



REPUBLIC OF KENYA

High Court at Machakos

Civil Case 271 of 2010

CARINA INVESTMENTS LIMITED ..... PLAINTIFF

VERSUS

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) ..... DEFENDANT

R U L I N G

This suit was filed on 10<sup>th</sup> December 2010 by way of plaint. The plaintiff sought injunctive orders, damages, costs and interest. On application, interim injunctive orders were issued in favour of the plaintiff by **H.P.G. Waweru J.** on 17<sup>th</sup> December 2010, subject to filing an undertaking for damages.

A Memorandum of Appearance was filed on behalf of the defendant on 12<sup>th</sup> July 2010 by **Erastus K Gitonga Advocate**. A defence (under protest) was filed on 11<sup>th</sup> October 2011. In the meantime, the plaintiff had issued a hearing notice for the main suit way back in June 2011.

The defendant filed a notice of preliminary objection to the suit on 11<sup>th</sup> October 2011. The objections are two, and I will reproduce them hereunder. They are as follows:-

1. **THAT this suit is wrongly before this court pursuant to section 129 of the Environmental Management and Coordination Act, 1999 and the decision of the Court of Appeal in Nairobi CA 84 of 2010 Republic –vs – National Environment Management Authority delivered on 15<sup>th</sup> July 2011.**
3. **THAT the National Environment Tribunal is a specialized court recognized by statute as befitting to try environmental appeals arising from decisions of the defendant.**

By a ruling delivered by **J.M. Ngugi J** on 30<sup>th</sup> April 2012, it was ordered that the Preliminary Objection should be heard and that a hearing notice should be issued. The learned Judge specifically under paragraph 8 of the ruling, directed as follows:-

**“8. I direct that Deputy Registrar to set the Preliminary Objection dated 30/9/11 for hearing on 15/05/2012 and an appropriate hearing notice to issue to the parties. For avoidance of doubt, during that hearing, the plaintiff should be prepared to demonstrate why the substantive suit should not be dismissed with costs.”**

The Preliminary Objection came up for hearing on 18/7/12. On that day **Mr J M Mutinda** who held brief for **Ms. Nungo** for the plaintiff, informed the court that there was a notice to withdraw the suit which had already been filed. After **Mr Gitonga** learned counsel for the defendant made his submissions in support of the Preliminary Objection, **Mr Mutinda** stated that he had nothing to say.

I will dismiss the suit. The Preliminary Objection has not been opposed, even in the face of the clear court order, that the plaintiff should demonstrate why the suit should not be dismissed. It all means that the plaintiff is not contesting the contention that the suit is incompetent. I uphold the objections, and will therefore dismiss the suit.

Consequently, I dismiss the suit of the plaintiff, with costs to the defendant.

Dated and delivered at Machakos this **21<sup>st</sup>** day of **November** 2012.

.....

**George Dulu**  
**Judge**

**In the presence of:**

E.K Gitonga for Defendant

N/A for Plaintiff

Nyalo – Court clerk