



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli. 1643 of 2004

REPUBLIC
APPLICANT

VERSUS

MINISTER FOR ENVIRONMENTAL AND NATURAL RESOURCES ... 1ST RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 2ND
RESPONDENT**

RULING

1. Background

1. In this Environmental Law Matter, the Minister of Environment and Natural Resources (as he was known then) intended to implement a decision of implementing the Lake Naivasha Managerial plan. A legal notice No. 108 issued by the Minister in Kenya Gazette notice No. 7704 on 3rd September, 2004 was to drastically effect the ex pate applicant.
2. The applicants applied for Judicial Review praying there to be leave to be given to them to stop any management plan by the Minister. The effect if not stopped, would effect their rights to the lake.
3. Leave was granted to the applicant by Nyamu J, of which leave, acted as a stay.
4. The Management Committee of Lake Naivasha appear to have disobeyed court orders. The application for contempt, heard by Nyamu J, was then not granted due to technicalities.
5. On the day this matter was called out for hearing the respondent namely advocate for NEMA and the state, raised a Preliminary Objection which is subject of this ruling.

II: Preliminary Objection

6. The objection raised is that the Judicial Review format was defective. There was no relief sought for NEMA.;
7. There was no proof of service on the Director General nor service on the Lake Naivasha Management Committee.
8. There are stay orders on record and as such the whole application should be struck out

9. Further, one Serah Nyambura has no locus to be before this court.
10. There was no reply by the respondents as they failed to file and service their reply.

II: Opinion

11. There are case law referred herein supporting the fact that if service and or the format of the Judicial Review is not in order the application may be struck out.
12. I would wish to bring the parties attention to the Environmental Management and Coordination Act which provides that any person aggrieved by any acts of or possible act of environmental degradation are permitted to come to court and the issue of Locus Standi will not be an impediment to appearing to court.
13. The person refers only to show that their rights have been contravened under section 3 and the High Court may hear them.
14. As the said parties wish to touch on the Minister and Government body then the parties must come to court by way of Judicial Review.
15. Access to justice and to be heard is of utmost importance in Environmental Law. The issue should have been taken up earlier and not at the stage of hearing.
16. As to the service upon other parties it is important to note the Government can come into a matter through the Attorney General at any stage and without filing papers.
17. The persons who believe they ought to be here, orders to have them served with the proceedings are available under Order LIII Civil Procedure Rules. And to give them evidence in court.
18. It is the fundamental right for the applicant to be heard on an Environmental Law matter. As such I dismiss this Preliminary Objection with costs to the respondent/applicant

DATED THIS 26TH DAY OF SEPTEMBER 2008 AT NAIROBI.

M.A. ANGA'WA

JUDGE

P.M. Muteithia instructed by P. Mureithi & Co. Advocates for the 1st respondent.

J. Olum holding brief for J. K. Kemboy instructed by Kemboy & Co. Advocates for the applicant – present

N. Thuku instructed by Mwenesi & Co. Advocates for the 2nd Respondent - present