



Karungu & another v Taifa Gas Investment Sez Limited; National Environment Management Authority (Interested Party) (Environment and Land Petition E006 of 2025) [2025] KEELC 6004 (KLR) (15 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6004 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E006 OF 2025
SM KIBUNJA, J
SEPTEMBER 15, 2025**

BETWEEN

MOHAMED SAID ALI KARUNGU 1ST PETITIONER

RAPHAEL NYIRO 2ND PETITIONER

AND

TAIFA GAS INVESTMENT SEZ LIMITED RESPONDENT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED PARTY

RULING

1. The petitioner moved the court through the petition dated 17th July 2025, and filed on the same date seeking inter alia declaratory, restoration, compensation and conservatory orders. Filed contemporaneously with the petition was the notice of motion under certificate of urgency of even date that sought for the following orders:
 - a. “That this honourable court be pleased to certify this application to be of utmost urgency and service on the respondents be dispensed with in the first instance.
 - b. That this honourable court be pleased to issue a conservatory order of temporary injunction to forthwith prevent, stop, discontinue or restrain the respondent whether by itself, servants, agents, officers and or anyone claiming under her from carrying out deleterious activities particularly cutting down, wasting away and destroying trees or any property, excavating or carrying out construction or works including but not limited to setting up a Liquefied



Petroleum Gas (LPG) terminus on the suit property known as Mombasa/Mainland South/Block 1V/247 in Likoni Mombasa pending the hearing and determination of this application.

- c. That this honourable court be pleased to issue a conservatory order of temporary injunction to forthwith prevent, stop, discontinue or restrain the respondent whether by itself, servants, agents, officers and or anyone claiming under her from carrying out deleterious activities particularly cutting down, wasting away and destroying trees or any property, excavating or carrying out construction or works including but not limited to setting up a Liquefied Petroleum Gas (LPG) terminus on the suit property known as Mombasa/Mainland South/Block 1V/247 in Likoni Mombasa pending the hearing and determination of this petition.
 - d. That the costs of this application be provided for.”
2. The application came up for directions on the 18th July 2025, when the court granted prayer (1) by dispensing with service in the first instance, and further directed as follows:
 - a. That application be served in two days and evidence of service be filed.
 - b. That respondent to file and serve replies in seven days after service and applicant granted three days to respond to new issues of facts after service.
 - c. Prayer (2) of the said application granted to be in force until the inter parties hearing on 31st July 2025.
 3. The record confirms that on the 31st July 2025, only counsel for the petitioner appeared and he submitted inter alia that no replies had been filed though he had effected service on 18th July 2025 and filed an affidavit of service earlier that morning dated 30th July 2025. The counsel sought for the prayer (3) of the application to be granted. In its ex tempore ruling, the court considered the application as unopposed and granted it in terms of prayer (3) and fixed the petition for mention on 29th October 2025.
 4. The respondent filed the notice of motion under certificate of urgency dated 7th August 2025 seeking for inter alia:
 - a. That the court be pleased to certify the application as urgent and set it down for hearing on priority basis.
 - b. That pending the hearing and determination of the application, the order issued on 5th August 2025 be set aside.
 - c. That pending the hearing and determination of the petition dated 17th July 2025, the order of 5th August 2025 be set aside.
 - d. That pending the hearing and determination of the application an order staying the execution of the order of 5th August 2025 be granted.
 - e. The court grants an order for re-hearing of the application dated 17th July 2025.
 - f. That costs do abide the outcome of the application.
 5. The application was filed with the chamber summons under certificate of even date that among others sought for the notice of motion to be certified urgent and admitted for hearing during the August recess. The court considered the two applications on the same date they were filed, 7th August 2025, and inter alia directed as follows:



- a. That no urgency has been shown for the application to be heard during the ongoing recess.
 - b. That the application be served and evidence of service be filed.
 - c. The respondents to file and serve replies in fourteen days after service and applicant granted corresponding leave to respond to new issues of facts after service.
 - d. That application be heard inter parties on 15th September 2025.
6. The respondent filed another set of applications like those in (4) and (5) above, that are dated 8th August 2025, seeking primarily to have the “no urgency order” issued on 7th August 2025 reviewed, an order staying that of 5th August 2025, and their application dated 7th August 2025 to be heard during the August recess. The court considered the applications on 8th August 2025 and ordered as follows:
- a. “That I have considered the grounds on the two applications and affidavit evidence in support and I am of the view that they be served first to enable the respondents have an opportunity to respond within the same timelines given in respect of the earlier application dated 7th August 2025.
 - b. That for reasons in (1) above, I find no reasonable basis to review the directions/orders issued on 7th August 2025.
 - c. That the inter parties hearing date fixed yesterday of 15th September 2025 is confirmed.”
7. Today, the 15th September 2025, Mr. Muchiri, Mr. Oduol and Mr. Karimu, learned counsel for the petitioner, respondent and interested party appeared before the court and made their oral submissions on various issues, including the following:
- a. Interested party’s request for time to file replies to the applications.
 - b. Petitioner’s request for time to file submissions on the respondent’s applications.
 - c. Whether to grant the respondent’s prayer for stay of the order of 5th August 2025 pending the hearing and determination of the application dated 7th August 2025.
 - d. Whether the petitioner should be ordered to provide unconditional Bank Guarantee of Kshs.16billion if the stay order is not granted and the injunction order is to remain in force.
8. That due to the serious contestations between the counsel for the petitioner and the respondent, especially on the issues of service upon the respondent, the previous litigations, and the fact that the counsel for the interested party had just come on record and wanted time to respond to the applications, the court reserved its ruling and further directions for 2.00 pm today. At this interlocutory stage, the court is not expected to make any final determinations on any points of facts and laws on the petition, as that has to wait for evidence to be presented by the parties first. However, the court is obligated under Article 159(2)(b), (d) & (e) of *the Constitution* to ensure justice is no delayed, and is administered without undue regard to technicalities. Section 19(1) of the *Environment and Land Court Act* No. 19 of 2011, requires “the court shall act expeditiously, without undue regard to technicalities of procedure.” Section 1A(3) of the *Civil Procedure Act* chapter 21 of Laws of Kenya, inter alia provides that “A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and , to that effect, to participate in the processes of the court and to comply with the directions and orders of the court,” while section 1B thereof among others requires the court to handle all matters presented before it efficiently, timeously, and at a cost affordable by the respective parties. With the foregoing in mind, and having perused the



record and upon considering the oral submissions of the learned counsel, the court has come to the following conclusions:

- a. That the court has noted that there is on record a Notice of Appeal by the respondent's counsel dated 11th August 2025 in respect of the order issued on the 5th August 2025. The learned counsel did not address the court on how the said notice of appeal impacts on the pending application dated 7th August 2025 that seeks to among others set the same order aside. I will leave that issue at that with the hope that counsel will address the court on it at the appropriate time.
 - b. That as admitted by counsel for the respondent in his submission the application dated 8th August 2025 whose purpose to review the application dated 7th August 2025 failed and has therefore, been overtaken by events, it will hereinafter be considered as abandoned. The court will therefore proceed to consider and give directions on the application dated 7th August 2025.
 - c. That while the injunction order granted on the 31st July 2025, and extracted on the 5th August 2025, may probably have resulted to the losses as particularized by the learned counsel for the respondent, that alone does not suffice to have the said order being stayed, as the flipside is that the damage to the environment may equally be as great if the works were to continue as the applications are heard and determined. That due to the urgent nature of the application dated 7th August 2025, the court is of the view that judicial time will best be used by the parties moving as fast as possible to the petition, but to do that the pending interlocutory applications need to be dealt with first. The court has a duty and an obligation to issue orders and or directions that will help the parties towards fast determinations of the said applications while ensuring justice and fairness to all parties concerned.
9. That in view of the above findings the court finds and orders as follows:
- a. That the prayer for stay of the injunction order granted on 31st July 2025, and issued on 5th August 2025, pending the hearing and determination of the application dated 7th August 2025, is rejected.
 - b. That the interested party is granted two days to file and serve its replies to the application.
 - c. That as the respondent/applicant has already filed its submissions, the petitioner and interested party are granted five days from today to file and serve their submissions.
 - d. That the respondent be at liberty to file and serve supplementary submissions in three days after service of the interested party's reply if any.
 - e. That the court will proceed to fix a ruling date on the application dated 7th August 2025 on priority basis this afternoon.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED TODAY THE 15th OF SEPTEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the Presence of:

Petitioner : M/S Mwangeli for Muchiri

Respondent : Mr Oduol



Interested Party : Mr Karimu

Shitemi-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

