



**Lagat & 5 others v Kaberu & another (Environment & Land Case  
254 of 2015) [2024] KEELC 483 (KLR) (2 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 254 OF 2015  
A OMBWAYO, J  
FEBRUARY 2, 2024**

**BETWEEN**

**JOHN LAGAT ..... 1<sup>ST</sup> PLAINTIFF  
ROBERT LANGAT ..... 2<sup>ND</sup> PLAINTIFF  
KENNETH KOSIMBEI ..... 3<sup>RD</sup> PLAINTIFF  
CYRUS KILONZI ..... 4<sup>TH</sup> PLAINTIFF  
JEFY RONO ..... 5<sup>TH</sup> PLAINTIFF  
PROF. EDWARD TANUI ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**NAFTALI KABERU ..... 1<sup>ST</sup> DEFENDANT  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) .... 2<sup>ND</sup>  
DEFENDANT**

**JUDGMENT**

1. John Lagat, Robert Langat, Kenneth Kosimbei, Cyrus Kilonzi, Jefy Rono, Prof. Edward Tanui hereinafter referred to as the Plaintiffs' commenced this suit vide a Plaint dated 11<sup>th</sup> September, 2015 averring that the stream next to the proposed Slaughter House drains into the Kasiminde Dam which is the only water resource for the surrounding community.
2. They also aver that the said slaughter house will make the nearby estates inhabitable because of the foul smell from bowels and blood of slaughtered animals and that despite demand that the 1<sup>st</sup> Defendant stops the said construction, the 1<sup>st</sup> Defendant has refused to comply. They also aver that despite demand and notice of intention to sue, the Defendants have refused to comply and the present suit has been rendered necessary.



3. The cause of action arose in Nakuru within the jurisdiction of this Honourable court. The Plaintiffs' pray for judgment against the Defendants jointly and severally for:
  - a. That there be a permanent injunction restraining the 1<sup>st</sup> Defendant by himself, servants, assigns, tenants and all who claim under as through him from erecting a Slaughter House within Belbur Farm- Baraka Estate- Njoro which is a health hazard to the community and the entire Eco-system.
  - b. A declaration that the 2<sup>nd</sup> Defendant's approval of the Project is Null and Void for failure to involve the Community.
  - c. Costs of this suit.
  - d. Any other relief that this court may deem fit and just to grant.
4. The 1<sup>st</sup> Defendant filed his Statement of Defence on 2<sup>nd</sup> October, 2015 and he denies the averments in the Plaintiff. The 1<sup>st</sup> Defendant states that before embarking on the project, he adhered to all procedural technicalities as required by the National and County Government and the National Environment Management Authority.
5. That the proposed slaughter house is at a safe distance from the said stream hence protects the riparian reserve and that the project includes construction of an approved and efficient facility that meets the standards for effluent discharge for disposing waste and water from the slaughter house.
6. The 1<sup>st</sup> Defendant denies any demand and notice of intention to sue was issued. He also admits the jurisdiction of this Honourable court.
7. The 2<sup>nd</sup> Defendant filed its Statement of Defence on 13<sup>th</sup> May, 2019 and it denies the Plaintiffs' averments in the Plaintiff. The 2<sup>nd</sup> Defendant states that any approval issued to the 1<sup>st</sup> Defendant was done legally and after following the due process as provided for under the Environmental Management and Coordination Act. The 2<sup>nd</sup> Defendant also states that no notice whatsoever has ever been served upon it. It also admits the jurisdiction of this Honourable court and prays that the Plaintiffs' prayers against it be dismissed with costs.

### **Plaintiffs' Evidence**

8. On 26<sup>th</sup> September, 2019 when the matter was before court, counsel for the 2<sup>nd</sup> Defendant informed court that all parties had complied with Order 11 and requested for a hearing date. The matter was subsequently scheduled for hearing on 28<sup>th</sup> June, 2021. The first witness to testify in support of the Plaintiffs' case was Cyrus Kilonzi (herein referred to as PW1). He testified that he is a resident of Belbur estate and he has resided there since 2005. He testified that he recorded a witness statement dated 4<sup>th</sup> February, 2019 and he adopted it as part of his evidence in chief.
9. In his witness statement, he states that as the residents and owners of land at Baraka Estate within Belbur Farm in Njoro within Nakuru County, they protest the construction of a slaughter house in a residential area which neighbors their houses being undertaken by the 1<sup>st</sup> Defendant.
10. He states that the said project started in June 2015 and they later found out that the project was a slaughter house. He states that they wrote a letter to NEMA seeking to know if they were aware of the project and if they had licensed it. He states that there was no public participation during the Environment Impact Assessment (EIA).



11. It is his statement that NEMA responded to their letter by visiting the site and they convened a public hearing where they raised their concerns and the reasons why they are against the construction of the project in the site. He states that NEMA representatives informed them that they were going to look into the matter and make a decision which will be communicated to them.
12. PW1 states that as the residents, they went ahead and contacted an expert in matters of the environment by the name Joseph M. Kiragu who conducted research and wrote a report on the impact of the slaughter house located on NJORO/NJORO BLOCK 4/1537 (BELBUR) in the socio-economic and biophysical environment.
13. He states that they further consulted an Environmentalist who prepared an Environment Report of proposed slaughter house on plot No Njoro/Njoro block/1537 which was prepared by Joseph Onsongo Angwenyi in which he made recommendations that the proposed slaughter house should not be allowed due to the adverse negative impacts which will be caused to the environment if the said project is allowed.
14. It is PW1's statement that they later learnt that NEMA had licensed the project and they filed a suit on 11<sup>th</sup> September, 2015 seeking an injunctive order to stop the project awaiting hearing and determination of the matter. He states that the court issued an injunction order on 16<sup>th</sup> October, 2015 and the 2<sup>nd</sup> Defendant commenced construction in total disregard of the court order.
15. He states that the continued disobedience of the court order made them look for assistance from the office of the OCS of Njoro whom they wanted to enforce the order. He states that On 26<sup>th</sup> February, 2018, the OCS informed them that he had no power to enforce the order as the order was not specific on the person required to enforce it.
16. He states that as a community, they are not against any development but they cannot support a project which pollutes the environment.
17. He states that they strongly oppose the project for the following reasons: the slaughter house is within residential homes, residents of the area depend on shallow wells for domestic water and they fear that the slaughter house will contaminate their only source of water, the slaughter house will lead to rerouting of natural water course of a seasonal stream which will result in water flooding homes and property next to it, the deflected water will flood pit latrines and as a result fecal matter will overflow and contaminate shallow wells in the area and contribute to waterborne diseases, the slaughter house is located in a wetland which occasionally floods during rainy season, Tengecha Primary School is within the neighborhood and the stream passes through the school compound, the newly constructed Belbur Dispensary is within the neighborhood and the stream passes nearby, waste disposals from the slaughter house will result in foul smell, they are concerned that scavengers will start invading the area e.g. dogs and birds, the noise and commotion from the slaughter house will disturb the peace in the neighborhood. Imported livestock may spread diseases to their local livestock and the contamination of the stream water will not be palatable to the livestock downstream.
18. It is his statement that the community is also concerned whether the developer obtained change of user of his plot from agriculture/ residential to industrial and if so, they did not see the notice on the said parcel of land.
19. PW1 was cross examined by counsel for the 1<sup>st</sup> Defendant and he explained that as at the time they filed the suit, construction had commenced in 2015 and the foundation had been done though the building had not come up. The construction never stopped. PW1 confirmed that he never came to court to complain that the Defendant had disobeyed the order of injunction and he does not know the



- size of the project plot. PW1 stated that his plot is in the same side of the project site and his house is 50 meters from the project site. He also stated that his plot does not share a boundary with the project site. He stated there are about four plots between him and the slaughter house.
20. He stated that the stream is about 50 meters from his plot and it does not touch the stream. He stated that the stream is seasonal and when the stream floods it spills to the neighboring areas particularly where the slaughter house has been built. He stated that even before the slaughter house was constructed, the stream used to flood.
  21. He stated that the slaughter house has the effect of directing flood water to neighboring plots. He also stated that NEMA held a public participation meeting on 15<sup>th</sup> July, 2015 after they complained. He explained that NEMA stated it would communicate its decision and the proponent was in attendance.
  22. He stated that the slaughter house is in operation and he has not visited the slaughter house since its operation. He stated that he has no tangible evidence of any person whose sickness can be attributed to the slaughter house. He also stated that he has no evidence of water and effluents flowing from the slaughter house to the neighboring parcel of land.
  23. PW1 was cross examined by counsel for NEMA and he stated that they did a letter to NEMA dated 26<sup>th</sup> June 2015 complaining about the project and he is not aware of the stoppage order issued to the 2<sup>nd</sup> Defendant or to the 1<sup>st</sup> Defendant.
  24. He confirmed a public consultation was convened by NEMA on 16<sup>th</sup> July, 2015 and he attended amongst other community members. He stated that he is not aware that a license was issued by NEMA to the 1<sup>st</sup> Defendant. He stated that they did not visit the NEMA offices to follow up after the meeting. He also stated that he is not aware that the county government issued the 1<sup>st</sup> Defendant with a certificate of compliance. He stated that he saw the public health recommendation and which stated that the 1<sup>st</sup> Defendant should do a public participation. He stated that he is not aware that NEMA license was issued on 22<sup>nd</sup> August, 2015 and they were not notified.
  25. He confirmed that he never challenged the decision at the National Environmental Tribunal and they choose to come to court instead. PW1 was reexamined and he testified that he saw the comments from the public health department via letter dated 7<sup>th</sup> August, 2015 which showed that no adequate public participation was conducted and further confirmed that NEMA did not conduct subsequent public participation meeting. He further testified that after the construction of the slaughter house, the water was directed and the plot of the 1<sup>st</sup> Plaintiff was seriously affected.
  26. The second witness to testify in support of the Plaintiffs' case was Robert Kibet Langat. (herein referred to as PW2). He testified that he comes from Njoro Delba firm and he is a retired accountant doing small farming. He stated that he is the 2<sup>nd</sup> Plaintiff and he signed a statement dated 4<sup>th</sup> February, 2019 which he adopted as part of his evidence in chief. It was his testimony that he has a certificate of authentication of photographs. He stated that he took the photographs himself and he produced the certificate of photographs as PEX 3(a) and 3b(i)-XVI. He testified that he photographs show how the flood affect the area during heavy rains.
  27. PW2 testified that there is a wall which prevent water from accessing his property, The deflated water goes to other people's property. The wall was to prevent water from his slaughter house but he directed the water to other people's property. He testified that the water used to flow from the upper side and through the school.
  28. He testified that he wrote a letter to the Ministry for Environment and the letter is dated 19<sup>th</sup> March, 2018 and produced as PEX5. He has attached a list of complains as PEX 6 from Page 85-90. He testified



- that their complaint was that the pollution to the environment in terms of Water and air pollution. He testified that the slaughter house has been constructed and it is running. He further testified that the stench or smell from the slaughter house is affecting the community.
29. He testified that the river is approximately one kilometer from the slaughter house. It was his testimony that the samples were taken to Nakuru water and sanitation services and they got the results of the lab test. The findings were that on the upper stream there was no contamination and on the lower stream there was contamination. He stated that the finding was prepared by Margaret Eliud Rotich.
  30. In his witness statement dated 4<sup>th</sup> February, 2019, PW2 states that they as a community are not against any development but they cannot support a project which pollutes the environment. He states that they are entitled to a clean and healthy environment based on the Constitution of Kenya and the Environment and Coordination Act. He states that it is their duty as a community to protect and ensure that they live in a healthy and clean environment for them and the future generation. Reliance is also placed on the water quality regulations.
  31. PW2 states that they strongly oppose the project for the following reasons: the slaughter house is within residential homes, residents of the area depend on shallow wells for domestic water and they fear that the slaughter house will contaminate their only source of water, the slaughter house will lead to rerouting of natural water course of a seasonal stream which will result in water flooding homes and property next to it, the deflected water will flood pit latrines and as a result fecal matter will overflow and contaminate shallow wells in the area and contribute to waterborne diseases, the slaughter house is located in a wetland which occasionally floods during rainy season, Tengecha Primary School is within the neighborhood and the stream passes through the school compound, the newly constructed Belbur Dispensary is within the neighborhood and the stream passes nearby, waste disposals from the slaughter house will result in foul smell, they are concerned that scavengers will start invading the area e.g. dogs and birds, the noise and commotion from the slaughter house will disturb the peace in the neighborhood. Imported livestock may spread diseases to their local livestock and the contamination of the stream water will not be palatable to the livestock downstream.
  32. PW2 states that as a community, they are concerned whether the developer obtained change of user of his plot from agriculture/residential to industrial and if so, they did not see the notice on the said parcel of land. Upon cross examination by counsel for the 1<sup>st</sup> Defendant, PW2 stated that the slaughter house is approximately 1 kilometer away from the river. He explained that there is a seasonal river passing near the slaughter house and the slaughter house has a permanent wall with an entrance of cows and vehicles.
  33. He further stated that he is not aware that the 1<sup>st</sup> Defendant has a title. He confirmed that the river is not far from the slaughter house. PW2 stated that the owner of the slaughter house constructed a wall in his property and it was not wrong for him to build a wall. PW2 confirmed that the wall is one meter from the water channel. He stated that the slaughter house is 7 years old and nobody has been taken to hospital. He also stated that nobody has ever complained to any authority.
  34. It was his statement that the people are suffering quietly but they are really suffering. He stated that they are having diseases. The slaughter house produces a foul smell and he is not aware of other slaughter houses. He stated that the water samples were taken to NAWASCO by a person known as Silas Kilonzo. He stated that the slaughter house is a liability to the country.
  35. Upon cross examination by counsel for the 2<sup>nd</sup> Defendant, PW2 stated that they complained to NEMA and NEMA visited the site. He confirmed that NEMA called for a public hearing and NEMA issued a stop order after our complaint. PW2 further confirmed that NEMA came once and he was present.



- He stated that they objected to the building of slaughter house. He further confirmed that NEMA came when they were starting the building.
36. He stated that they gave their reasons for objection and they wanted NEMAs license cancelled. He stated that NEMA was behaving as if service would die if the slaughter house was not built. He confirmed that Mr. Kilonzo took samples. He confirmed knowing him as a residence of Bella Community. He also confirmed that he is in the Egerton University and he does environmental science.
  37. On re-examination, PW2 testified that NEMA visited the site once. He stated that NEMA came during the building of the slaughter house and the stop order was issued when they complained. He testified that the stop order was lifted and NEMA did not come before construction.
  38. PW2 testified that there is a seasonal river passing at the back of the slaughter house. He stated that the seasonal river is one meter from the slaughter house. He testified that the seasonal river flows to main river which is one kilometer from the slaughter house.
  39. Joseph Onsongo Angwenyi testified as PW3. It was his testimony that he comes from Nakuru Shabab and he is the author of the report dated 16<sup>th</sup> October, 2015 which is at page 69. He testified that he did his A level at Nakuru High School in 1967 and proceeded to the University of New Brousely in Canada between 1968-1972. He testified that he worked in the Ministry of Environment and Natural resources in Forestry Department between 1972-1989. He testified that he retired from Public service and proceeded to Kakuzi . It was also his testimony that he worked for 10 years and in 2006 he retired from Kakuzi. He testified that he retired from his other employee in 2002 and had an opportunity to train in Norway post graduate in forestry.
  40. He further testified that in 2005, he was trained at JKUAT. He testified that he was represented as a land expert in Environment. It was also his testimony that from 2006, he has practiced as a lead expert based in Nakuru until the year 2020. He testified that he visited the site and there was a proposed slaughter house. He testified that he assessed the input and his assessment and recommendation are in the report. He testified that he has not visited the site after writing the report. He testified that he has a license and he produced the report as part of his evidence in chief.
  41. Upon cross examination by counsel for the 1<sup>st</sup> defendant, PW3 stated that the report was prepared before the slaughter house was established. The report was prepared in anticipation and the likely adverse effects. He stated that he is not aware that construction was completed. PW3 was shown the NEMA license and he stated that if the construction was done in compliance with the condition's in the NEMA license then it would be okay.
  42. Upon cross examination by counsel for the 2<sup>nd</sup> Defendant, PW3 stated that the report is dated October 2015. He confirmed that he was not given the EIA report for the project. He also confirmed not being aware that the project was licensed. PW3 stated that he was not doing an EIA report and it was a precautionary report. He confirmed that his mandate was to prepare a report. He stated that one dissatisfied with the decision of NEMA then one should go to the tribunal.

### **Defendants' Evidence**

43. Naftali Kiberu Ngugi testified as DW1 and he adopted his statement dated 21<sup>st</sup> October, 2015 as part of his evidence in chief. He testified that the property is in Njoro and was built in 2015. DW1 produced the following documents: Documents number 1-6 as produced as 1<sup>st</sup> DEX number 1 to DEX 6, Documents number 7 as produced as DDFI-7. Documents No 8 and 9 are produced as DEX 8 and DEX 9. He further testified that there are further documents filed on 7<sup>th</sup> February, 2023. He went



on to further produce document number 1 and 2 are issued as DEX 10 and DEX 11 and Document number 3 is DMFI 12.

44. It was his testimony that some villagers approached NEMA in regard of his development and none stopped his activities pending a meeting. He testified that his project was stopped and he was given terms and conditions. NEMA called a meeting and they attended the meeting on 16<sup>th</sup> July, 2015 at 11.30 a.m.
45. He testified that after the meeting he was given conditions. He testified that he was told by NEMA to proceed upon fulfilling conditions. He testified that he was given an Environment Impact Assessment License with conditions and it was produced as DEX 13.
46. He testified that the County Government have been supervising his project. He testified that he put a fence (walled strong) round the property. He also testified that he put a gate which is a steel gate and no animal can be allowed ingress.
47. He testified that there is no river near the slaughter house and he has put a double fence stone wall.. He testified that he put 7 courses of the wall upwards. He testified that the fence was with guidance of NEMA and he went 7 courses down. He stated that he was advised to make a hole 40 feet down (deep) for disposing blood and there is a company called Eco safe. He testified that they were given some chemicals to put into the pit.
48. He testified that the NEMA people advised him to do a shed for fertilizer. He testified that the inside of the animals is used as fertilizer. He testified that there has never been flooding due to his project. NEMA and public health have appeared in his project. He testified that he has planted trees between his project and river. He testified that the trees have matured and they have done for 6 years.
49. He testified that the Public health have been supervising his project. He testified that they were given a letter by a veterinary officer confirming that the animals are safe from diseases.
50. He further testified that no transportation of any animal can be allowed without a letter from a veterinary doctor. He testified that there has never been any outbreak of diseases and no health hazard had even arisen.
51. He testified that he has had no business for 6 years. He testified that the slaughter house is clean and he has have never operated without a license. He testified that the villagers are happy because they have jobs as he has employed direct and indirect laborers which benefit about 200 people. He testified that no permanent employees have ever complained. He prayed that the case be dismissed with costs and the court makes a site visit. Upon cross examination by counsel for the 2<sup>nd</sup> Defendant, DW1 stated that NEMA visits the site and they look at the meter, system, cleanness and trees. He further stated that NEMA cannot allow them to proceed if there was a problem. He confirmed that NEMA is supervising the place on a monthly basis.
52. Upon cross examination by counsel for the Plaintiff, DW1 stated that he purchased the property in 2015. He confirmed that the property was in a residential area and he made an application for change of user. He stated that he applied for change of user after buying and before change of user, there was public participation. He confirmed that there was public participation during NEMA approval and he applied for NEMA approval in late 2015.
53. It was DW1's statement that NEMA gave a stop order. He stated that the license was given on 27<sup>th</sup> August, 2015 and the stop order was made on 24<sup>th</sup> June, 2015. He confirmed that there is a stream behind the slaughter house and it flows into a big river. He stated that the slaughter house is 3



- meters from the stream. He stated that the wall is between 3-6 meters from the river and they started construction at the end of 2015. He stated that they started by depositing construction materials.
54. DW1 was shown a letter dated 7<sup>th</sup> August, 2015 and he testified that on this date, he had started depositing materials. He confirmed that the letter states the truth and he had stated construction. He stated that he complied with all regulations. He further informed the court that he has evidence of the place for disposal of waste.
  55. He stated that there is a report by NEMA and he is the one running the slaughter house. He confirmed that he has a record of 200 employees and there are people who benefit either directly or indirectly. He confirmed that the land is 2 acres and in the plot, there is a slaughter house, store and a small parking. He confirmed that he has half an acre for parking and the empty space can accommodate many vehicles.
  56. He also confirmed that he has a holding place for the cows which can hold 70 cows. He confirmed having immediate neighbors who are John Langat. Robert Langat, Kennedy Kisumbei. He stated that he does not know the names of the direct neighbors and he only saw a report.
  57. DW1 confirmed that he gave the job to a professional. He stated that he was told that the project would be advertised and he has not seen the advert. He confirmed that there were notices on the land and he has not produced the same.
  58. He also confirmed that he has not been shown any notice by his advocate. DW1 confirmed putting up a chimney and asked the court to visit the site. It was also his statement that the project was opposed by people and hence the matter being in court.
  59. Upon re-examination, while making reference to DEX 1 and DEX 2, DW1 testified that his project was approved by his technical team and the change of user was approved. He testified that the distance between the slaughter house fence to the river is 3 meters and the distance from the fence to slaughter house is 6-7 meters. He testified that he gave an expert to do the work and he has a license to operate.
  60. James Siati testified as DW2 and he testified that he works with NEMA. His statement is dated 13<sup>th</sup> May 2019 and he filed a bundle of documents which he produced them as exhibits. He testified that they have never received any complaint since it was approved and there is no issue that has come to their attention.
  61. Upon cross examination by counsel for the 1<sup>st</sup> Defendant, he stated that he has seen all documents including the certificate of compliance. He confirmed that he allowed them to proceed with the project. He also confirmed that that there was public participation. Upon cross examination by counsel for the Plaintiff, DW2 stated that he works at NEMA and he is the County Director of Environment Nakuru. He stated that he has been a County Director since 2015. He confirmed that he has a bachelor's degree in Environmental science with 15 years' experience. He also confirmed studying for a master degree. He further stated that when the project was done he was at NEMA Nakuru holding brief as a County Director. He confirmed that the letter at page 42 was written by himself.
  62. He stated that his first visit was on 24<sup>th</sup> June, 2015 and it was established that Development had begun and no license had been issued. He stated that they issued a stop order and the license was issued in August 2015. He further confirmed that before a license is issued there must be a report and it is circulated to the departments. It was his statement that they usually visit the site and the report is reviewed and that they consider the mitigation measures and they look at the methodology and consider the impact. DW2 further stated that they consider the measures and public participation is done in direct context to enable inclusivity. He stated that they can have a physical meeting or do the questionnaire and that they look at the person responding and whether he is affected. He stated that



- they consider the name, identification number, address and the land reference number. He stated that they also consider the relationship such as neighbors.
63. He stated that he went to the site and interviewed the neighbors. He confirmed that in the questions there are no details such as identification numbers, phone numbers or addresses. He further confirmed that there is no indication of the relationship and it is not indicated that they were neighbors. He also stated that the area is not a residential area but it was a residential area and he is aware of change of user. DW2 confirmed that there must be public participation and he has been to the site. He confirmed that there is a stream outside the site and he does regular audit. He stated that the participation was triggered by complaints by neighbors which led to a meeting being convened which is a form of public participation. He stated that a Public Barazza is done once. He confirmed that they interviewed nine people and they did another public participation.
  64. Upon re-examination, DW2 testified that the stream was 500 meters and had no running water. He testified that the nearest home was 500 meters to one kilometer. He confirmed that Page 16 has of change of user from agricultural to commercial use. He further stated that public participation involves other agencies.
  65. He testified that they were seeking advice from Public Health and County Executive Committee and all the institutions did not object. He stated that the purpose of the Barazza was to widen the knowledge and the minutes are in Page 20. He stated that the Barazza was well attended and the issues raised and discussed included waste water and solid waste.
  66. Joseph Mwangi Kiragu testified as DW3. He testified that he is a resident of Nakuru County at Egerton. He testified that he is an environmental consultant and a lead expert. He stated that he has a master degree in Environmental science and is the lead consultant for Etcon E A Ltd. DW3 testified that he knows the 1<sup>st</sup> defendant and did consultation for him. He further testified that they prepared a report and presented the same to NEMA which subsequently issued a licence. He testified that there were complaints raised by members of the public and they addressed the issues raised such as noise. He testified that they advised the client on how to address the issues.
  67. He stated that the waste could be used as manure and a well was to be done as well as installation of a bio digester. He stated that a pit for carcasses was also to be dug. He testified that the recommendations have been complied with and they have been maintained as consultants. It was also his testimony that there was the second issue of pollution of the environment. He testified that they gave a number of measures such as fencing to deter animals from the slaughter house. He testified that they also recommended digging of condemnation pit. DW3 testified that they advised their client to reserve a big parcel of land and recommended another acre. He testified that the land is properly fenced. He further testified that the proprietor was to leave some area for the river to flow. He testified that a double wall was erected to prevent the river from entering his premises. He testified that big trees were also planted and no flooding has ever happened. He testified that on solid management they advised their client to collect the waste in solid form and take it to the arable land. He further testified that the waste does not run out of the slaughter house to the river. He stated that their work as consultant is to give advice for improvement. He testified that NEMA was satisfied with their application and that they have been doing environmental audits and he has a report for 2022. He stated that the documents are in the supplementary further list of documents. Document number 3 is produced as DEX3 and DEX 12. He testified that nobody has complained about the slaughter house.
  68. Upon cross examination by counsel for the Plaintiff, DW3 stated that he did the report and submitted to NEMA. He confirmed that they did not make an announcement on Radio as this was not a High Rank project. He further confirmed that there was no advertisement in the Radio or Newspaper.



69. DW3 confirmed that the land was 2 acres and it is not in the report. He confirmed that he has annexed a copy of the title in the report and unfortunately, he does not have the title. He confirmed interviewing nine people and he did not indicate their identification details or their addresses. He further stated that none were interviewed in person. DW3 confirmed that he did not establish the owners of the adjacent parcels.
70. He stated that they do not have any other minutes and the report had nine questions. He confirmed that he did not participate in change of user. He further confirmed having the documents of the Impact Assessment Report. He also stated that he did not consider the change of user. It was his statement that during the meeting, NEMA found that there was construction before license. He stated that the license was issued on 27<sup>th</sup> August, 2015.
71. Upon re-examination, DW3 testified that the EIA report he prepared was on project Report as opposed to the study report. He testified that in a project report there is no requirement for advertisement in Radio or newspaper. It was his testimony that he attached a copy of the title in the report. He testified that he has a copy of the title deed and the acreage was 0.404 acres. He testified that there was no objection to the change of user and the change of user was obtained by the 1<sup>st</sup> Defendant. Counsel for the 1<sup>st</sup> Defendant prayed for the court to visit the site and there was no objection to the prayer. The court conducted the site visit on 29<sup>th</sup> September, 2023. The court visited the site on the  
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#### **Issues For Determination**

72. The Plaintiffs' filed their submissions on 31<sup>st</sup> October, 2023 and they identified the following issues for determination:
  - a. Whether the 1<sup>st</sup> Defendant has violated the Plaintiff's right to a clean and healthy environment?
  - b. Whether the 2<sup>nd</sup> Defendant approval of the 1<sup>st</sup> Defendant's project was lawful and justified?
73. The Plaintiff submits that the state and its organs have a duty to ensure that protection of the environment is key in all development agendas and participation of its citizenry in all decisions prior to implementation of a project affecting the environment, is mandatory.
74. They rely on Article 42 of the Constitution of Kenya, 2010 and submit that the Defendants' have undeniably exposed the Plaintiffs' and the community they represent to a harmful environment leaving them destitute in total breach of Articles 10, 42 and 69 of the Constitution of Kenya.
75. It is their submission that the duty to have the environment protected for the benefit of present and future generations is imposed on both the State and every person under Article 69 which among others requires the state to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; to establish systems of environmental impact assessment. Environmental audit and monitoring of the environment and to eliminate processes and activities that are likely to endanger the environment.
76. They further submit that the Constitution calls for accountability in environmental matters, with a particular focus on respecting, protecting and fulfilling environmental rights, as well as the promoting of environmental rule of law. Reliance is placed on the judicial decision of Moffat Kamau & 9 others v Actors Kenya Ltd & 9 others [2016] eKLR.
77. They submit that the Constitution guarantees the right to life and dignity of man under Articles 26 and 28 and if both are read together, then a person cannot be said to have dignity of man if his right



- to life is below bare necessity line that is without proper food, clothing, shelter, education, healthcare, clean atmosphere and unpolluted environment.
78. The Plaintiffs' rely on Principle 10 of the [Rio Declaration on Environment and Development](#) [1992]. They submit that the provisions of Article 2 (5) of the [Constitution](#) and the Principles in the Rio Declaration on Environment and Development are binding on the Defendants.
  79. It is their submission that the neighborhood is a residential area and their properties are adjacent to and/or adjoining the suit property, and by virtue of the proximity of the suit property, they are directly affected by any developments or works being undertaken on the parcel.
  80. They submit that the Environmental Impact Assessment report which the 1<sup>st</sup> Defendant is waving before this court and purports to have taken into examined the socio-economic and biophysical environment of the project area; the developments on adjoining pieces of the land, the likely impacts of the project on the same and the environmental impacts of the project is a complete hoax for want of public participation.
  81. The Plaintiffs' submits that the manner in which the 2<sup>nd</sup> Respondent treated the aspect of public participation in the EIA process was tantamount to abdicating its obligations to ensure public participation was undertaken pursuant to Article 10 of the [Constitution](#) and Regulation 17 of the [Environment \(Impact Assessment and Audit\) Regulations 2003](#).
  82. Reliance is placed in the judicial decisions of [Ken Kasing'a v Daniel Kiplagat & 5 others](#) [2015] eKLR and [John Kabukuru Kibicho & another v County Government of Nakuru & others](#) [2016] eKLR.
  83. It is the Plaintiffs' submission that the project discloses numerous environmental concerns regarding air pollution, noise pollution, waste management, and made the area inhabitable for the residents. They submit that the slaughterhouse is incontrovertibly a health hazard as it has made the neighborhood; a residential area inhabitable owing to foul smell from bowels and blood of slaughtered animals. Waste diverted and discharged to the stream. They submit that this has immensely affected the quality of the lives lived by residents of Belbur Estate.
  84. Reliance is also placed on the judicial decision of [Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others](#) [2018] eKLR where the court adopted the decision in Communication No 155/96: The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria.
  85. They submit that the [Constitution](#) of Kenya 2010 makes environmental conservation a constitutional issue and the unfortunate fact that the slaughterhouse sits next to a steam poses (5 meters to be precise) a great danger to the ecosystem thus an utter breach to this constitutionally imposed obligation. They submit that the long term effects of this might be irreversible and there is an urgent need to stop the illegal actions of the 1<sup>st</sup> Defendant.
  86. The Plaintiffs' rely on the judicial decision of [Adrian Kamotho Njenga v Council of Governors & 3 others](#) [2020] eKLR. The Plaintiffs; contend that the Respondents have over the years been acting outside the realm of the law and the [Constitution](#) and this court should find their unlawful and dubious actions as null and void.
  87. They submit that the residents of Belbur just like any other Kenyan deserve to live in a habitable and clean environment free from any health hazard. They submit that the breach on their right to enjoy their constitutionally guaranteed right to clean and healthy environment has been going on for the longest time and they move this Honourable court as a forum of last resort in a bid to have this right enforced and the Defendants tamed from further mutilating this right.



88. They submit that the court visited the site and indeed confirmed that the project is next to a stream, 5 meters away, contrary to the law. Further, the court noted that rain water has been diverted to the 2<sup>nd</sup> Defendant's property causing it to flood and it has led to sinking of a pit latrine.
89. The Plaintiffs' submit that the court further observed that the road leading to the project was raised, further confirming the diversion of rain water. They submit that the court was able to further confirm that there is an outlet that discharges waste from the slaughter house to the river and all this happened with the approval of the 2<sup>nd</sup> Defendant.
90. It is the Plaintiffs' submission that the facts, the evidence and the law are for granting the prayers sought by the Plaintiffs'. They invite this court not to shy away from issuing closure orders aimed at preventing, stopping and discontinuing harm to the environment. They add that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's activities constitute a blatant violation of the Statutes and the Constitution and infringe on the Plaintiffs' right to a clean and healthy environment enshrined in Article 42 of the Constitution. They urge the court to grant the reliefs as prayed.
91. The 1<sup>st</sup> Defendant filed his submissions on 30<sup>th</sup> November, 2023. He submits that prayer (a) of the claim is already overtaken by events as what is sought to be injuncted has already been completed and has been fully operational for close to 8 years now and this cannot be granted and the court should find so.
92. He submits that on prayer (b), the approvals for its project were done in accordance with all the requirements of the law. He submits that he duly testified and produced evidence that all the issues raised by both the public and the 2<sup>nd</sup> Defendant prior to giving out a licence were duly addressed to satisfaction and the public duly participated. He submits that this is clear in the evidence of both the 1<sup>st</sup> Defendant and his witness Joseph M Kiragu and it is also duly explained by the evidence of the 2<sup>nd</sup> Defendant's witness who actually participated in ensuring the law was followed to the letter.
93. He submits that he duly produced all the documents from different Government and County Officers who gave the project a go ahead with no objection, and Environmental Impact Assessment License was duly given by the 2<sup>nd</sup> Defendant and this, coupled with the meetings held with members of the public in the presence of NEMA officials, the 2<sup>nd</sup> Defendant and his expert Mr. Kiragu clearly show that the public was duly involved and its concerns addressed before the project was given the go ahead and this court should so find.
94. The 1<sup>st</sup> Defendant submits that the court visited the scene and was able to see the project and it is clear that all the fears that the Plaintiffs expressed before the project commenced have been fully addressed. He submits that the compound is fully fenced and no stray dogs or any other creature can carry things from the slaughter house to the outside to spread any disease.
95. He submits that the alleged river is far from the premises and a permanent wall with planted trees was seen and from this, no effluence was seen being released to the river as alleged. He submits that the site is so clean and the court saw how the slaughter is done and the waste properly handled. He submits that indeed it was clear from the visit that no smell was coming from the premises.
96. The 2<sup>nd</sup> Defendant submits that the slaughter house has been operational for the last 8 years and no case at all was reported of any harm to people, livestock or the environment. It submits that if any had been pointed out, then the fears raised by the Plaintiff would have been clearly visible and there were none.
97. The 1<sup>st</sup> Defendant submits that subsequently; licenses have been issued annually from all the public Health Department concerned, including veterinary department and NEMA after visiting the



premises every year to ensure full compliance and had there been any problem, the licenses could not have been renewed every year.

98. He submits that the project is massive with investment worth over 50 million. It has also employed many people as was seen during the site visit and it is of immense public importance and should not be ordered closed unless any very serious breach, which cannot be rectified is seen. He submits that it is in the public interest to maintain the project.
99. The 1<sup>st</sup> Defendant submits that it was clear from the visit that if any flooding occurred, he has taken efforts to avoid the same polluting the environment, move so the seasonal river thereby. He submits that it was clearly seen that one of the Plaintiffs has actually interfered with the river by constructing residential houses on the river bed.
100. 1<sup>st</sup> Defendant submits that he has also raised the ground next to the river to divert flow of flood water from getting into the river. He submits that it is clear that it is the Plaintiffs' who have developed without following the law on riparian and yet they come complaining against the Defendant.
101. On jurisdiction, the 1<sup>st</sup> Defendant submits that this suit was wrongly filed before court. He submits that the challenge against the 2<sup>nd</sup> Defendant's issuance of a license should have been made to the relevant Tribunal established by the law, before coming to this court. On this grounds alone, the case fails and should be dismissed with costs.

### **Analysis And Determination**

102. After analyzing the pleadings, testimonies and submissions by the parties, the following issues arise for determination:
  - a. Whether this Honorable court has jurisdiction to determine the issues herein?
  - b. Whether the 1<sup>st</sup> Defendant has violated the Plaintiff's right to a clean and healthy environment?
  - c. Whether the 2<sup>nd</sup> Defendant approval of the 1<sup>st</sup> Defendant's project was lawful and justified?
  - d. Who should bear the costs of this suit?

#### **A. Whether this Honorable court has jurisdiction to determine the issues herein?**

103. The Defendant's in their submissions submit that the suit was wrongly filed before court. They submit that the challenge against the 2<sup>nd</sup> Defendant's issuance of a license should have been made to the relevant Tribunal established by law, before coming to this court.

Section 129 of the [EMCA](#) states;

- (1) Any person who is aggrieved by—
  - (a) a refusal to grant a license or to the transfer of his license under this Act or regulations made thereunder;
  - (b) the imposition of any condition, limitation or restriction on his license under this Act or regulations made thereunder;
  - (c) the revocation, suspension or variation of his license under this Act or regulations made thereunder;
  - (d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;



(e) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

104. In the case, the *Agatha Jeruto Kimaswai v Attorney General & 3 others* [2021] eKLR, the court pronounced itself as follows:

“The provisions of section 129 of the *EMCA* does not oust the jurisdiction of this court to hear and determine applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*.”

105. Further, in the case of *Dominic G. Ng’ang’a & another v Director General National Environment Management Authority & 4 others* [2020] eKLR, the court held that:

“The court finds that the claim herein is a claim relating to violation of right to clean environment and even though numerous tribunals dealt with the issuance of licenses and approvals, those issues cannot be dealt separately and thus this Court is clothed with jurisdiction to deal with the claim herein as provided in Article 162(2)(b) of the *Constitution*”.

106. Based on the above judicial decisions, this court finds that it has jurisdiction to deal with the issues herein.

## **B. Whether the 1<sup>st</sup> Defendant has violated the Plaintiff’s right to a clean and healthy environment?**

107. It is the Plaintiff’s case that 1<sup>st</sup> Defendant has constructed a slaughter house in a residential area with the approval of the 2<sup>nd</sup> Defendant. It is also the Plaintiffs case that the stream next to the proposed slaughter drains into Kasiminde Dam which is the only water resource for the surrounding community. It is the 1<sup>st</sup> Defendants case that before embarking on the project, he adhered to all procedural technicalities as required by the National and County Government and the National Environment Management Authority.

108. It is the 2<sup>nd</sup> Defendants case that any approval issued to the 1<sup>st</sup> Defendant was done legally and after following the due process as provided for under the Environmental Management and Coordination Act.

109. This court conducted a site visit on 29<sup>th</sup> September, 2023 and noted that that the only contravention on the plaintiffs rights was that the 1<sup>st</sup> defendant had constructed a wall one meter from the seasonal river which floods when it rains. The question that this court ought to answer is whether the rivers proximity to the slaughter house built by the 1<sup>st</sup> Defendant affects the environmental rights of the Plaintiffs.



Article 42 of the Constitution provides as follows:

Every person has the right to a clean and healthy environment, which includes the right—  
to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and

110.

a. to have obligations relating to the environment fulfilled under Article 70.

Article 69 of the Constitution provides as follows: -

1) The State shall-

- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (d) encourage public participation in the management, protection and conservation of the environment;
- (e) protect genetic resources and biological diversity;
- (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (g) eliminate processes and activities that are likely to endanger the environment; and
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.

(2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

111. In the case of Republic v Kenya National Commission on Human Rights Ex parte Uhuru Kenyatta HC Misc. App. No 86 of 2009 the court considered the treatment of public interest vis-a vis individual interests when it held thus: -

“-----the court had an onerous responsibility of maintaining the delicate balance between an individual right and those of the public and that sometimes private rights have to bow to public interest. Putting all facts together, this court is of the view that in the circumstances of the case, public interest far outweighs the rights of the *ex parte* applicant and in considering the above, balancing and putting all matters to scale this court in exercising its judicial discretion declines to give an order for certiorari and the application therefore fails”.

112. It is uncontroverted that the 2<sup>nd</sup> Defendant approved the 1<sup>st</sup> Defendant’s project. The court notes that members of the community have gone to great lengths to avoid the effects of the flooding seasonal river by raising the ground level of the gates and toilets.



113. The Plaintiff has produced a report prepared by PW3 which concludes that the slaughter house construction in the current location will deflect natural stream flow into adjacent properties and cause floods on the properties. It goes on to state that the flooding of pit latrines and overflow of faecal matter into the area will contaminate shallow wells in the area and contribute to spread of water bone diseases. Downstream public utilities relying on the stream, such as the school, farmers watering livestock along the stream and the Kasiminde dam will be adversely affected.
114. The 1<sup>st</sup> Defendant states in his submissions that the project is massive with investment worth over 50 million. He further submits that it has also employed many people and it is of immense public importance and should not be closed unless a very serious breach, which cannot be rectified is seen.
115. This Court in this case finds that the public interests outweighs the 1<sup>st</sup> Defendant's private rights. The effects of the 1<sup>st</sup> Defendant's project are a danger to the communities guaranteed environmental rights under Article 42 and 69 of the Constitution of Kenya.

**C. Whether the 2<sup>nd</sup> Defendant approval of the 1<sup>st</sup> Defendant's project was lawful and justified?**

116. Based on the courts finding in (B) above, I find that the 2<sup>nd</sup> Defendants approval of the 1<sup>st</sup> Defendant's project was not proper with the wall on the river.

**D. Who should bear the costs of this suit?**

117. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. This was the holding in *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287.

**Disposition**

118. In the result, balancing public interest with private interest where the former outweigh the latter, I do order that the 1<sup>st</sup> defendant does remove the wall near the seasonal stream to a distance of 10 meters from the highest water mark of the stream. This to be done within 30 days from today. The 2<sup>nd</sup> defendant to test the liquid flowing from the slaughter house to the seasonal river and ascertain whether the same is water or effluent from the slaughter house if found to be effluent, the same to be corrected or, the slaughter house to be closed. A report to be filed in court within 30 days by the 2<sup>nd</sup> defendant. Mention on the 12<sup>th</sup> March 2024, It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 2<sup>nd</sup>FEBRUARY, 2024**

**A O OMBWAYO**

**JUDGE**

