



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KAJIADO**

**ELC CASE NO. E032 OF 2021**

GEORGE NKAACA MATEU.....1<sup>st</sup> PLAINTIFF  
JACOB TEUSI.....2<sup>rd</sup> PLAINTIFF  
SOKOIYON TEUSI.....3<sup>rd</sup> PLAINTIFF  
SARINGE TEUSI.....4<sup>th</sup> PLAINTIFF  
DANIEL TAUTA.....5<sup>th</sup> PLAINTIFF  
JOHN SIMEL.....6<sup>th</sup> PLAINTIFF  
SAMMY NKINAIYO.....7<sup>th</sup> PLAINTIFF  
KUNTAI NKINAIYO.....8<sup>th</sup> PLAINTIFF  
RAPAINE SARINKON .....9<sup>th</sup> PLAINTIFF  
DANIEL KIPIRASH SAIGILU.....10<sup>th</sup> PLAINTIFF

**VERSUS**

CHANIA GREEN GENERATION LTD.....1<sup>st</sup> DEFENDANT  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....2<sup>nd</sup> DEFENDANT

**RULING**

On 7<sup>th</sup> June, 2021, the first Defendant filed a Notice of Preliminary Objection urging that the Plaintiffs' suit dated 7/5/2021 and the Notice of Motion of the same date be struck out with costs on the following grounds;

1. There exists an alternative forum for resolution of the Plaintiffs' grievances- The National Environment Tribunal ( The Tribunal) established under **Section 125 of the Environmental Management and Coordination Act, 1999 (EMCA)**.
2. The suit and the Application violate the provisions of **Section 129 of the Environmental Management and Coordination Act (EMCA)** which requires the Plaintiffs to present all grievances concerning the grant of licences under the **Environmental Management and Coordination Act (EMCA)** and the Regulations to the Tribunal.
3. This Honourable Court does not have original jurisdiction to determine issues relating to the process and procedure leading to grant of licences by the 2<sup>nd</sup> Defendant.

On 21/7/2021, the first defendant filed written submissions in support of the Preliminary Objection in which the following issues were raised;

- (a) Failure to exhaust alternative remedies.
- (b) Does this Court have original jurisdiction to determine issues pertaining to **Environmental Impact Assessment (EIA) Licences**

granted by the second Defendant?

On the first issue, it is the first Defendant's position that the Plaintiffs' have not exhausted the laid down procedure of appeal to the Tribunal if they were dissatisfied by the issue of the Environmental Impact Assessment (EIA) Licences to the defendant.

Counsel relied on the authority of *Shiloah Investments Limited –vs-National Environment Tribunal and 7 others (2018) eKLR* where the Court simply restated the Law in **Section 126 of the Environmental Management and Coordination Act, (EMCA)** and the Regulation 17 of **Environmental Impact Assessment (EIA) Regulations**.

On the second issue of jurisdiction, Counsel urged that this Court has no jurisdiction in matters pertaining to Environmental Impact Assessment (EIA) Licences as such jurisdiction resides in the National Environmental Tribunal (NET).

In this regard, Counsel relied on the authority of *Kibos Distillers Limited and 4 others –vs- Benson Ambuli Adega and 3 others (2020) eKLR* where it was held, inter alia,

**“that a party cannot confer jurisdiction on a tribunal through the manner in which they have drafted their pleadings”.**

Several other authorities were relied upon by the first Defendant's Counsel but they do not add new material to the issues at hand.

On 27<sup>th</sup> July, 2021, the Plaintiffs' Counsel filed written submissions in reply and submitted as follows;

Firstly, Counsel urged that a Preliminary Point of Law must consist of a Point of Law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a Preliminary Point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

See *Mukhisa Biscuit Manufacturing Company Limited –vs- West End Distributors Limited (1969) EA 696*.

The Plaintiffs urge that the suit raises constitutional issues which cannot be determined by the National Environmental Tribunal (NET).

It is also the Plaintiffs' submission that the suit should have been filed as a Constitutional Petition but such a process would limit the evidence adduced as it is rarely viva voce.

Secondly, on the issue of jurisdiction, Counsel urged that by virtue of **Article 162 (2) (b) and Section 13 of the Environment and Land Act, 2011**, this Court can hear and determine any matter related to Environment and land.

Counsel relied on the case of *Moffat Kamau and 9 others –vs- Aelous Kenya Limited and 9 others (2016) EKLR* which restated the two provisions of the Constitution and statute.

I have carefully considered the Preliminary Objection dated 4/6/2021 and the submissions by learned counsel for the parties and I make the following findings;

Firstly, I find that the objection does not raise a pure point of law. It raises facts namely that the Plaintiffs did not appeal to the National Environment Tribunal (NET). A perusal of the plaint does not bring out this fact.

As stated in the case *Mukhisa Biscuit Manufacturing Company (supra)*, a preliminary objection must stem out of what is pleaded. This is not the case here. The objection is introducing evidence. This cannot be entertained at this stage.

Secondly, the jurisdiction of this Court in Environment and Land disputes is unlimited and clearly spelt out in **Article 162 (2) (b) and Section 13 of the Environment and Land Court Act**.

It is only after hearing evidence that we shall know if there ought to have been an appeal to the National Environment Tribunal (NET) or not.

Finally, this suit is not only about Environmental Impact Assessment (EIA) Licences. There are other issues to be decided as per paragraph 23 (1) and (c) of the plaint.

For the above stated measures, reasons, I dismiss the Preliminary Objection dated 4<sup>th</sup> June, 2021. Costs in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4TH DAY OF NOVEMBER, 2021.**

**M.N. GICHERU**

**JUDGE**