



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC SUIT NO. 52 OF 2019

NEMA.....1ST PLAINTIFF

MAASAI MARA WILDLIFE CONSERVANCIES.....2ND PLAINTIFF

MAA COMMUNITY HERITAGE CONSORTIUM.....3RD PLAINTIFF

EUNICE NAISHORUA SALAU.....4TH PLAINTIFF

PARSOLOI LETIET.....5TH PLAINTIFF

EMILLY LAISO KANTENT.....6TH PLAINTIFF

-VERSUS-

LEMAYIAN HOLDINGS LTD.....DEFENDANT

RULING

The Plaintiffs/Applicants had by a Notice of Motion dated 28/8/19 sought for orders of injunction restraining the Respondent from interfering with the ecosystem and Wildlife within the Mara Naboisho Conservancy by carrying out any construction, trespassing on land parcel Mara/Koiyaki-Dagurugurueti/4879 and further for the payment of damages caused to the environment as a result of the disobedience of the NEMA Licence approval conditions and further that the order of the court be enforced by the police.

The Application was opposed by the respondents who had filed a replying affidavit however on the 18/9/19 the respondents had filed a notice of preliminary objection of point of law on the grounds that the court lacks original jurisdiction to hear and determine the instant application and the entire suit since the claim herein is based on the contravention of the terms and conditions of an Environmental Impact Assessment Licence and thus the claim ought to have been filed at the National Environmental Tribunal.

It is the respondent's contention that the dispute before court is one touching on an Environmental Impact Assessment Licence in which a stop order exists and its challenge ought to be filed before the National Environmental Tribunal as opposed to the Environment and Land court pursuant to the provisions of section 129 and 130 of the EMCA. He contends that the tribunal is the appropriate forum since it is endowed with the adequate technical capacity to hear and determine the dispute.

The applicant in response to the Preliminary Objection though filed his submission has not addressed himself to the preliminary objection but asserts that the preliminary objection was withdrawn on 19/11/19. However, from the record I find no notice of withdrawal filed by the respondent as claimed by the applicants and in any event if such notice of withdrawal existed I don't see the reason why the respondents will file submissions in respect of a withdrawn preliminary objection dated 13th January, 2020 and in the circumstances and since no submissions were made by the applicants I will proceed to make a determination on the Preliminary Objection.

Having considered the preliminary objection and the pleadings filed the issue for determination before me is whether this court has jurisdiction to entertain a suit for breach of the terms and conditions of an Environmental Impact Assessment (EIA) Report.

The conduct of the affairs of the National Environmental Management Authority in so far its decision are concerned by the provisions of Section 129 and 130 of the Environmental Management Conservation Act. The Respondent is a developer who obtained an Environmental Impact Assessment Licence from NEMA to undertake certain developments within the Mara Naboisho Conservancy. However, the applicants contend that the respondents had breached and contravened the conditions upon which the licence was granted and thus its actions are a threat to the Ecosystem.

I have considered the Preliminary Objection and the submissions filed and the provisions of section 129 and 130 of the EMCA confer the jurisdiction to hear environmental matters in the first instance with the National Environmental Tribunal and Jurisdiction is thus vested in the tribunal. Since the applicants are aggrieved by the grant of a licence as envisaged under section 129 (1)(a) of the EMCA it is the tribunal that is vested with the jurisdiction to hear and determine any claims in respect of an EIA. The applicant must first ventilate their claim before the National Environmental Tribunal rather than the ELC.

The upshot of the above is that I find the Preliminary Objection dated 18/9/19 is merited and I consequently strike out the plaint dated 28/8/19 together with the Notice of Motion of even date. Costs to the Defendant/Respondent.

DATED, SIGNED and DELIVERED IN OPEN COURT AT NAROK on this 5th day of MAY, 2020.

Mohammed Kullow

Judge

5/5/2020

In the presence of: -

CA:Chuma

Mr Okinyi for the Defendant/Respondent

N/A for the Plaintiff

Mohammed Kullow

Judge

5/5/2020