



**Republic v Nairobi City County Government; National Environmental Management Authority (NEMA) & another (Interested Parties); Amiha Investments Limited (Exparte Applicant) (Miscellaneous Application E034 of 2023) [2025] KEHC 4236 (KLR) (Judicial Review) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4236 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E034 OF 2023**

**JM CHIGITI, J  
APRIL 4, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE NAIROBI CITY COUNTY GOVERNMENT ..... RESPONDENT**

**AND**

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY  
(NEMA) ..... INTERESTED PARTY**

**CONSTRUCTION AUTHORITY ..... INTERESTED PARTY**

**AND**

**AMIHA INVESTMENTS LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

**Applicant’s case**

1. The application before this Court is the Notice of Motion dated 6<sup>th</sup> April, 2023. The application is brought Under Order LIII Rules 3 & 4 of the Civil Procedure Rules, Sections 9, 10, and 11 of the *Fair Administrative Action Act* 2015 of the Laws of Kenya and All enabling provisions of the Law. It seeks the following orders:
  - a. An Order of Prohibition prohibiting the Respondent from harassing, intimidating, arresting the Applicant and its agents, interfering with and/or carrying out or causing to be carried



out any act detrimental and/or prejudicial to the Applicant's subject lawful investment, developments and the project being carried out in LR. No. 2951/434.

- b. An Order of Mandamus compelling the Respondent to uphold, protect and respect the regular and lawful licenses and permits issued to the Applicant by the Respondent and the Interested Parties with respect to the Applicant's project being carried out in LR. No. 2951/434.
  - c. The cost of this application be in favour of the Ex-parte Applicant.
2. The application is supported by a statutory statement dated 28th March, 2023 and Verifying Affidavit of Chirag M. Shah sworn on 6th April, 2023.
  3. The Applicant is the registered proprietor of LR. No. 2951/434 situated in Kitusuru Estate along Ngecha Road within the Nairobi City County (the Project Site).
  4. It is the Applicant's case that upon acquiring the Project Site, it obtained all the necessary licenses, authorizations and approvals including but not limited to :- (i) obtaining a change of user from residential to commercial use, developing design works for the proposed development, project authorization by the Respondent and the National Constructions Authority.
  5. According to Applicant, they regularly complied with the requirements of the *Environmental Management and Co-ordination Act* (EMCA), made an application for an Environmental Impact Assessment (EIA) License and submitted to the National Environmental Management Authority (NEMA) an Environmental Impact Assessment Study Report which NEMA found to have satisfactorily addressed the potential environmental impacts of the proposed development and duly issued the Applicant with an EIA License.
  6. The Applicant made an application to the Respondent and on 22nd September 2022, they were issued with an Approval of Development Permission of the same date to develop a commercial development on the Project Land.
  7. It is averred that they regularly and lawfully procured all the necessary development approvals from the 1st and 2nd Interested Parties and invested in the project having committed sums in excess of Kshs. 200 Million.
  8. It is the Applicant's case that on 17th March 2023, the Respondent stormed into the Applicant's project site and harassed the Respondent and unjustly and irregularly arrested and detained the Applicant's project foreman.
  9. He was arraigned at the City Court and charged with the alleged offence of erecting a building structure without approved plans. He was later released on a cash bail of Kshs. 150,000/-. The case was withdrawn on 21st March 2023 on the grounds that the Respondent had issued a valid approval and development permit for the subject project.
  10. It is argued that the Respondent has continued to unlawfully harass and intimidate the Applicant which actions have crippled the Applicant's operations subjecting it to great loss, anxiety, apprehension and fear to the extent that it has been deprived of the right to lawfully develop and use its property and carry out its affairs within the law despite it obtaining the necessary project approvals, permits and licenses.
  11. It posited that the Respondent's actions are irregular, unlawful, illegal and contrary to Articles 40, 43 and 47 of *the Constitution*.



12. The Applicant argues that it is against public policy that public institutions like the Respondent herein should be allowed to act in such unfair and unreasonable manner without any regard to the constitution and the rule of law.
13. The submitted that the actions of the Respondent of harassing, threatening and even arresting the Applicant and its agents meet the threshold set in the case of Pastoli Vs..Kabale District Local Government Canal & Others (2008} 2EA 300 at pages 300-304.
14. The Applicant places reliance in the case of Kenya National Examination Council V Republic Ex- Parte Geoffrey Gathenji Njoroge C.A Civil Appeal No. 266 of 1996 where the Court said the following on Mandamus:

“The order of mandamus is of a most extensive remedial nature and is in form of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legal bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

15. Reliance is also placed in the case of Kenya National Examination Council-Vs-Republic Exparte Geoffrey Gathenji & 9 Others. Nairobi Civil Appeal No.266 of 1996, where the Court held as follows with specific attention to the order of prohibition: -

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings -See Halsbury's Law of England, 4th Edition vol. I at Pg.37 paragraph 128”

16. It is contended that the Respondent's actions are unlawful, arbitrary, malicious, capricious, based on wrong interpretation of the law, unreasonable, discriminatory, actuated by bad faith, based on extraneous considerations and against the Applicant's lawful, legitimate and rightful expectation and taken in breach of the rules of natural justice.
17. It is the Applicant's case that it was entitled to reasonable opportunity to be informed of the Respondent's allegations against it before it took matters into its hands.
18. It is also its case that the Respondent acted ultra vires. See R v. The Commissioner of Coop. Exp. Kirinyaga Tea Growers Coop. Savings and Credit Society Ltd, Civil Appeal No. 39 of 1997.



### **1<sup>st</sup> Interested Party's case;**

19. The 1<sup>st</sup> Interested Party in response to the Application filed a Replying Affidavit by David Ong'are sworn on 24th July, 2024.
20. It is posited that pursuant to the prescribed environmental rules and guidelines, it is a requirement that a proponent of any project specified in the second schedule to EMCA undertakes and prepares environmental impact assessment project report and submits the report to the Authority prior to being issued with an Environmental Impact Assessment (EIA) License by the Authority. The Authority is tasked with issuing Environmental Impact Assessment Licenses for development projects after review of the submitted EIA report (s) as provided under the EMCA.
21. It is the 1st interested party's case that on 5th May 2014, it received from Shiloah Investments Limited an Environmental Impact Assessment Report dated March 2014 for proposed commercial and recreational development on LR No. 2951/434 along Ngecha Road in Kitusuru as required so as to receive approval from the Authority in accordance with section 58 of EMCA and responded vide its letter dated 14th May 2014, stating that that it had reviewed the project report which revealed that the magnitude and uncertainties associated with project demands wider public consultation and in depth coverage of the foreseen impacts and mitigation measures. Pursuant to regulation IO (3) of the of the Environmental (Impact Assessment and Audit) Regulations 2003.
22. The proponent was then advised to initiate an Environmental Impact Assessment Study and develop a term of reference for approval and on 20th May 2014, the 1st interested party received from the proponent the terms of reference upon which the Environmental Impact Assessment Study would be prepared.
23. The project proponent, Shiloah Investments Limited thereafter on 23rd July 2014 submitted an application referenced NEMA/EIA/5/2/1165 to the 1st interested party an Environmental Impact Assessment Study Report for the proposed commercial and recreational development on LR No. 2951/434 in Kitusuru.
24. It is posited that after following due process, Shiloah Investments Limited was issued with an EIA License reference number NEMA/EIA/PSL/2407 on 13th October 2015 with mandatory conditions to safeguard the environment and for

### **The 2<sup>nd</sup> Interested Party's case;**

25. The 2nd Interested Party is established under section 3(1) of the *National Construction Authority Act* (hereinafter referred to as the Act) No. 41 of 2011 with a mandate to oversee the construction industry and coordinate its development. Section 5 (2) (g) of the said Act, further mandates the 2nd Interested Party to promotes and ensures quality assurance in the construction industry.
26. It is posited that the National Construction Authority Regulations 2014 commenced on 6th June 2014 and under Legal Notice No. 74 and Regulation 17 of the said Regulations provides for registration of all construction works, contracts or projects either in public or private sector shall be registered with the Authority in accordance with the Act.
27. It is its case that in line with Section 23A and 23 (2) of the *National Construction Authority Act*, on 26th April 2023, its Compliance Officers from Nairobi Region investigated the development on the property known as Plot Title No. 2951/434 Nairobi County and after the investigation it prepared a preliminary investigation report of the development on the property.



28. According to them, it was established that the site had complied with the seven (7) key checklist items. However, the Authority suspended the construction works until the issues raised by the Applicant and Respondent are resolved.
29. It is their case that Applicant's application before this honourable court does not disclose any reasonable cause of action against it.

**Analysis and determination;**

30. The following are issues for determination;
  1. Whether this court has jurisdiction to whether applicant is entitled to the order sought.
  2. Whether applicant is entitled to the orders sought.
31. The jurisdiction is everything. This is what power the court to determine the disputes that have been placed before it. Without the jurisdiction of the court is incapable of rendering a judgment or a determination that can be enforceable.
32. The Court has looked at their rival arguments and submissions by parties and noted that the matters that are in dispute revolve around the following issues;
  - i. The parcel of land known as LR. No. 2951/434 situated in Kitusuru Estate along Ngecha Road within the Nairobi City County (the Project Site).
  - ii. The Applicant's case that upon acquiring the Project Site, it obtained all the necessary licenses, authorizations and approvals including but not limited to; - (i) obtaining a change of user from residential to commercial use, developing design works for the proposed development, project authorization by the Respondent and the National Constructions Authority.”
  - iii. The issue of compliance with the requirements of the *Environmental Management and Co-ordination Act* (EMCA), made an application for an Environmental Impact Assessment (EIA) License and submitted to the National Environmental Management Authority (NEMA) an Environmental Impact Assessment Study Report which NEMA found to have satisfactorily addressed the potential environmental impacts of the proposed development and duly issued the Applicant with an EIA License.
  - iv. The question of the issuance of an Approval of Development Permission of the same date to develop a commercial development on the Project Land.
  - v. The concern that on 17th March 2023, the Respondent stormed into the Applicant's project site and harassed the Applicant and unjustly and irregularly arrested and detained the Applicant's project foreman and that the Respondent's actions are irregular, unlawful, illegal and contrary to Articles 40, 43 and 47 of *the Constitution*.
  - vi. The requirement that a proponent of any project specified in the second schedule to EMCA undertakes and prepares environmental impact assessment project report and submits the report to the Authority prior to being issued with an Environmental Impact Assessment (EIA) License by the Authority. The Authority is tasked with issuing Environmental Impact Assessment Licenses for development projects after review of the submitted EIA report (s) as provided under the EMCA.
  - vii. That the 1st interested party's case that on 5th May 2014, it received from Shiloah Investments Limited an Environmental Impact Assessment Report dated March 2014 for proposed



commercial and recreational development on LR No. 2951/434 along Ngecha Road in Kitusuru as required so as to receive approval from the Authority in accordance with section 58 of EMCA and responded vide its letter dated 14th May 2014, stating that that it had reviewed the project report which revealed that the magnitude and uncertainties associated with project demands wider public consultation and in depth coverage of the foreseen impacts and mitigation measures. Pursuant to regulation IO (3) of the of the Environmental (Impact Assessment and Audit) Regulations 2003.

- viii. That the proponent was then advised to initiate an Environmental Impact Assessment Study and develop a term of reference for approval and on 20th May 2014, the 1st interested party received from the proponent the terms of reference upon which the Environmental Impact Assessment Study would be prepared.
  - ix. Whether the site had complied with the seven (7) key checklist items. However, the Authority suspended the construction works until the issues raised by the Applicant and Respondent are resolved.
33. Article 162 of *the Constitution* has created the courts known Environment and Land Court.
  34. The *Environment and Land Court Act* no.19 of 2011 (ELCA) gives effect to Article 162(2) of *the Constitution* and the court was established to hear and determine disputes relating to the environment and the use and occupation of, and title to land.
  35. The court exercises jurisdiction throughout Kenya. It has original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of the Act or any other written law relating to environment and land.
  36. The court has powers to deal with disputes relating to land administration and management. It is also empowered to hear cases relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land.
  37. Upon looking at the foregoing and without getting into the merits of the Application, this court is clear in its mind that this matter is a matter that belongs to the Environment and Land court.

Section 13(1) of the *Environment and Land Court Act*, The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes— (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land. [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1] (3) Nothing in this Act shall preclude the Court from hearing and determining 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*. (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court. (5) Deleted by *Act No. 12 of 2012*, Sch. (6) Deleted by *Act No. 12 of 2012*, Sch. (7)



In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including— (a) interim or permanent preservation orders including injunctions; (b) prerogative orders;

The Court has power to prerogative orders. Prerogative orders have been defined Prerogative orders are judicial remedies, or writs, issued by the High Court to exercise its supervisory jurisdiction over inferior courts, tribunals, and public authorities, ensuring they act lawfully. These are provided for under article 53 of *the Constitution*.

The Environment and land court has the power to determine whether or not the Respondent’s actions are unlawful, arbitrary, malicious, capricious, based on wrong interpretation of the law, unreasonable, discriminatory, actuated by bad faith, based on extraneous considerations and against the Applicant’s lawful, legitimate and rightful expectation and taken in breach of the rules of natural justice.”

38. In so holding, this court is further guided by the case of Republic v Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court’s decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters “reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)”.

**Disposition;**

39. The Environment and Labour Court has power to make any order and grant any relief as the Court deems fit and just, including prerogative orders.
40. This court lacks jurisdiction to determine this matter. Having found that this court lacks jurisdiction I hereby down its tools leaving the 2<sup>nd</sup> issue to be determined in line with the orders that flow.

Order;

This suit in is hereby transferred to The Environment and Land Court for determination.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**J. CHIGITI (SC)**

**JUDGE**

