



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. 135 OF 2019

FRANCIS MWANGANGI & 31 OTHERS.....PLAINTIFFS

VERSUS

NAIROBI WATER SEWAGE COMPANY.....1ST DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT2ND DEFENDANT

TECHNICAL DIRECTOR NAIROBI WATER &

SEWAGE COMPANY.....3RD DEFENDANT

LIRONA CONSTRUCTION LIMITED.....4TH DEFENDANT

RULING

1. This is a ruling in respect of a preliminary objection raised by the 4th Defendant on the ground that this court lacks jurisdiction to entertain the suit by the Plaintiffs. The Plaintiffs were residents of Lunga Lunga Sinai area. The Plaintiffs had built shops and other structures along the sewer line in the area. In or around April 2019, Nairobi City water and Sewerage Services Company Limited (NCWSC) gave notice to the Plaintiffs to remove their structures by 12th April 2019 to pave way for construction, rehabilitation and cleaning up of the sewer system in the area.
2. On 18th April 2019, the Plaintiffs moved to court and filed an application for injunction seeking to stop NCWSC and 3 others from removing them from the area. There were no interim orders granted. The Court directed that the application by the Plaintiffs be served for inter-partes hearing. Before the application could be heard, it would appear that the plaintiffs were moved from the sewer line which has since been completed. The Plaintiffs appear to have lost interest in the matter and never attended court during the hearing of their application which was dismissed for non-attendance on 16th October 2019.
3. The 4th Defendant thereafter filed a notice of preliminary objection on 6th November 2019 in which it contends that under Section 121 of the Water Act No.43 of 2016, it is the Water Tribunal which has jurisdiction to hear any appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or any person acting under the authority of the Cabinet Secretary, the Authority or the Regulatory Board.
4. The 4th Defendant contends that under section 124 of the Water Act No.43 of 2016, the Environment and Land Court can only exercise Appellate jurisdiction from the decision of the Water Tribunal.
5. The Plaintiffs who were duly served with the preliminary objection did not attend court during the hearing. The counsel for 1st and 2nd Defendants supported the preliminary objection by the 4th Defendant as well as the submissions during the hearing.
6. I have considered the preliminary objection by the 4th Defendant. Section 121 of the Water Act No.43 of 2016 provides as follows: -

“The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.

In addition to the powers set out in subsection (l), the Tribunal shall have the power to hear and determine any dispute

concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism”.

7. Section 124 of the Water Act No.43 of 2016 provides as follows: -

“A person aggrieved by a decision of the Tribunal may, within twenty-one days from the date of that decision, appeal to the Land and Environmental Court, established under article 162(2) of the Constitution on an issue of law”.

8. There is no doubt that NCWSC issued notice pursuant to its role of provisions of water services. The NCWSC is licensed by the Water Services Regulatory Board to provide water services. According to the Water Act No.43 of 2016, “water services” means any services of or incidental to the supply and storage of water and includes the provision of sewerage services. By the NCWSC issuing notice for relocation of the structures of the Plaintiffs to pave way for construction, rehabilitation and cleaning up of the sewer system, it was acting under the authority of the Water Services Regulatory Board established under section 70 of the Water Act No. 43 of 2016.

9. It therefore follows that any person or institution who was affected by the decision of the NCWSC should have appealed against that decision to the Water Tribunal. It is after the Water Tribunal has heard the affected party that the said affected party can move to the Environment and Land Court on appeal. It is therefore clear that the Environment and Land Court does not have original jurisdiction to hear and determine matters which ought first to go to the Water Tribunal. I therefore uphold the preliminary objection and proceed to strike out the Plaintiffs’ suit with no order as to costs as the Plaintiffs were persons who were living on the sewer line and may not meet the costs as they have already relocated to unknown destinations.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** on this **10th** day of **June 2021**.

E. O. OBAGA

JUDGE

In the Virtual presence of:-

M/s Githii for 4th Defendant/Applicant

Mr Jeji for Mr Odongo for 1st and 3rd Defendants

Mr Gichuhi for M/s Aradi for 2nd Defendant

Court Assistant: Okumu

E. O. OBAGA

JUDGE