



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**CONSTITUTIONAL PET. NO. 16 OF 2018**

**IN THE MATTER OF PETITION UNDER ARTICLES 20,21,22**

**AND 23 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF INFIRINGMENT OF FUNDAMENTAL FREEDOMS**

**AND RIGHTS OF THE PETITIONERS UNDER ARTICLES 40,42,43,47,69**

**AND 70 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT**

**(NO. 8 OF 1999) AND ENVIRONMENT AND LAND COURT ACT (NO. 19 OF 2011) AND**

**IN THE MATER OF ENVIRONMENTAL IMPACT**

**ASSESSMENT LICENSE NO. NEMA/EIA/PSL/6181**

**BETWEEN**

**MARA NABOISHO CONSERVANCY.....PETITIONER**

**-VERSUS-**

**DIRECTOR GENERAL NEMA AUTHORITY & ANO...RESPONDENTS**

**AND**

**NAROK COUNTY GOVERNMENT & ANO.....INTERESTED PARTIES**

**RULING**

The 2<sup>nd</sup> Respondent had raised a Preliminary Objection on point of law to strike out the Petition on the grounds that the honourable court lacks jurisdiction to hear and determine the petition on the Environmental Impact Assessment (EIA) Licence issued by the 1<sup>st</sup> Respondent can only be challenged by way of an Appeal to the National Environmental Tribunal by the provisions of Section 129 of the Environmental Management and Coordination Act No. 8 of 1988.

It is the 2<sup>nd</sup> Respondent's contention that pursuant to the provisions of the aforesaid section any person who is aggrieved by the decision to grant a licence or permit is dissatisfied thereof with suits on the occurrence of the event against which he is aggrieved or dissatisfied can appeal to the National Environmental Tribunal which is established pursuant to the provisions of section 125 of the EMCA and it is on the above basis that when the petition here was filed it raised the preliminary objection arguing that rather than file the petition herein in challenging the EIA licence their first point of call would have been the National Environmental Tribunal.

The 2<sup>nd</sup> Respondent further contended that the petitioners have not demonstrated any exceptional circumstances to pursue the jurisdiction of the tribunal in the subject matter.

The Petitioner in response to the preliminary objection submitted that pursuant to the provisions of Article 162 (2) of the Constitution of Kenya and Section 13 of the Environment and Land Court Act the court has jurisdiction to hear and determine the petition and contends the jurisdiction vested in the environment and Land court in both constitutional and statutory jurisdictions. The Petitioners further stated that the violations stipulated in the petition are constitutional in nature pursuant to the provisions of Articles 10,40,42,43,47,69,70 and thus properly before the court.

The 1<sup>st</sup> Respondent submitted that the matter raised in the petition are matters that fall within the Jurisdiction of the National Environmental Tribunal as the main grievance is the 1<sup>st</sup> Respondent issued an EIA that contravened their constitutional rights and thus the right forum for the hearing of these matter.

I have considered the preliminary objection that was raised and the petition. It is not disputed by the parties that the catalyst of the petition herein is centred in the issuance of the EIA and it is not constrained where should be the right forum to litigate the fair and from and from the issuance of the EIA.

Since the Preliminary Objection challenges the jurisdiction of the court it is paramount that the place to have the issue be heard and determined.

In the case of MV Lilian the court stated that jurisdiction is everything and a court cannot cloth itself with jurisdiction where it lacks one. In the instant matter it is clear that the petition though framed as a constitutional petition the common denominator of what is alleged to have ignited the alleged infringement is in respect of the EIA report and that being any party aggrieved by the issuance of an EIA report should find redress in the National Environment Tribunal as contemplated in the provisions of section 129 of EMCA and I find that this court lacks jurisdiction to hear and determine and I consequently strike out the said petition for want of jurisdiction.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 5<sup>TH</sup> day of MARCH, 2020**

**Mohammed Kullow**

**Judge**

**5/3/2020**

In the presence of:-

CA:Chuma/Kimiriny

Mr Okinyi for the 2<sup>nd</sup> Respondent

N/A for the other parties

**Mohammed Kullow**

**Judge**

**5/3/2020**