



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC MISC 186 OF 2017

OKIYA OMTATAH OKOITI & ANOTHER.....APPLICANTS

=VERSUS=

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

& 8 OTHERS.....RESPONDENTS

RULING

1. This is a ruling in respect of a notice of motion dated 6th October 2017. This application was filed before this court because as at that time, the National Environment Tribunal (NET) was not fully constituted as it did not have a Chairman. The application sought to cite officers of the 4th and 5th Respondents for contempt on the ground that the said Respondents had disobeyed a stop order which was automatically issued upon the Applicants filing Tribunal Appeal No. NET 200 of 2017. The Applicants also contended that the said Respondents had disobeyed further orders issued by NET on 30th May 2017.

2. The Applicants had filed an Appeal against the National Environment Management Authority (NEMA) which had granted an Environment Impact Assessment Licence (EIA) to the 4th Respondent to construct phase II of the Standard Gauge Railway (SGR). Under section 129(4) of the Environmental management and Coordination Act (EMCA) the Respondents were obliged to stop any further construction of Phase II of the SGR pending the hearing and determination of the Appeal filed in NET No. 200 of 2017.

3. As this application was pending before this court, the chairman of NET was appointed. The Applicants moved to the NET and filed a similar application on 17th January 2018. This application was heard by the NET which dismissed it on 6th March 2018 on the ground that the NET did not have jurisdiction to hear the same as the NET'S jurisdiction had been taken away by section 6 of the Contempt of Court Act of 2016 which has since been nullified by the constitutional court vide judgement delivered on 9th November 2018. The Applicants have since filed an Appeal against the ruling of the NET. The Appeal is pending before this Court. The Appeal which had been filed in Net 200 of 2017 has also been heard and the same dismissed. There is an appeal pending before this Court against the Judgement.

4. The parties had been directed to file written submissions in respect of the application. The Applicants filed their submissions on 22nd March 2019. The 5th Respondent filed submissions on 26th April 2019. The 4th and 9th Respondents filed their submissions on 30th April 2019. There is an issue which has been raised by the Respondents and in particular the 5th Respondent that the Application herein is a gross abuse of the process of the court and ought to be struck out. I will first deal with this issue for if I find that the application is an abuse of the process of the court, the application will fail without the court considering the merits or otherwise of the same.

5. The Applicants filed this application before this Court because there was no chairman of the NET. When the Chairman of the NET was appointed, the Applicants went before the NET and filed an Application for contempt there. This application was heard and determined. The Applicants filed an appeal against the said ruling to this court. That Appeal is pending before this court. The Applicants have now come back to argue this application when they are well aware that a similar application has been determined and there is an appeal pending before this court against the Ruling. To be precise, the Appeal is ELC Appeal No 18 of 2018. This is clearly an abuse of the process of the Court. What the Applicants ought to have done was to withdraw this application once they decided to move to the NET. By prosecuting this application when a similar one has been dismissed and an appeal filed before this court is pending gross abuse of the process of the Court. On this ground alone, the Applicants' application fails and is dismissed with costs to the 4th and 5th Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 21st day May of 2020.

E.O.OBAGA

JUDGE

In the virtual Presence:-

Mr Motari for 2nd and 3rd Respondents

Mr Ondego for 5th Respondent and for Mr Muturi for 4th Respondent

Court Assistant: Hilda

E.O. OBAGA

JUDGE