

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 103 OF 2014

BOB AND URSULLA BRENNEISEN & 7 OTHERS.....PLAINTIFFS

-VERSUS-

SHANZU WATER FRONT LIMITED.....DEFENDANT

RULING

1. In the ruling of this Court delivered on 30th July 2015, I had granted a conditional injunction pending the making of a report to the Court by the NEMA. The Court stated that it would issue a final order on whether to confirm or lift the injunction beyond the 90 day period pegged on the contents of the current report presented by NEMA.

2. This matter has been pending for one year now because the applicant had filed an appeal against the decision of 30th July and also delay in having NEMA present their report to Court. On 28th July 2016 Mr Stephen Wambua the Mombasa County NEMA director finally took the stand to be cross – examined on his report.

3. He was examined by Mr Kagram advocae for the petitioner on functions of County NEMA director and he listed them. He explained that the project in dispute is classified as high risk hence the reason why the E.I.A was approved from Nairobi their headquarters. He also stated that they supervise the works to ensure compliance with the E.I.A licence as issued. He admitted that indigenous trees take time to grow if cut and re-planted.

4. On cross – examination by Mr Savia advocate for the respondent, he stated that an E.I.A licence was issued on 16.10.2013 to the Respondent to construct 4 blocks of apartments. That this was after NEMA was satisfied that comprehensive mitigating measures would be undertaken to redress the negative impacts likely to be caused by the project. That from his inspection, the 4 blocks are at the foundation level which is not a risk to the environment for the moment. He stated the need for supervision to ensure the proponent complies with the E.I.A requirements and that they have no authority to alter the plans.

5. I have perused the NEMA report dated 13th January 2016. It stated that there is no on-going construction currently and there are approximately 83 trees standing on the site. The site is fenced by a 9 feet high perimeter wall and there is one old abandoned bungalow with disused swimming pool. The report referred to the earlier report dated 27.9.2013. This earlier report laid out what the proponent was expected to do during the construction process. The report concluded that the proposed development conforms to the existing land use of the area and is not out of character. The proponent was told to adhere to the mitigation measures intended to abate the impacts identified above.

6. Taking the contents of the report and the early stage at which the project is and reiterating my earlier decision particularly paragraph 17 of the ruling, I find no reason to stop the Respondent from continuing with the project as the County Director of NEMA stated that the proponent has not breached the terms of the licence at the stage where the development had reached. Consequently I discharge the temporary orders of injunction that were issued on 30.7.2015 and has been extended over time.

7. The lifting of the injunction is no bar to the petitioners moving the Court in the future as the

development progress in case the need arise.

Ruling dated and delivered this 9th day of September 2016

A. OMOLLO

JUDGE