



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC PETITION NO. 2 OF 2019**

**MARTIN WANYONYI.....1<sup>ST</sup> PETITIONER**

**(C.E.O WESTERN KENYA LEGAL AND ORGANIZATION)**

**JOHN WEKESA KHAOYA (C.E.O CENTRE FOR HUMAN**

**RIGHTS ORGANIZATION).....2<sup>ND</sup> PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF BUNGOMA.....1<sup>ST</sup> RESPONDENT**

**C.E.C MEMBER OF ENVIRONMENT**

**WATER & NATURAL RESOURCE.....2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY GOVERNMENT OF BUNGOMA..3<sup>RD</sup> RESPONDENT**

**R U L I N G**

The three (3) applications subject of this ruling were canvassed by way of written submissions which were to be filed before 2<sup>nd</sup> March 2020.

When the matter came upon for mention before the Deputy Registrar on 2<sup>nd</sup> March 2020, he directed that the case be mentioned before me on 17<sup>th</sup> March 2020. However, that dated coincided with the scaling down of Court operations following the **COVID – 19** pandemic and it was not until this month that the file was fished out following a letter dated 5<sup>th</sup> October 2020 addressed to the Deputy Registrar by the Applicants herein enquiring about the ruling.

The delay is regretted but is attributable to the fact that following the scaling down of Court operation in March 2020, many files which were due for mention that month and subsequently thereafter could not be brought up as scheduled.

As already stated above, this ruling is in respect to the following three (3) applications: -

- 1. The Petitioners' Notice of Motion dated 15<sup>th</sup> January 2020 (the contempt application).**
- 2. The Petitioners' Notice of Motion dated 22<sup>nd</sup> January 2020 (the injunction application); and,**
- 3. The Respondents' Notice of Motion also dated 22<sup>nd</sup> January 2020 (the conservatory application).**

The background to these applications is that having heard the Petitioners' Petition dated 24<sup>th</sup> July 2020 seeking various remedies against the Respondents with regard to the violation of the rights of the residents of the **LUMORO VILLAGE** to a clean and healthy environment due to the dumping of waste in an un – protected area, this Court by its Judgment dated 11<sup>th</sup> December 2019 ordered as follows: -

**1. "The prayer to remove the 3<sup>rd</sup> Respondent from office is declined."**

**2. "A finding is made that the establishment of a dump site at the LUMORO village by the Respondents constitutes an infringement of the right to a clean and healthy environment to the residents under Article 42 of the Constitution."**

3. *“The 1<sup>st</sup> Respondent shall within thirty (30) days of this Judgment apply for the relevant licence under Sections 87, 88 and 89 of the EMCA.”*

4. *“The 1<sup>st</sup> Respondent shall also within thirty (30) days of this Judgment undertake an Environmental Impact Assessment (EIA) study and prepare a report to be submitted to EMCA for it’s consideration as per Section 58 of the EMCA.”*

5. *“In default of (3) and (4) above, the 1<sup>st</sup> Respondent shall stop utilizing the dump site at LUMORO village and restore it to it’s original state withing sixty (60) days of this Judgment.”*

6. *“The 1<sup>st</sup> Respondent shall meet the Petitioners’ costs.”*

A decree followed thereafter. That Judgment provoked the three (3) applications which I shall now consider in that order.

**1: THE PETITIONERS’ CONTEMPT APPLICATION DATED 15<sup>TH</sup> JANUARY 2020.**

This application was filed by the Petitioners on 15<sup>th</sup> January 2020. It is anchored upon the provisions of **Section 143(a) (b) and (c)** as read with **Section 58(1) (2) (3) (4) (5) (6) (7) (8) and (9), Section 87(1) (2) (4) and (5), Section 88(1) (2) or (3) and Section 89** of the **ENVIRONMENTAL MANAGEMENT AND CO – ORDINATION ACT (EMCA)**.

The application seeks the main remedy that this Court issues orders of contempt against the Respondents. It is based on the grounds set out therein and is supported by the affidavit of the two Applicants herein. The gravamen of the application is that following this Court’s Judgment dated 11<sup>th</sup> December 2019, the Respondents have failed to comply with the orders therein and have also continued to dump waste at **LUMORO VILLAGE**. Further, that the Respondents have offended the provisions of **Sections 58, 87, 88, 89 and 143 of EMCA** and therefore this Court should issue orders restraining the dumping of waste at **LUMORO VILLAGE** which should be enforced by the **OFFICER COMMANDING (OCS) BUMULA POLICE STATION** who should arrest any person(s) contravening the said orders.

In opposing the application, **MOSES SICHEI SOET** the **CHIEF OFFICER** of the 1<sup>st</sup> Respondent has sworn a replying affidavit dated 27<sup>th</sup> January 2020 and filed on the same date in which he has deponed, inter alia, that following this Court’s Judgment dated 11<sup>th</sup> December 2020, the Respondents not only applied for the relevant licences but also made full payment for the same (annextures MSS 3(a) and 3(b)). That the Respondents also occasioned an **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)** study to be conducted at the **LUMORO** dumpsite. The report dated 10<sup>th</sup> January 2020 is annexure **MSS – 4**. That on 13<sup>th</sup> January 2020, and without reference to the Respondents to confirm if they had complied with the Judgment of this Court, the Petitioners in the company of un – identified Police Officers went to **LUMORO** dump – site and dug trenches along the road to ensure that vehicles are un – able to access the dump – site. That the Respondents have fully complied with this Court’s Judgment aforesaid and cannot therefore be held to be in contempt of the same. That it is the Applicants who are interfering with the Respondents attempt in building a perimeter wall around the dump – site and waste is currently being disposed in undesignated areas within **BUNGOMA COUNTY** and the state of sanitation within the **COUNTY** is now quickly becoming deplorable. Annexed are photographs of the current garbage disposal areas being used by the Respondents – annexure **MSS – 7**. That if the Petitioners are discontent with the **EIA** report and licences issued by **NEMA**, they may approach the **NATIONAL ENVIRONMENT TRIBUNAL (NET)** which is duly established under **Section 125 of EMCA**. This application should therefore be dismissed with costs.

I have considered the application, the rival affidavits and annexures thereto as well as the submission as filed both by **MR WASILWA** instructed by the firm of **B M S ADVOCATES** now on record for the Petitioners and by **MS KHADAMBI** instructed by the firm of **GUMBO AND ASSOCIATES** for the Respondents.

It is clear from paragraphs 6 and 7 of the replying affidavit of **MOSES SICHEI SOET** and the relevant annexures that on 10<sup>th</sup> January 2020, the Respondents not only applied for the licences, paid for them but have also obtained an **EIA** report. It is averred in those paragraphs as follows: -

6 *“That the Respondents not only applied for all the relevant licences but also made full payment for the licences (Annexed and marked MSS – 3a) and 3(b) are two receipts for the relevant licences both dated 10<sup>th</sup> January 2020).”*

7 *“That the Respondents also occasioned an ENVIRONMENTAL IMPACT ASSESSMENT (EIA) study to be conducted on LUMORO dumpsite and that study culminated in the preparation of an ENVIRONMENTAL IMPACT ASSESSMENT (EIA) report dated 10<sup>th</sup> January 2020. All that was done within thirty (30) days of this Court’s Judgment dated 11<sup>th</sup> December 2020. It is therefore obvious that there was compliance by the Respondents of the orders No 3 and 4 of this Court’s Judgment dated 11<sup>th</sup> December 2019 and any claim that the Respondents are in contempt of the orders of this Court are not well taken.”*

Counsel for the Petitioners has submitted at length on the principles that should guide **NEMA** in the preparation of an **EIA** report. Among the issues raised in those submissions include whether there was public participation, the inconsistencies of the report, the proprietorship of the land where the dump site is located and lack of scientific study. Those observations may or may not be correct. However, **NEMA** is not a party in these proceedings and most importantly, the jurisdiction to determine a dispute regarding the issuance of an **EIA** licence is vested in the **NATIONAL ENVIRONMENT TRIBUNAL (NET)** under **Section 129 of the EMCA**. That provision reads as follows: -

129: *“Appeals to the Tribunal: -*

*(1) Any person who is aggrieved by –*

- (a) *The grant of a licence or permit or a refusal to grant a licence or permit under this Act or its regulations;*
- (b) *The imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;*
- (c) *The revocation, suspension or variation of the person's licence under this Act or its regulations;*
- (d) *The amount of money required to pay as fee under this Act or its regulations;*
- (e) *The imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its regulations, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal."*

It is clear from the replying affidavit of **MOSES SICHEI SOET** and the annexures thereto that the Respondents are yet to receive the relevant licence. What they have done is make an application for the same as was directed by this Court. In their communication to the 1<sup>st</sup> Respondent dated 10<sup>th</sup> January 2020, **NEMA** confirms as follows: -

**"RE: ACKNOWLEDGMENT FOR PAYMENT OF APPLICATION/RENEWAL TO OWN/OPERATE WASTE TREATMENT/DISPOSAL FACILITY/SITE (DUMPSITE MUNICIPAL)**

*The National Environment Management Authority NEMA has received your cheque/Bank deposit slip of Kshs. 3,000 as licence application fee to own/operate waste treatment/disposal facility site.*

*We are processing your application/license and will get back to you in due course.*

**MAUREEN NJERI**

**WASTE MANAGEMENT UNIT."**

And in a further communication to the 1<sup>st</sup> Respondent also dated 10<sup>th</sup> January 2020, **NEMA** addresses the 1<sup>st</sup> Respondent as follows: -

**"RE: ACKNOWLEDGMENT OF ENVIRONMENTAL IMPACT ASSESSMENT PROJECT REPORT.**

*The National Environment Management Authority (NEMA) acknowledges receipt of five (5) copies of Environmental Impact Assessment Project Report prepared by ELIZABETH WANJIKU MBUGUAH (EIA/Audit Lead Experts/Firm of Experts).*

*The reference number for the EIA project report is NEMA/PR/5/2/23267 for future correspondence.*

*The report will be reviewed in accordance with the Environmental Impact Assessment and Audit Regulations 2003, and NEMA will communicate its assessment/findings within 28 to 45 working days.*

*On the interim, please do not commence or proceed with any development of the project until you receive communication from NEMA on the same.*

**MARRIAN KIOKO**

**HEAD OF EIA SECTION"** Emphasis added.

In paragraph 15 of the replying affidavit by **MOSES SICHEI SOET** dated 27<sup>th</sup> January 2020, it is averred as follows: -

*"That from the time when the Petitioners/Applicants started interfering with LUMORO dumpsite, disposal of waste has not been possible in the county. The Respondents attempts to find a temporary location for waste disposal have borne fruit (sic) and as such waste has been disposed in undesignated areas within the County thus the County's state of sanitation is quickly becoming deplorable (Annexed and marked MSS – 7 are photographs showing the un – suitable garbage disposal areas)."*

The averment that the Respondents have now resorted to disposing waste in **"undesignated areas"** was not specifically rebutted by any supplementary affidavit. The imminent fear of disposal of waste in undesignated areas is what I had in mind when in my Judgment dated 11<sup>th</sup> December 2019, this Court observed as follows: -

*"Counsel for the Respondents has submitted that there is no alternative dump site should the current one be closed. I take cognizant of the fact that waste disposal is a daily occurrence and if the LUMORO dump site is the only one available as stated, the Respondents would have no other site to dispose the waste that is generated in the County. Such action would be drastic and simply create another problem in another village. This Court would not want to precipitate such a scenario. On the other hand, this Court would not wish to see the Constitutional rights of the residents of LUMORO village to a clean and healthy environment being infringed with impunity."*

In the same Judgment, this is what I said about the dump site: -

***“The dump site is not even fenced and it can be no consolation when MOSES SICHEI SOET avers in paragraph twenty of his replying affidavit that this process of constructing a perimeter wall around the dump site has been factored in the 2019/2020 Financial Year.”***

In paragraph 14 of the same replying affidavit, **MOSES SICHEI SOET** avers as follows: -

***“That I am further advised by the Respondents’ Advocates on record which advice I verily believe to be true that this Honourable Court can direct the Petitioners/Applicants to stop interfering with LUMORO dump site so that the Respondents can building (sic) a perimeter wall around the dump site in observance of the sentiments of the Court from it’s Judgment aforementioned.”***

It is not the business of this Court to explain its Judgment to the Petitioners. They filed their Petition in person before Counsel came on record. What is important however, and for the avoidance of any doubt, this Court’s reference to the fact that the **LUMORO** dump site was not fenced did not mean that the Respondents can use it once it is fenced. Neither did this Court direct that it be fenced. The reference as to fencing the site was simply meant to express my displeasure both towards the Respondents in using a site that was not secure and also at **NEMA** for allowing the Respondents to continue using that site. I must make it clear in this ruling that until the Respondents obtain a licence from the **NEMA**, the **LUMORO VILLAGE** dump site is a no-go zone for the Respondents, their agents or employees for any use as a dumping site including fencing it. How can they possibly fence the site before it has been approved? Indeed, in the last paragraph of **NEMA**’s letter dated 10<sup>th</sup> January 2020 addressed to the 1<sup>st</sup> Respondent, it is clear that: -

***“On the interim, please do not commence or proceed with any development project until you receive communication from NEMA on the same.”***

Nothing can be clearer than that. Therefore, although as at the time the Petitioner’s application for contempt was filed the Respondents had applied for the licence and undertaken an **EIA** study followed by a report, the site cannot be utilized until the licence is obtained and as is now clear, the Respondents are meanwhile using un – designated sites for waste disposal.

The prayer that the Respondents be cited for contempt is not well founded and must be dismissed.

The Petitioners have also prayed that the Respondents have offended **Section 143(a) (b) and (c) of the EMCA** and, presumably, should also be punished. That Section provides as follows: -

**143 (1) “Any person who -**

***(a) fails, neglects or refuses to comply with an environmental restoration order made under this Act,***

***(b) fails, neglects or refuses to comply with an environmental easement issued under this Act,***

***(c) fails, neglects or refuses to comply with an environmental conservation order made under this Act,***

***(d) fails, neglects or refuses to comply with any order made by the Tribunal***

***Commits an offence and shall on conviction, be liable to imprisonment for a term of not less than one year and not more than four years or to a fine not less than two million shillings and not more than four million shillings or to both such fine and imprisonment.***

***(2) Failure by a lead agency to comply with a directive of the Authority issued under Section 12 of this Act shall constitute an offence.”***

The jurisdiction to prosecute the Respondents for a violation of the provisions of **Section 143 of EMA** is vested in **NEMA. Section 118(a) and (b) of EMCA** provides: -

***118 (a) “Subject to the Constitution and the direction and control of the Director of Public Prosecutions, an environmental Inspector may, in any case in which he considers it desirable so to do –***

***(a) institute and undertake criminal proceedings against any person before a Court of competent jurisdiction (other than a Court martial) in respect of any offence alleged to have been committed by that person under this Act; and***

***(b) discontinue at any stage with the approval of the Director of Public Prosecutions, before Judgment is delivered any such proceedings instituted or undertaken by himself.”***

This Court’s jurisdiction is circumscribed by **Section 13 of the ENVIRONMENT AND LAND ACT** and **Section 150 of the LAND ACT**. It is an un – limited civil jurisdiction in matters germane to land and the Environment. It does not enjoy the criminal jurisdiction to punish for offences under **Section 143 of EMCA** and even if it did, a charge sheet would have to be prepared by **NEMA** which would then prosecute the offenders of course under the directions and control of the Director of Public Prosecutions. That scenario does not obtain here

and I must decline any invitation to usurp the jurisdiction bestowed on another Court by also rejecting that prayer.

Ultimately, therefore, this Court must dismiss the Petitioners' Notice of Motion dated 15<sup>th</sup> January 2020.

## **2: THE PETITIONERS' INJUNCTION APPLICATION DATED 22<sup>ND</sup> JANUARY 2020.**

Though not elegantly drafted by the Petitioners who were still acting in person when this application was filed, it is clear to me that it is essentially seeking injunctive reliefs. The application is worded as follows: -

### **1. Spent**

**2. This Honourable Court be pleased to grant orders restraining the transporter to dump waste at LUMORO VILLAGE dump site.**

**3. This Honourable Court be pleased to grant orders for enforcement to the OCS BUMULA POLICE STATION to arrest any person(s) who contravenes the orders/decrees dated 13<sup>th</sup> December 2019.**

It is clear from the submission by **MR WASILWA** who is now on record for the Petitioners that he too understood the said Notice of Motion to be an application for injunction. This is because, at page 15 of his submissions he states as follows under reliefs proposed

**“(a) –**

**(b) To stop the Respondents or their agents from using the LUMORO site which is private property for disposal of waste.”**

The application is supported by the Petitioners' affidavit dated 22<sup>nd</sup> January to which is annexed the decree issued following this Court's Judgment dated 11<sup>th</sup> December 2020.

The gravamen of the application is that in its Judgment dated 11<sup>th</sup> December 2020, this Court granted the Respondents thirty (30) days to apply for the relevant licences under **Sections 87, 88 and 89 of EMCA** and in default, stop utilizing the dump site at **LUMORO VILLAGE** and restore it to its original state within sixty (60) days. That the Respondents have dumped waste at **LUMORO VILLAGE** and are abusing the process of this Court.

In opposition to that Notice of Motion, the Respondents filed grounds of opposition dated 29<sup>th</sup> January 2020 describing the application as frivolous, misconceived and an abuse of the process of the Court. That the application does not flow from this Court's Judgment and does not meet the threshold for granting an order of injunction as envisioned under **Order 40 of the Civil Procedure Rules** or the principles set down in the case of **GIELLA .V. CASSMAN BROWN & COMPANY LTD 1973 E.A 358**. That the order restraining transporters from dumping waste at **LUMORO** dumping site is misdirected and un – sustainable in law.

I have similarly considered that application, the supporting affidavit and grounds of opposition as well as the submissions of Counsel.

Both Counsel have addressed me on the principles of granting an injunction under **Order 40 of the Civil Procedure Rules** and the principles set out in the case of **GIELLA .V. CASSMAN BROWN** (supra). However, **Order 40 Rule 1 of the Civil Procedure Rules** is clearly not applicable in the circumstances of this case which has already been heard and determined. That provision is only applicable where a suit is still pending. It reads: -

**“where in any suit it is proved by affidavit or otherwise –**

**(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or**

**(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”** Emphasis added.

This suit has already been heard and final disposal orders made. If the application sought a temporary injunction as envisaged under **Order 40 Rule 1 of the Civil Procedure Rules**, it is clearly misconceived.

If on the other hand what is sought is a permanent order of injunction, then similarly, such a remedy cannot be through an application such as this one. It must be pleaded as a remedy in the suit. In any event, as I have now already clarified in this ruling, the Respondents shall not utilize the dumping site at **LUMORO** village including carrying out any developments thereon, until they have secured a licence from **NEMA**. That has also been made abundantly clear by **NEMA** in their communication to the 1<sup>st</sup> Respondent dated 10<sup>th</sup> January 2020 and which I have already referred to above. In any case, an order of permanent injunction, given what I have already stated above, would be mere surplusage. This is because, should the Respondents obtain a licence to utilize the **LUMORO** dump site, then unless that licence is successfully challenged at the **NET**, there would be no basis to permanently injunct the Respondents from accessing and utilizing the said

site.

It must be obvious by now that there is no need to interrogate whether the principles set out in **GIELLA .V. CASSMAN BROWN** (supra) have been established because this case does not call for the grant of any orders of an injunction, temporary or otherwise.

The Petitioners' Notice of Motion dated 22<sup>nd</sup> January 2020 is also for dismissal.

### **3: THE RESPONDENTS' APPLICATION FOR CONSERVATORY ORDERS DATED 22<sup>ND</sup> JANUARY 2020.**

This application was filed on 22<sup>nd</sup> January 2020 and is anchored under **Order 40 Rule 1** and **2** and **order 51 Rule 1 of the Civil Procedure Rules** as well as **Sections 1A, 1B and 3A of the Civil Procedure Act**. It seeks the following orders: -

#### **1. Spent**

**2. That a conservatory order issue prohibiting restraining and stopping the Petitioners/Respondents by themselves, their agents or their servants from accessing, interfering, digging, ploughing, harrowing all that parcel of land known as SOUTH BUKUSU/WEST MATEKA/1147 and 1148 pending the hearing of this application inter – partes.**

**3. That a conservatory order do issue prohibiting, restraining and stopping the Petitioners/Respondents by themselves, their agents or their servants from accessing, interfering, digging, ploughing, harrowing all that parcel of land known as SOUTH BUKUSU/WEST MATEKA/1147 and 1148 pending the hearing and determination of this application.**

**4. That the Court directs the OCPD – BUNGOMA SOUTH to provide security to the 1<sup>st</sup> Respondent/Applicant's Officers to go to LUMORO dump site to fill the trenches and to supervise the continued operation of LUMORO dump site.**

**5. That costs of this application be borne by the Petitioners/Respondents.**

The application is premised on the grounds set out therein and is also supported by the affidavit of **MOSES SICHEI SOET** dated 22<sup>nd</sup> January 2020.

The gist of the application is that in its Judgment dated 11<sup>th</sup> December 2020, this Court did not order for the immediate closure of **LUMORO** dump site but directed the Respondents to apply for the relevant licences under **Sections 87, 88 and 89 of EMCA** and to apply for an **EIA** study within thirty (30) days from the delivery of the Judgment. That before the lapse of the thirty (30) days, the Respondents applied for the relevant licences and occasioned the conduct of an **EIA** study which culminated in the preparation of an **EIA** report. However, without confirming the above, the Petitioners in the company of un – identified Police Officers went to the **LUMORO** dump site on 13<sup>th</sup> January 2020 and dug trenches along the road in a bid to ensure that motor vehicles cannot access the site. As a result, the Respondents have been forced to look for an alternative dumping site leaving the sanitation condition in the County in a deplorable state as the Respondents are now using undesigned areas for garbage disposal.

The application is opposed and in their replying affidavit filed herein on 27<sup>th</sup> January 2020, the Petitioners aver, inter alia, that the Respondents have misapprehended this Court's Judgment dated 11<sup>th</sup> December 2019 as there is no evidence that they have obtained a licence for waste disposal. Further, that this Court did not authorize the Respondents to re – start utilizing the **LUMORO** dump site after thirty (30) days. That any such resumption would require the stamp of approval by **NEMA**. That there was no public participation and the persons named to have participated did not do so and therefore the whole process was a charade. In any event, the land parcels **NO WEST BUKUSU/NORTH MATEKA/1146 and 1147** which have been earmarked for the dump site belong to persons who are deceased and their personal representatives are yet to be issued with Letters of Administration in respect to their respective Estates.

I have considered the application, the rival affidavits and annexures as well as the submissions by Counsel.

Notwithstanding the manner in which this application is crafted, it is obvious that the orders sought are similar to those in the Petitioners' application also dated 22<sup>nd</sup> January 2020. The application must therefore also collapse for the same reasons as did the Petitioners' application. At the risk of repeating myself, however, let me state that this Petition having been heard and finalized following my Judgment dated 11<sup>th</sup> December 2020, there is no suit pending "**disposal**" as envisaged under **Order 40 Rule 1 of the Civil Procedure Rules** to warrant the grant of the orders sought. I must also clarify, as I have already done, that although the Respondents complied with this Court's Judgment by applying for the licence and occasioning the **EIA** study and preparation of the report dated 10<sup>th</sup> January 2020, that did not authorize them to continue utilizing the **LUMORO** dump site. The law is very clear that unless and until licenced to do so by **NEMA**, they must keep off that site. **NEMA** itself sounded that caution to the Respondents in their letter dated 10<sup>th</sup> January 2020. Most importantly, the Respondents as a **COUNTY GOVERNMENT** are expected to know and comply with the law. By the same token, the Petitioners are not expected to take the law into their own hands by digging trenches on the road. If there was any clarification required about my Judgment herein, I hope that has now been done. Those other issues regarding the efficacy or otherwise of the **EIA** study and report are really matters for **NET** and not this Court.

However, the Respondents' Notice of Motion dated 22<sup>nd</sup> January 2020 is devoid of merit and is hereby similarly dismissed.

The up – shot of the above is that having considered the three (3) applications herein, this Court makes the following orders: -

**1. The Petitioners' Notice of Motion dated 15<sup>th</sup> January 2020 (the contempt application) is dismissed.**

**2. The Petitioners' Notice of Motion dated 22<sup>nd</sup> January 2020 (the injunction application) is dismissed.**

**3. The Respondents' Notice of Motion dated 22<sup>nd</sup> January 2020 (the conservatory application) is dismissed.**

**4. Each party shall bear their own costs of the applications.**

**Boaz N. Olao.**

**J U D G E**

**2<sup>nd</sup> November 2020.**

**Ruling dated, signed and delivered at BUNGOMA this 2<sup>nd</sup> day of November 2020 by way of electronic mail in keeping with the COVID – 19 pandemic guidelines.**

**Boaz N. Olao.**

**J U D G E**

**2<sup>nd</sup> November 2020.**