



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC JUDICIAL REVIEW MISC NO. 6 OF 2019

**IN THE MATTER OF DEMAND FOR THE EFFLUENT DISCHARGED LICENSE FOR MISTY
MOUNTAIN LODGE LTD BY THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)**

AND

IN THE MATTER OF THE WATER ACT NO. 43 OF 2016

AND

IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999(EMCA)

AND

IN THE MATTER OF THE ENVIRONMENTAL AND COORDINATION (WATER QUALITY) REGULATIONS 2006

IN THE MATTER OF ILLEGAL CRIMINALIZATION AND THE ARREST OF THE APPLICANT

FOR FAILING TO PRODUCED AN EFFLUENT DISCHARGE LICENSE BY THE POLICE

AND DIRECTORATE OF PUBLIC PROSECUTIONS WITHOUT A VALID GAZETTE NOTICE

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI,

ROHIBITION AND MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA).....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

EX-PARTE

MISTY MOUNTAIN LODGE LTD.....1ST APPLICANT

DENNIS MATHENGE WAIHENYA.....2ND APPLICANT

JUDGEMENT

1. By a Notice of Motion dated 4th July, 2019, the Applicants herein sought leave Apply for the orders of certiorari, prohibition and mandamus. The application having been served upon the Respondent and there having not been any response in opposition or otherwise, the same was herein allowed.
2. The Applicant was directed to file and serve the substantive motion upon the Respondent. Leave was also granted to the Respondent to file and serve their response within 14 days upon service wherein the substantive motion was fixed for hearing.
3. Pursuant to the above directions the Applicant filed their substantive motion dated 29th July, 2019, brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules and Section 8 of the Law Reform Act, wherein they sought for an order of Certiorari to bring to the Court for purpose of being quashed the decision of the 1st Respondent in demanding for an Effluent Discharge License and/or application of the same by the 1st Applicant.
4. The Applicant also sought for an order of Prohibition restraining the Respondents from demanding for an Effluent Discharge License and/or application thereof, arresting and/or preferring any criminal proceedings against the 1st Applicant, its agents, servants and/or employees over the issue of effluent discharge license. They also sought for costs of the suit and any other relief that the Court deemed fit to grant.
5. The substantive motion was supported by the chamber summons, statutory statements, annexures and verifying affidavit of Dennis Mathenge Waihenya dated the 4th July 2019.
6. The Applicants' grievance is that pursuant to construction of the Misty Mountain Lodge hotel, the 1st Applicant had procured the necessary licenses and permits from the relevant authorities including and not limited to the licenses and permits by the 1st Respondent for the purpose of legally and successfully completing the construction.
7. That sometime in the month of June 2019 in the cause of the construction, the 1st Respondent started sending their agents and using the agents of the 2nd Respondent to harass the Applicants' agents and/or servants on allegations that the Applicant had not applied for the necessary licenses for the ongoing construction thereby demanding that the Applicant produces an Effluent Discharge License.(EDL)
8. That in the process, the 1st Respondent caused the arrest of the 2nd Applicant's agent for failing to produce the said license to which the 2nd Applicant was released on a cash bail of Ksh 20,000/= to be arraigned in Court on a later date.
9. The 1st Applicant has deponed that since the hotel was opened, they have not been discharging any effluent on the property but in their septic tanks which effluent is then collected/emptied by the NEMA licensed agents.
10. That there was no requirement under the law requiring that he procures an Effluent Discharge License and therefore the demand by the 1st Respondent was null and void in law therefore making the insistence of the 1st Respondent for the said effluence license an abuse of power and which did not constitute a criminal act punishable by law.
11. That pursuant to the provisions of Section 75(1) of the Environmental Management and Co-ordination Act, an Effluent Discharge License is to be procured by parties who discharge effluence into the environment unlike the Applicants who had constructed a septic tank within the premises where the effluent was stored awaiting collection by an independent and duly licensed party who then disposed it in a designated area.
12. The Applicant further deponed that the Environmental Management and Co-ordination Act did not stipulate any offences and penalties to be levied upon a party who did not have an Effluent Discharge License and therefore the 1st Respondent did not have the mandates to cause the arrest and prosecution of the Applicants' agents.
13. The Applicant thus deponed that their rights and fundamental freedoms had been unreasonably and unconstitutional threatened to warrant the invocation of the Court's jurisdiction under Articles 23(1) and 23(3) of the Constitution.
14. That Respondent's actions therefore were in contravention of Articles 47(1) of the Constitution and amounted to unfair administrative action. That the demand of the 1st Respondent was irrational, unreasonable and was in contravention of Article 69(1) (d) of the Constitution and Section 5 of the Environmental Management and Coordination Act as it was devoid of any public participation in a directive that was likely to have a direct or substantial indirect effect on their business. They sought for the application to be allowed.
15. The motion was opposed by the 1st Respondent through their replying affidavit dated the 30th October 2019 and filed on 6th November 2019 in which one Mr. Mamo B Mamo, the acting Director General of the 1st Respondent deponed that the intended criminal prosecution against the Applicant was made upon due process premised on the physical inspection on the suit premises where it was found that the Applicant was using a septic tank to discharge its effluent without the requisite Effluent Discharge License(EDL) whose purpose was to ensure that the septic tank was operating optimally in such a way that the final product (effluent) has been treated and thus safe for discharge into the environment.
16. That in its application for an Environmental Impact Assessment (EIA) for its hotel premises the Applicant had indicated in its architectural drawings that it was to install an underground sewerage disposal system by way of a septic tank to handle its wastewater. The

1st Respondent having inspected the facility and not having been informed of any change of the design made a conclusive decision that the treatment technology at the site was that of a septic tank. However the conclusion was difficult to arrive at since the Applicant had erected a permanent building/lavatory on the treatment plant thus leaving the 1st Respondent to rely largely on the submitted architectural drawings.

18. That indeed the Applicant had admitted that the treatment technology it was using was that of a septic tank but had failed in appreciating how a septic tank worked. It was their stand that indeed the effluent from the 1st Applicant's septic tank was neither collected by NEMA licensed agents or exhausters as alleged and that the ex parte 1st Applicant should therefore be put to strict proof.

18. The 1st Respondent further deponed that the Environmental Impact Assessment (EIA) license issued to the 1st Applicant on 16th December 2015 was not a bar to it obtaining the Effluent Discharge License(EDL) as the two licenses were mutually exclusive, both being necessary for the kind of establishment run by the 1st Applicant.

19. That the provisions of Section 75 as read with Section 144 of the Environmental Management and Co-ordination Act provided for a penalty for the offense of discharging affluent without a license. That failure to comply with the said provisions of the law, the Applicant herein had been issued prior with a notice vide an improvement order dated 26th June 2019, herein annexed as MM3, before its agents were arrested for prosecution.

20. The 1st Respondent deponed that the decision to prosecute the Applicant for non-compliance was procedural and as such, the Applicant should be directed to face his accusers and make his defence accordingly. The 1st Respondent further deponed that the allegations of corruption through bribery demands were not known to his department and should therefore be reported to the relevant authorities. The 1st Respondent then sought for the dismissal of the application as the same was not merited.

21. Although the Court directed for the motion to be disposed of by way of written submissions, only the 1st Respondent complied and reiterated what they had deponed in their affidavit in response to the Motion. In addition it submitted that upon the 1st Respondent having approved the Environmental Impact Assessment (EIA) there had been indicated therein as an operational condition that;

‘The proponent shall ensure that suitable wastewater treatment technology is incorporated in the designs and implemented (not the existing septic tank/soak pit system.)’

22. Amongst other conditions that were imposed on the Applicant was that it shall submit on Environmental Audit Report in the first year of operation to confirm the efficiency and adequacy of the environmental management plan which it failed to submit to date.

23. The 1st Respondent relied on Section 12(2) of the Environmental Management and Co-ordination (Water Quality) Regulations 2006 to submit that the 1st Applicant in its application for Environmental Impact Assessment for its hotel premises had indicated in its report and in its architectural drawings that it would install an underground sewerage disposal system by way of septic tank to handle its waste water, it cannot therefore later on deny that it operates a septic tank.

24. The 1st Respondent framed its issues for determination as follows;

i. Whether the Applicant required an effluent discharge license.

25. In response the 1st Respondent submitted that the provisions of Section 75 (1) of the Environmental Management and Co-ordination Act were clear and to which effect the Applicants were clearly in contravention of the said provisions as during the issuance of the EIA license, it was clearly stated that obtaining an Effluent Discharge License was one of the operational conditions.

ii. Whether the statutory function of the NEMA acting legally can be suspended.

26. On this issue for determination, the 1st Respondent submitted while relying on the decided case in **Republic vs. National Environment Management Authority ex- parte NEMA [2006] eKLR** that the functions of NEMA having been created by a statute, could not be stopped by a Court of law unless it was shown that the said functions were wrongly exercised.

iii. Whether the arrest of the 2nd Applicant was merited.

27. The 1st Respondent while discussing this issue relied on the provisions of Section 75 as read with Section 144 of the Environmental Management and Co-ordination Act to submit that it was within their mandates to cause the arrest and prosecution of the 2nd Applicant for failing to procure an EDL license. That the said arrest therefore did not in any way infringe on the Applicants' rights. The 1st Respondents sought for the application to be dismissed with costs for want of merit.

28. There was no response from either the 2nd nor the 3rd Respondents.

Determination.

29. I have anxiously considered the application, the affidavits filed, the submissions as well as the authorities cited. The issue that emerges for determination is whether the ex parte Applicant is entitled to the remedies sought.

30. Mandamus is a judicial remedy in the form of an order from a Court to any government, subordinate Court, [corporation](#), or [public authority](#), to do (or forbear from doing) some specific act which that body is obliged under law to do (or refrain from doing), and which is in the nature of public duty, and in certain cases one of a statutory duty. I note that along the way this writ was abandoned by the Applicant and as such the same shall rest.

31. I note that the Applicant has focused its attention on the writs of certiorari and prohibition wherein it seeks that Court do intervene to issue the orders of Certiorari to bring to the Court for purpose of being quashed the decision of the 1st Respondent in demanding for an Effluent Discharge License and/or application of the same by the 1st Applicant and the consequent arrest and/or criminal proceedings against the 1st Applicant, its agents, servants and/or employees by the Respondents over the issue of effluent discharge license.

32. The Applicant also seeks for an order of Prohibition restraining the Respondents from demanding for an Effluent Discharge License and/or application thereof, arresting and/or preferring any criminal proceedings against the 1st Applicant, its agents, servants and/or employees over the issue of effluent discharge license.

33. The Court notes that one of the purposes of Judicial Review is to review administrative action for the purpose of ensuring that public agencies and officers act fairly towards the citizen and that they abide by the law.

34. In the instant case that 1st Applicant herein had commenced the construction of a Hotel on its premises wherein it had obtained the necessary licenses and permits from the relevant authorities including and not limited to the licenses and permits by the 1st Respondent, save for an Effluence Disposal License (EDL), for the purpose of legally and successfully completing the construction.

35. The said Effluence Disposal License (EDL) herein is the bone of contention in the suit before Court in that the Respondent's position is that during the issuance of the EIA license, it had been clearly stated that obtaining an Effluent Discharge License was one of the operational conditions as provided for under the provisions of Sections 75 (1) of the Environmental Management and Co-ordination Act. That since the Applicant did not possess the said EDL then it was clearly in contravention of the said provisions which when read with Section 144 of the same Act made it an offence to wit 'discharging affluent without a license'. That was the reason as to why there was an arrest and prosecution of the 2nd Applicant.

36. The Applicant's contention on the other hand is that since the hotel was opened they had been discharging their effluent in their septic tanks which effluent is then collected/emptied by the NEMA licensed agents. That there was no requirement under the law requiring him to procure an Effluent Discharge License because the provisions of Section 75(1) of the Environmental Management and Co-ordination Act stipulated that an Effluent Discharge License is to be procured only by parties who discharge effluence into the environment. That their effluence was stored in a constructed septic tank within the premises awaiting collection by an independent and duly licensed party who then disposed it in a designated area.

37. That the demand of them therefore by the 1st Respondent for the Effluence Disposal License was null and void in law and an abuse of power. That further the arrest and prosecution of the 2nd Applicant therefore for not having the said Effluence Disposal License were in contravention of Articles 47(1) of the Constitution and amounted to unfair administrative action. That the demand by the 1st Respondent was irrational, unreasonable and was in contravention of Article 69(1) (d) of the Constitution and Section 5 of the Environmental Management and Coordination Act.

38. NEMA is tasked by Section 9 of the Environmental Management and Coordination Act (EMCA) to co-ordinate the various environmental management activities being undertaken by lead agencies and promote the integration of environmental considerations into development policies, plans, projects and programs to ensure the proper management and use of the environmental resources. Section 87 of EMCA prohibits any person from discharging or disposing of any wastes in a manner that may cause pollution to the environment or ill health to any person.

39. I have taken note of the undisputed fact that in its application for an Environmental Impact Assessment (EIA) for its hotel premises the Applicant had indicated in its architectural drawings that it was to install an underground sewerage disposal system by way of a septic tank to handle its wastewater. That NEMA upon approving the Environmental Impact Assessment (EIA) had vide its approval of 16th December 2015 had asked the Applicant to obtain an Effluent Discharge License as per condition No. 4.4 which clearly stated that;

'The proponent shall ensure that suitable wastewater treatment technology is incorporated in the designs and implemented (not the existing septic tank/soak pit system.)'

40. It is also not in contention that on 26th June 2019 when the NEMA through its County Director of the Environment-Nyeri County, conducted a site visit at the hotel, they had observed that the 1st Applicant had no Effluent Discharge License for their waste water and yet their waste disposal system was by way of a septic tank which finally released water to the environment.

41. Vide an Improvement Notice issued by the 1st Respondent to the 1st Applicant therein dated the 26th June 2019, the 1st Applicant was required to;

- i. Ensure all NEMA approvals and records are available at the site for inspection by NEMA inspectors
- ii. Apply for an Effluent Discharge License immediately.
- iii. Conduct an environmental audit and submits to NEMA within 7 days from the date of the notice.

42. The 1st Respondent was categorical that the effluent from the 1st Applicant's septic tank was neither collected by NEMA's licensed agents or exhausters as alleged by the ex-parte Applicant and put the 1st applicant strict proof thereto. That pursuant to the 1st Applicant's failure to comply with the Improvement Notice, the 1st Respondent caused the arrest and prosecution of its agent, the 2nd Applicant herein.

43. It is therefore apparent that instead of the 1st Applicant complying with the said Improvements Notice, it had run to Court and filed the present application.

44. The first issue that I need to determine is whether the present Judicial Review proceedings were initiated prematurely keeping in mind the provisions of Section 129 of EMCA and Section 9 of the Fair Administrative Action Act.

45. The National Environment Tribunal was established by Section 125 of the Environment Management and Coordination Act (EMCA), Act No. 8 of 1999. The mandate of the tribunal is contained in Section 129(1) and (2) of the statute which is drawn as follows :-

(1) Any person who is aggrieved by-

a) the grant of licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;

b) the imposition of any condition, limitation or restriction on the persons licensed 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 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 the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

46. Section 9 of the Fair Administrative Action Act provides as follows;

(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review *jurisdiction of the High Court may appeal to the Court of Appeal.*

47. Clearly from the above provisions of the law, it is apparent that before the Applicant could file the present Judicial Review proceedings before this Court, it ought to have channeled their grievance to the National Environment Tribunal which generally has the mandate to hear complaints over the issuance of licenses by NEMA and these will include EIA licences. As it is to be noted by the provisions of Section 9 (2) of the Fair Administrative Action Act that this Court is barred against exercising Judicial Review jurisdiction unless available statutory appeal and review mechanisms have been exhausted.

48. I therefore find that the present Judicial Review proceedings were initiated prematurely and in violation of the provisions of Section 129(1) of the Environment Management and Coordination Act (EMCA) and Section 9 of the Fair Administrative Action Act in so far as they relate to whether there was need or not to quash the Improvement Notice (Order) issued by the 1st Respondent requiring for an Effluent Discharge License and/or application of the same by the 1st Applicant.

49. The second issue for determination that the court shall seek to address is whether the criminal proceedings initiated against the 2nd Applicant, were actuated by ulterior motives thereby violating his constitutional rights under Article 47(1) of the Constitution.

50. In their motion, the Applicants had sought for Prohibition orders restraining the Respondents from arresting and/or preferring any criminal proceedings against the 1st Applicant, its agents, servants and/or employees over the issue of effluent discharge license, the Court finds that, the exercise of the prosecutorial powers under the Environment Management Coordination Act No. 8 of 1999 has to be sparing

and to balance the right to utilize property and that of the environment. The Act is more tailored towards remedial and precautionary measures rather than prosecutorial remedies, so that Orders issued by NEMA are usually called restoration and/or improvement Notices. They require of a party to undertake certain activities that would enhance the quality of the environment.

51. In the instance case the said order issued by the 1st Respondent was as stipulated herein above.

52. Section 144 of the Act provides as follows;

Any person who contravenes against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable, upon conviction, to imprisonment for a term of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment. or to both such fine and imprisonment.

53. From the above provision, it is only after the failure to comply with the Improvement Order that a decision to prosecute can be considered. See **Republic v National Environment Management Authority & Another Ex-parte Taherali Hassan Ali & another [2018] eKLR**

54. It is also not in doubt that the *Environmental Management and Coordination Act*, at Section 145, extends the liability for environmental offences to directors of corporations, Partnerships, Principals, persons individually, agents and/or servants and Employers. In this case the ex parte Applicants' case is that the 1st Respondent has caused the arrests and prosecution of its agents and/or servants on allegations that the Applicant had not applied for an Effluent Discharge License despite the fact that there was no requirement under the law requiring that he procures the same and further that they have not been discharging any effluent on the property but in their septic tanks which effluent is then collected/emptied by the NEMA licensed agents. The 1st Applicant's position is that the Environmental Management and Co-ordination Act does not stipulate any offences and penalties to be levied upon a party who does not have an Effluent Discharge License and therefore the 1st Respondent did not have the mandates to cause the arrest and prosecution of its agents.

55. The 1st Respondent's response is that upon a physical inspection on the suit premises, it was found that the 1st Applicant was using a septic tank to discharge its effluent without the requisite Effluent Discharge License (EDL) whose purpose was to ensure that the septic tank was operating optimally in such a way that the final product (effluent) has been treated and thus safe for discharge into the environment. That they had subsequently issued the Applicant with an Improvement Notice dated 26th June 2019 specifying some conditions but which notice was not complied with thus leading to the arrest and prosecution of the 1st Applicants' agents for non-compliance.

56. Several decisions have been handed down setting out the law relating to circumstances in which the Court would be entitled to prohibit, bring to a halt or quash criminal proceedings. A Judicial Review Court is not concerned with the innocence or guilt of the Applicant but rather with the fairness of the process which the Applicant is being or has been subjected to. Where the Court finds that the process is unlawful or unfair, it has the duty to stop the same in its tracks. On the other hand as long as the process is being carried out in a lawful and just manner, even the mere fact that there is likelihood of an acquittal will not justify the Court in interfering.

57. The Court ought to be extremely cautious in its findings so as not to prejudice the intended or pending criminal proceedings. As Judicial Review proceedings are concerned with the process rather than merits of the challenged decision or proceedings, the Court is not entitled to make definitive findings on matters which go to the merit of the impugned proceedings. In determining the issues raised herein the Court will therefore avoid the temptation to unnecessarily stray into the arena exclusively reserved for the criminal or trial Court.

58. Since according to NEMA, the responsibility to set up a functioning sewerage treatment plant lies with the ex parte Applicants squarely, it cannot lie to the *ex parte Applicants* that prosecuting them for the offences they have been charged with, is unreasonable or irrational to warrant Judicial Review orders.

59. In the case of **Peter Bogonko vs. NEMA (2006) eKLR** the Court held that:

“Under Section 69 (1) of the Act, NEMA in consultation with other lead agencies is charged with the duty of monitoring all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impact or operation of any projects or activity with a view to determining its immediate and long term effects on the environment. The Court cannot curb NEMA's powers given by Statute.”

60. I thus find that the Court should therefore strive to avoid the temptation to unnecessarily stray into the arena exclusively reserved for the criminal or trial Court. Similarly, the Court in determining Judicial Review proceedings ought not to usurp the Constitutional and statutory mandate of the prosecutorial and the investigative agencies to investigate and undertake prosecution in the exercise of the discretion conferred upon them by the law and the Constitution.

61. The House of Lords in **Director of Public Prosecutions vs. Humphreys [1976] 2 All ER 497 at 511** cautioned that:

“A judge must keep out of the arena. He should not have or appear to have any responsibility for the institution of a prosecution. The functions of prosecutors and of judges must not be blurred. If a judge has power to decline to hear a case because he does not think it should be brought, then it soon may be thought that the cases he allows to proceed are cases brought with his consent or approval...If there is a power...to stop a prosecution on indictment in limine, it is in my view a power that should only be exercised in the most exceptional circumstances.”

62. Although the exercise of the prosecutorial powers under the *Environment Management Coordination Act* No.8 of 1999 has to be done

sparingly while balancing the right to utilize property and that of the environment, and that remedial and precautionary measures would be more appropriate than prosecutorial remedies, yet the decision as to which mode of enforcement is more appropriate ought to be left to the agencies concerned unless it is shown that in the exercise of their discretion, the agencies are acting unreasonably or mala fides.

63. In the instant case, I find that determination as to whether the ex-parte Applicants were liable must be left for determination by the trial Court since to make such a determination in these proceedings would amount to this Court determining the guilt or innocence of the Applicants which is not the mandate of this Court exercising its Judicial Review jurisdiction.

64. In the end, I find that the Applicants have failed to discharge the burden and must be ready to face their trial as was stated in the case of **Daniel Ndungu vs. Director of Public Prosecutions & Another (2013) eKLR**:

“In conclusion, the Petitioner ought to face his accusers, prove his innocence or otherwise and submit to the consequences of the Law should he be found culpable”.

65. The totality of the Court’s findings on the above matter is that there is no merit in the Applicants’ plea for orders of certiorari and prohibition itemized in the Notice of Motion dated 29th July, 2019. The application is accordingly dismissed with costs for lack of merit.

Dated and delivered at Nakuru this 11th day of December 2020.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE