



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION 16 OF 2019

IN THE MATTER OF PETITION UNDER ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF INFRINGEMENT OF FUNDAMENTAL FREEDOMS AND RIGHTS OF THE PETITIONER UNDER ARTICLE 19,20,22,23,24,28,31,42,69 AND 70 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF SECTION 18 OF THE ENVIRONMENT AND LAND COURT ACT 2011

AND

IN THE MATTER OF ACTIONS OF VICTOR KARITHI MUTUMA WARD REPRESENTATIVE FOR ATHWANA WARD AND IN THE COUNTY GOVERNMENT OF MERU IN ARBITRARILY PLANNING TO CONSTRUCT A MARKET ON A THIN STRIP OF LAND IN KARAMENE AREA WITHIN ATHWANA WARD ON A RESIDENTIAL AREA AND NEAR WASO MARA RIVER PROVIDING DRINKING AND FARMING WATER TO THE INHABITANTS AND THOSE LIVING DOWNSTREAM

BETWEEN

MICHAEL GATUMA.....1ST PETITIONER

JOSEPH MAILUTHA.....2ND PETITIONER

DOMISIANO MWILARIA..... 3RD PETITIONER

MWITI NICHOLAS..... 4TH PETITIONER

KAMAAI ITHIKANYI..... 5TH PETITIONER

SEBASTIANO IKIAOO.....6TH PETITIONER

PRISCILLA MUKOKINYA.....7TH PETITIONER

PATRICK MBURUKI.....8TH PETITIONER

CYPRIANO LIMBITU.....9TH PETITIONER

THARAMBA KALAINA.....10TH PETITIONER

SABERA KATHONI..... 16TH PETITIONER

GRACE MWARI..... 17TH PETITIONER

SARAFINA NKIRINA.....18TH PETITIONER

CHARITY MWARI KAREI..... 11TH PETITIONER

AGNES KARAMBU..... 12TH PETITIONER

JAMES MURIUKI.....13TH PETITIONER
MARTIN MURITHI..... 14TH PETITIONER
FLORA KITHUKU.....15TH PETITIONER
SERA.....19TH PETITIONER
JACOB KIMATHI.....20TH PETITIONER

VERSUS

VICTOR KARITHI1ST RESPONDENT
COUNTY GOVERNMENT OF MERU..... 2ND RESPONDENT

RULING

1. The applicants herein have filed an application dated 18.6.2019 seeking to halt the construction of the proposed Athwana market in Karamene area citing none compliance with provisions of the Physical Planning Act and National Environment Management and Coordination Act. This application is at the infancy stage and is yet to be heard.

2. Further, the respondents have on their part filed a notice of preliminary objection to have the application of 18.6.2019 and the entire petition dismissed. Likewise, this preliminary objection is yet to be prosecuted.

3. The court has been urged by the applicants to grant orders of maintenance of status quo in order to preserve the substratum of the suit pending the determination of the preliminary objection and the application.

4. On the other hand the respondents aver that there is no certainty that the petition will be sustained.

5. On 10.7.2019, both sides confirmed that the status quo is one where the only activity ongoing on the ground is the construction of a toilet though materials are on site.

6. I find that the petitioners have raised a serious allegation that the requisite approvals from the National Environmental Management Authority (NEMA) have not been obtained and that the project is being put up contrary to the provisions of the physical planning Act.

7. Section 58 of the Environment Management and Co-ordination Act provides that the proponent of a project must submit an environmental Impact Assessment Report to NEMA so as to be issued with the relevant license. The second schedule of the aforementioned Act further provides for the instances where submission of an E.I.A study report is required. The petitioners have taken a step of engaging a professional expert (a lead expert) who has prepared an environmental Impact Assessment Advisory report where a conclusion has been made to the effect that the project will have more negative effects than positive ones.

8. Respondents have not availed any single document to counter the averments made by the petitioners, yet they admit that materials are already on site ready to commence the construction.

9. Taking into account the precautionary principle of environmental protection and considering that respondents have so far not availed any document of compliance with the EMCA and physical planning Act, and keeping in mind that the project is at the infancy stage, then, I am inclined to give orders as follows:

1) Status quo to be maintained, whereby the only activity to be undertaken is the construction of the toilet until the application and or the Preliminary Objection is heard and determined.

2) The matter to be heard on priority basis.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 31ST DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Dennis

Munene holding brief for Maranya for applicant/petitioner

Laichena for respondent

HON. LUCY. N. MBUGUA

