



Mayaka & 3 others (Suing as Administrators of the Estate of Evaresto Mayaka Ongondi – Deceased) v Nyando Building Extracts Limited & 3 others (Environment and Land Case 2 of 2024) [2025] KEELC 5540 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 2 OF 2024**

**M SILA, J
JULY 24, 2025**

BETWEEN

**ROBERT ONGONDI MAYAKA 1ST PLAINTIFF
THADDEUS MORIRA 2ND PLAINTIFF
DORAH SELLA MASESE NYAGETUBA 3RD PLAINTIFF
REUBEN ABINO MAYAKA 4TH PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF EVARESTO MAYAKA
ONGONDI – DECEASED**

AND

**NYANDO BUILDING EXTRACTS LIMITED 1ST DEFENDANT
MINISTRY OF MINING, BLUE ECONOMY AND MARITIME
AFFAIRS 2ND DEFENDANT
THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
(NEMA) 3RD DEFENDANT
HON. ATTORNEY GENERAL 4TH DEFENDANT**

RULING

(On whether suit should be terminated)

1. This suit was commenced through a plaint dated 15 July 2025. In a nutshell, the plaintiffs complained about the manner in which the 1st defendant was undertaking quarrying activities around the vicinity of the land that they occupied. They particularly complained that the blasting of rocks in the quarry led to flying rocks and debris which caused cracks and damage to the walls and roofs of



their houses. The plaintiffs contended that the 2nd and 3rd defendants, respectively, the Ministry of Mining, and the National Environment Management Authority (NEMA) had failed in their duties to give proper guidance to the 1st defendant on matters related to quarrying, extraction, and blasting. Contemporaneously with the suit, the plaintiff filed an application seeking orders of injunction to restrain the 1st defendant from undertaking any further quarrying activities and to stop the 2nd and 3rd defendants from licencing the operations of the 1st defendant.

2. In the course of the case, I issued various stop orders, and also issued orders to the 2nd and 3rd defendants to provide direction to the 1st defendant on how best to undertake her quarrying activities without the same being a risk to the health and safety of the public. I issued orders for a series of controlled blasting under the supervision of the 1st and 2nd defendants. This was so as to ensure that the blasting activities were undertaken safely and in accordance with regulations relating to quarrying activities. The first controlled blasting did not bring a very good report but further directives were issued and subsequent blastings were confirmed to be in conformity with safety standards. The court also visited the site on 3 April 2025 when blasting took place in my presence, as Judge, and the parties who were accompanied by their experts and representatives. There were no longer flying rocks and debris and generally the blasting was considered by all experts to be safe.
3. The 1st defendant also entered into negotiations with the plaintiffs to compensate them for the damage they suffered. Payment has been made in accordance with the negotiations.
4. When the matter came up on 22 July 2025, the issue that was argued was whether there was anything left in the suit. Mr. Ochwangi, learned counsel for the plaintiffs, urged that the suit was not just about compensation. Mr. Bonuke, learned counsel for the 1st defendant was of opinion that the issues are settled given that blasting is now safe and compensation has already been paid to the plaintiffs. This was supported by Mr. Wabwire, learned state counsel appearing for the 2nd defendant. He submitted that what is now left is continuous supervision of the quarrying site which falls for the Ministry of Mining and not for the court.
5. I agree with the submissions of Mr. Bonuke and Mr. Wabwire. The plaintiffs of course came to court to ensure that the quarrying activities are not a danger to them or to the public and they also wished to be compensated for the damage that they suffered. Under court's directions and supervision, and the directives and supervision of officials of the 2nd and 3rd defendants, it can be affirmed that now the quarrying activities of the 1st defendant have been aligned to the required safety standards.
6. It is not necessary for every case to be heard in the traditional way especially cases relating to environment. Sometimes, under the court's directions and the guidance of experts, the environmental hazard that is complained of in a case can be brought under control. So long as control is achieved, it is not a must for persons to proceed with the case. The intention of such a case is to see to it that safeguards related to the environment and the health and safety of persons are achieved. Once this is achieved, the case no longer has any purpose. In essence, we need to evolve from the traditional methods of litigation particularly when it comes to matters touching on the environment. Courts need to be innovative so that the intention is to attain acceptable levels of environmental protection, and health and safety of the public, rather than merely do a routine hearing of a suit.
7. The case herein has been resolved pursuant to the court's directives and supervision of the environment hazard complained of. The only issue left is costs. I will allow parties opportunity to address me on costs upon delivery of the ruling herein. Apart from that this file be deemed as closed.
8. Orders accordingly.

DATED AND DELIVERED THIS 24 DAY OF JULY 2025



JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT
AT KISII

Delivered in the presence of :

Mr. Ochwangi for the plaintiffs

Mr. Bonuke for the 1st defendant

Mr. Wabwire for the 2nd & 4th defendants

N/A for the 3rd defendant

