



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 7 OF 2019

IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF INFRINGEMENT OF FUNDAMENTAL FREEDOMS AND RIGHTS OF THE PETITIONER UNDER ARTICLE 19, 20, 22, 23, 24, 42, 69 AND 70 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE ACTIONS OF THE TANA WATER SERVICES BOARD, COUNTY GOVERNMENT OF MERU, HANKUK ENGINEERING CONSULTANTS AND ECOSITE DEVELOPMENT CONSULTANTS LIMITED IN ARBITRARILY PLANNING TO CONSTRUCT A SEWERAGE PROJECT ON TOP OF A WATER CATCHMENT BODIES NAMELY RIVER KINYARITHA AND A SWAMP BOTH OF WHICH PROVIDES DRINKING WATER AND FARMING WATER TO THE INHABITANTS AND THOSE LIVING DOWNSTREAM

BETWEEN

RWANYANGE RESIDENT SELF HELP GROUP

(suing thro' CHARLES KARIUKI, NICK MUTIGA,

its Chairman and Secretary respectively.....PETITIONER

AND

TANA WATER SERVICES BOARD.....1ST RESPONDENT

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

HANKUK ENGINEERING CONSULTANTS LIMITED.....3RD RESPONDENT

ECOSITE DEVELOPMENT CONSULTANTS LTD.....4TH RESPONDENT

RULING/DIRECTIONS

1. The genesis of this matter traces its roots in the proposed construction of a sewerage project in Ndiine sub location in Rwanyange location. The residents of the aforementioned location through their self-help group filed a petition on 29.4.2014 objecting to the construction of the said project. An application was also filed contemporaneously with the petition where the petitioners sought for a temporary and permanent injunction restraining the respondents from proceeding with the said project.
2. In a detailed ruling dated 31.7.2019, the court granted a temporary injunction as it had emerged that the project proponents did not have an Environmental Impact Assessment license (EIA). The court was to give further directions once the license was availed hence this ruling.
3. The respondents now have the EIA license dated 27.9.2019. However, the petitioners contend the license was issued after the project had kicked off. They therefore intend to make an application to enjoin NEMA in these proceedings and to challenge the license. The petitioners further stated that the court can proceed to hear the matter on the other constitutional issues raised in the petition.
4. I have perused the entire petition where the claim of the petitioners is captured in paragraph 7 to 10. In summary the claimants have raised the following issues:

(i) That the project proponents have not carried out a EIA

(ii) That NEMA has not been involved

(iii) That there was no public participation

(iv) That the project construction will result in the contamination of the water downstream, hence the residents will be exposed to diseases.

5. Now that the respondents have an Environmental Impact Assessment (EIA) license, then it means that the National Environment Management Authority (NEMA) is involved. The outstanding issue is with regard to public participation as well as the issue of water contamination.

6. On the issue of public participation, I pronounced myself in my ruling of 31.7.2019 in paragraph 36. Therefore, it is the study report and/or the licence which ought to be challenged on this issue.

7. Again on the issue of water contamination, reference is made to paragraph 35 of my ruling of 31.7.2019 where I stated that “**the setting up of a sewerage system is a matter in the technical arena**”.

8. In paragraph 37 of the aforementioned ruling, I had stated that:

“Once the respondents demonstrate that their involvement with NEMA complies with the provisions of Environment Management and Coordination Act (EMCA) and the regulations thereof, then this court may refer the dispute to the laid down dispute resolution mechanism under Environmental Management and Coordination Act (EMCA)”.

9. I must add that this court has the mandate and jurisdiction to deal with issues of public participation as well as a clean and healthy environment. However, the nature of the project in question is one which requires a deeper scrutiny of the completeness and scientific sufficiency of the study report which gave rise to the issuance of the license by NEMA. This is therefore an area which ought to be dealt with under the licensing regime in the first instance.

10. Since the respondents have a study report as well as the license, then the validity of the same ought to be challenged through the laid down formal mechanism under EMCA.

11. In conclusion, I proceed to give final orders as follows;

1) This Petition is hereby marked as SPENT.

2) The earlier orders of injunction issued herein on 31.7.2019 are hereby discharged.

3) The respondents are condemned to pay the costs of this petition as they had no license when matter was filed.

4) For purposes of any litigation under EMCA as well as compliance with the set timelines, I direct that time shall run from the date of delivery of this ruling.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF NOVEMBER, 2019

IN THE PRESENCE OF:-

C/A: Kananu

Maranya for petitioners

Muthamia holding brief for Kiunga for 2nd respondents

Macharia holding brief for Mwai for 1st, 3rd and 4th respondents

Petitioners

Onesmus Kariuki a representative of the 1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE