



**REPUBLIC OF KENYA**

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

**ELC. PETITION NO. 2 OF 2018**

COUNTY GOVERNMENT OF KITUI.....PETITIONER

VERSUS

SONATA KENYA LIMITED.....1<sup>ST</sup> RESPONDENT

MALUKI KITILI MWENDWA.....2<sup>ND</sup> RESPONDENT

NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY (NEMA).....3<sup>RD</sup> RESPONDENT

**RULING**

1. The Petitioner filed a Notice of Motion dated 16<sup>th</sup> January, 2018 in which it is seeking for the following orders:

*a. The Honourable Court be pleased to issue a declaration that the 1<sup>st</sup> Respondent's acts are in contravention of Article 42 of the Constitution, 2010.*

*b. The Honourable Court be pleased to issue a declaration that the violation of Article 42 of the Constitution, 2010, by the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent has resulted to a denial of the right to a clean and healthy environment to the residents of Kitui County and specifically the residents of Maluma Location, Nzambani Ward in Kiongwe area.*

*c. The Honourable Court be pleased to issue a declaration that in breach of (3) above the Petitioner has a right to redress for an order of injunction, pursuant to Article 23(3) b of the Constitution of Kenya, 2010 as read with Section 13(7) (a) of the Environment and Land Court Act, No. 19 of 2011.*

*d. The Honourable Court be pleased to issue a mandatory injunction compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to identify and relocate the aforesaid asbestos to a different and suitable site for disposal of waste in accordance to the Environmental Management and Coordination Act, 1999, at their cost.*

*e. The Honourable Court be pleased to issue a mandatory injunction to compel the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and/or their employees and/or agents and assigns and/or anybody whoseover to bear the cost of restoring the environment where the hazardous asbestos had been dumped by the 1<sup>st</sup> Respondent at Kiongwe area as far as practicable to its immediate condition prior to the depositing.*

*f. The Honourable Court be pleased to issue an environmental restoration order to be issued against the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent.*

*g. The Honourable Court be pleased to issue a prohibitory injunction to the 1<sup>st</sup> Respondent and/or its employees and/or agents/or assigns and/or anybody whosoever to permanently restrain them and/or permanently stop them from depositing any hazardous waste at L.R No. Nzambani/Maluma/690.*

*h. The Honourable Court be pleased to issue an order compelling the 3<sup>rd</sup> Respondent to revoke the Environmental Impact Assessment licence issued to the 1<sup>st</sup> Respondent.*

*i. The Honourable court be pleased to issue a mandatory order compelling the 1<sup>st</sup> Respondent to refund to the Petitioner, the cost incurred by the Petitioner in engaging a licensed asbestos handler to remove the disposed asbestos from the disposal site at*

***Maluma Location in Nzambani Ward, other administrative costs and legal costs incurred by the Petitioner in the process of mitigating the effects of the illegal dumping of the hazardous materials.***

***j. The Honourable Court be pleased to make such further or other orders as it may deem just and expedient to the circumstances of this case.***

***k. Costs of this Petition***

2. According to the Affidavit of the Petitioner's acting County Secretary, the 3<sup>rd</sup> Respondent granted the 1<sup>st</sup> Respondent an Environmental Impact Assessment licence for asbestos disposal site (*landfill*) at Ngai Ndethya Ranch, a water catchment area which feeds into Thua River on plot number Nzambani/Maluma/690; that the Water Resources Management Authority ordered the 1<sup>st</sup> Respondent to cease any dumping of asbestos at Maluma Location which is a water catchment area and that the license procured from the 3<sup>rd</sup> Respondent is for the disposal of asbestos which are classified as high risk, harmful and hazardous materials that neither decompose, decay nor burn and once inhaled, the fibers may cause mesothelioma cancer, lung cancer and asbestosis.

3. It is the Petitioner's case that by depositing the hazardous asbestos at the water catchment area and posing a health hazard to the residents of Maluma in the period between March and April, 2017, the 1<sup>st</sup> Respondent violated the rights of the residents of Maluma area as enshrined in Article 42 of the Constitution which guarantees everyone the right to a clean and healthy environment.

4. Due to the above mentioned risks, the Petitioner's County Clerk deponed that it procured the services of Warote Africa Kenya Limited which successfully excavated the asbestos from the suit land and temporary stored them in two containers before final disposal at a National Environmental Management Authority registered site; that the continued stay of the asbestos is posing a danger to the residents of the County and that the process of issuance of the license to the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent was marred by illegality because the residents of Maluma Location were never consulted.

5. In response, the 1<sup>st</sup> Respondent's Director deponed that the 1<sup>st</sup> Respondent obtained an Environmental Impact Assessment license on 20<sup>th</sup> February, 2017 regarding the proposed Asbestos Disposal Site (*landfill*) from the 3<sup>rd</sup> Respondent; that the Petitioner's application is challenging the issuance of an Environmental Impact Assessment license to the 3<sup>rd</sup> Respondent and that under Section 129 of the Environmental Management and Co-ordination Act (EMCA), the platform for making an appeal should have been lodged with the National Environment Tribunal.

6. According to the 1<sup>st</sup> Respondent, the Petitioner did not at any time object to the report prior to the implementation of the project; that throughout the entire process leading to the issuance of the licenses to the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent, the Petitioner did not raise any objection and that the Petition is based on unsubstantiated fears about the disposal of the asbestos at the suit property.

7. The 1<sup>st</sup> Respondent's Director deponed that the subject site where the waste was disposed was appropriate and that if there were any environmental concerns which have not been demonstrated, improvement order was sufficient to address such concerns and not excavating the waste; that the 1<sup>st</sup> Respondent was issued with a Cessation and Restoration Order on account of misconceived breach of the terms of the license when in actual fact the breach was politically instigated and that the excavation of the asbestos waste from the commissioned site by the Petitioner was illegal.

8. According to the 1<sup>st</sup> Respondent, being unable to locate a legally commissioned site, the Petitioner's agents are now stuck with the waste as it has dawned on them that they went about the wrong way in interfering with the commissioned site; that the Petitioner's actions of excavating the waste was hurried and that the orders been sought cannot be granted.

9. The registered proprietor of parcel of land known as Nzambani/Maluma/690, the 2<sup>nd</sup> respondent, deponed that the suit land is very expansive and covers an approximate area of 136Ha; that in January, 2017, his land was subject to an Environmental Impact Assessment by a National Environmental Management Authority authorized expert and that the assessment was pursuant to the proposal to dispose asbestos on the suit land by the 1<sup>st</sup> Respondent.

10. According to the 1<sup>st</sup> Respondent, the Directors of the 1<sup>st</sup> Respondent embarked on their mandate to dispose asbestos on the land as per the conditions of the license and the relevant regulations; that having exhumed the asbestos, it is the Petitioner and M/s Waste Africa Limited who are liable to pay the costs of disposing the said asbestos and that he is amenable of providing a section of his land for the disposal of the asbestos.

11. On his part, the 3<sup>rd</sup> Respondent's Director in charge of Compliance and Enforcement deponed that the order seeking for the cancelation of the Environmental Impact Assessment license should be canvassed at the Tribunal; that copies of the Environmental Impact Assessment Project Report were dispatched to lead agencies by his office seeking for their comments as required by the law and that the Environmental Impact Assessment Project Report had public interview questionnaires.

12. It is the 3<sup>rd</sup> Respondent's case that it was only after the Environmental Impact Assessment licence had been issued that the Petitioner submitted its long sought comments on the project and that on 8<sup>th</sup> June, 2017, the 3<sup>rd</sup> Respondent issued a Cessation and Restoration Order to the 1<sup>st</sup> Respondent stopped all disposal activities and ordered for the rehabilitation of the site due to a confirmed breach of the Environmental Impact Assessment Licence Conditions.

13. The 3<sup>rd</sup> Respondent's officer further deponed that it invoked its delegated prosecutorial powers and arraigned a Director of the 1<sup>st</sup> Respondent in court and charged him with the offence of breaching license conditions and that it is not clear why the Petitioner excavated the

asbestos waste from a licensed site only to take the waste to the Kitui Stadium.

14. In his submissions, the Petitioner's advocate submitted that the case before the court is a Constitutional Petition alleging violations of rights enshrined in the Constitution, including a violation to the right to a clean and healthy environment and that it is this court which has jurisdiction to hear Constitutional Petitions and not the Tribunal.

15. Counsel submitted that no public participation was carried out involving the residents of Maluma Location; that the Water Resources Authority requested the 3<sup>rd</sup> Respondent to submit a design of the landfill which the 3<sup>rd</sup> Respondent did not respond to and that where the procedures for the protection of the environment are not followed, an assumption may be drawn that the right to a clean and healthy environment is under threat.

16. The Petitioner's advocate finally submitted that the onus lie on the Respondents to prove that the area is not a catchment area by filing a credible report in this court and that the Petitioner cannot entrust the 1<sup>st</sup> Respondent with the disposal of the asbestos in the same area which is a water catchment area; that the license that was granted to the 2<sup>nd</sup> Respondent by the 3<sup>rd</sup> Respondent should be suspended and that the hazardous asbestos materials be removed from their current storage because they are a health hazard to the residents of Kitui County.

17. The 1<sup>st</sup> Respondent advocate on the other hand submitted that the Environmental Impact Assessment Report shows the suitability of the site for the disposal of the asbestos materials and that the only time the Petitioner could have challenged the implementation of the project was at the time when the 1<sup>st</sup> Respondent had the Environmental Impact Assessment Report published for scrutiny.

18. Counsel submitted that the Petitioner's claim is founded on speculation and apprehension that injury would have been caused; that it is the National Environment Tribunal which has the jurisdiction to handle the dispute and that the mandatory orders of injunction cannot issue because the Petitioner is the sole author of the crisis in question.

19. The 1<sup>st</sup> Respondent's counsel finally deponed that nothing stops the Petitioner from seeking for an Improvement Order against the disposal of the hazardous materials at the suit land and that the removal of the said waste was purely illegal and interferes with the laid down procedures.

20. The 2<sup>nd</sup> Respondent's advocate submitted that the Petitioner disregarded the Guidelines on Safe Management and Disposal of Asbestos by excavating the waste from the suit land; that the doctrine of *novus interveniens* comes into play in apportioning blame and that the Defence of a third party act exists in environmental pollution disputes when the polluter pays principle is invoked by one of the parties.

21. The 3<sup>rd</sup> Respondent's counsel submitted that it is the National Environmental Tribunal which has the jurisdiction to deal with this dispute; that the 1<sup>st</sup> Respondent applied and was granted an Environmental Impact Assessment license and that all the lead agencies were involved before the Environmental Impact Assessment license was issued to the 1<sup>st</sup> Respondent.

22. Counsel submitted that the subject project was carried out as an Environmental Impact Assessment Project Report and not an Environmental Impact Assessment Study Report; that the Environmental Impact Assessment Project Reports have less involvement because they are perceived to cause less environmental impact and therefore the need to conduct a public hearing, gazette or advertise does not arise and that only questionnaire surveys from the persons likely to be affected are required.

23. Counsel submitted that it is the Petitioner who is the polluter under the polluter pays principle; that it was irresponsible for the Petitioner to transfer the asbestos from a licensed site to a temporary place being Kitui Stadium and that the Petitioner flaunted the National Guidelines on Safe Management of Asbestos.

24. The 3<sup>rd</sup> Respondent's advocate finally submitted that the Petitioner has not proved any constitutional violation by the Respondents.

#### **Analysis and findings:**

25. It is not in dispute that the 3<sup>rd</sup> Respondent granted to the 1<sup>st</sup> Respondent an Environmental Impact Assessment License for asbestos disposal site (*landfill*) at Ngai Ndethya Ranch in Maluma Location on parcel of land known as Nzambani/Maluma/690. The license procured by the 1<sup>st</sup> Respondent was for the disposal of Asbestos materials which are classified as one of the high risk, harmful and hazardous materials whose exposure is likely to cause mesothelioma cancer, lung cancer and asbestosis.

26. It is the Petitioner's case that the issuance of the license to the 1<sup>st</sup> Respondent for Asbestos disposal site on the suit land was marred by illegality because the same was issued without involving the residents of Maluma Location who were likely to be affected by the disposal of the hazardous waste materials.

27. At this stage, the court is only supposed to determine whether indeed the Petitioner has a prima facie case with chances of success, for it to issue conservatory orders. Before delving into the issue of whether or not the Petitioner has established a prima facie case with a likelihood of success, I should determine whether the Petition should have been filed in the National Environment Tribunal (NET) at the first instance or not.

28. Under Section 129(1) of the Environmental Management and Co-ordination Act, the National Environment Tribunal (NET) is empowered to hear and determine appeals arising from persons aggrieved by decisions of National Environmental Management Authority (NEMA), such as the issuance of a license by the 3<sup>rd</sup> Respondent to the 1<sup>st</sup> Respondent.

29. However, the Petition before the court is a Constitutional Petition alleging violations of various rights enshrined in the Constitution, including a violation of the right to a clean and healthy environment provided for in Article 42 of the Constitution. Article 162(2) (b) of the Constitution and Section 13(1) of the Environment and Land Court Act provides that this court can hear and determine any matter related to the Environment and Land. Section 13(3) of the Environment and Land Court Act further provides as follows:

***“13(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.”***

30. It is therefore this court, and not the National Environment Tribunal, that has the jurisdiction to hear and determine any dispute under Article 70 of the Constitution which provides as follows:

***“70(1) If a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.  
(2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate--***

***a) to prevent, stop or discontinue any act or omission that is harmful to the environment;***

***b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or***

***c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.***

***(3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.”***

31. The Petition before me is seeking for the reliefs that are provided for under Article 70, that is, preventing, stopping or discontinuing any act or omission that is harmful to the environment. Consequently, it is this court that has the requisite constitutional and statutory jurisdiction to determine the dispute and not the National Environment Tribunal (NET) whose jurisdiction is limited.

32. The evidence before me shows that by way of a letter dated 24<sup>th</sup> January, 2017, the 3<sup>rd</sup> Respondent received a copy of the Environmental Impact Assessment Project of the excavation of asbestos graves, packing and sealing, offloading and burying, general truck cleaning and associated facilities located at parcel number Nzambani/Maluma/690. In its letter dated 20<sup>th</sup> February, 2017, the 3<sup>rd</sup> Respondent issued to the 1<sup>st</sup> Respondent License No. NEMA/EIA/PCL 4315 subject to the conditions which were attached to the license. I have gone through the copy of the Environmental Impact Assessment Project Report. The Report recognizes the fact that asbestos is heat resistant and mostly impervious to chemical treatment. When asbestos fibers are airborne, they cause health risk to people in the surrounding area, including causing lung cancer, mesothelioma, cancer of pleura and peritoneum, cancer of bronchus, cancer of intestines amongst other diseases.

33. According to the Environmental Impact Assessment Project, once the asbestos have been buried, the site is decommissioned, not to be used again. The site is also supposed to be fenced with a chain link, lockable-fence with a warning notice that reads “Asbestos Hazard Area, keep off.”

34. The Environmental Management and Co-ordination Act (Waste Management) Regulations, 2006 categorize hazardous wastes and non-hazardous. The fourth schedule of the Regulations, Item 136, categorizes waste containing asbestos in the form of dust or fibers as hazardous.

35. Section 58 of the Environmental Management and Co-ordination Act stipulates the procedure to be followed when applying for an Environmental Impact Assessment license. The Section provides as follows:

***“58(1).Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.***

***(2). The proponent of a project shall undertake or cause to be undertaken at his own expense an environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.***

***(3). The environmental impact assessment study report prepared under this subsection shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee.***

***(4). The Minister may, on the advice of the Authority given after consultation with the relevant lead agencies, amend the Second Schedule to this Act by notice in the Gazette.***

***(5).Environmental impact assessment studies and reports required under this Act shall be conducted or prepared respectively by***

*individual experts or a firm of experts authorized in that behalf by the Authority. The Authority shall maintain a register of all individual experts or firms of all experts duly authorized by it to conduct or prepare environmental impact assessment studies and reports respectively. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.*

*(6).The Director-General may, in consultation with the Standards Enforcement and Review Committee, approve any application by an expert wishing to be authorized to undertake environmental impact assessment. Such application shall be made in the prescribed manner and accompanied by any fees that may be required.*

*(7).Environmental impact assessment shall be conducted in accordance with the environmental impact assessment regulations, guidelines and procedures issued under this Act.*

*(8). The Director-General shall respond to the applications for environmental impact assessment license within three months.*

*(9).Any person who upon submitting his application does not receive any communication from the Director-General within the period stipulated under subsection (8) may start his undertaking.”*

36. An Environmental Impact Assessment license can only be issued after a successful Environmental Impact Assessment process, which envisages two modes of processes: that is, an Environmental Impact Assessment Project Report or an Environmental Impact Assessment Study Report.

37. According to the second schedule of the Environmental Management and Co-ordination Act, as amended vide Legal Notice No. 150 of 16<sup>th</sup> June, 2016, all projects pertaining to waste disposal; including hazardous wastes treatment or disposal facilities and commercial asbestos disposal sites, require the proponent to submit Environmental Impact Assessment Reports under Section 58(2) of the Act.

38. Under Section 58(2), the 1<sup>st</sup> Respondent was required to undertake a full Environmental Impact Assessment Study and submit an Environmental Impact Assessment Study Report to the 3<sup>rd</sup> Respondent and not a Project Report as submitted by the 3<sup>rd</sup> Respondent's advocate.

39. Section 59(1) of the Act stipulates that upon receipt of an Environmental Impact Assessment Study Report, the 3<sup>rd</sup> Respondent is required to publish it in the gazette, in at least two newspapers circulating in the area and over the radio calling for submissions. There is no evidence that indeed the 3<sup>rd</sup> Respondent complied with the provisions of Section 59(1) before it issued to the 1<sup>st</sup> Respondent with an Environmental Impact Assessment (EIA) license. There is also no evidence that the Respondents complied with Regulation 22 of the Environmental (*Impact Assessment and Audit*) Regulations, 2003 which stipulates that upon receipt of both oral and written comments as specified under Section 59 and 60 of the Act, the Authority may hold a public hearing.

40. The few ineligible questionnaires annexed on the Environmental Impact Assessment Study Report do not meet the threshold that is required under Section 59 of the Act. Indeed, the said questionnaires do not even give the description of the people who were interviewed or if they are residents of Maluma Location, where the suit land is situated.

41. Indeed, as was held in the case of *Ken Kasinga vs. Daniel Kiplagat Kirui & 5 others (2015) eKLR*, where the procedures for the protection of the environment are not followed, including the process of public participation, then an assumption may be drawn that the right to a clean and healthy environment is under threat. The evidence before this court shows that the Respondents did not only breach the provisions of Section 58 and 59 of the Environmental Management and Co-ordination Act, but also Article 69(1) (d) of the Constitution which provides that the State shall encourage public participation in the management, protection and conservation of the environment.

42. In addition to the above domestic laws which the Respondents breached, Principle 10 of the Rio Declaration on Environment and Development (1992) was also not complied with. The said principle states as follows:

***“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making process...”***

43. By virtue of the provisions of Article 2(5) of the Constitution, the Principles in the Rio Declaration on Environment and Development are binding on the Respondents. The 3<sup>rd</sup> Respondent should have complied with both the domestic and international law on involving the public fully, and giving the said public information about the project, before issuing the license to the 1<sup>st</sup> Respondent to operate an Asbestos waste disposal site on the suit land. That seems not to have happened in the instant case.

44. In any event, it would appear that the 1<sup>st</sup> Respondent did meet some of the conditions in the license before it commenced the exercise of excavation of asbestos on the suit land. One of the conditions which the 1<sup>st</sup> Respondent seems not to have complied with is obtaining the requisite approvals from the Petitioner and all other relevant authorities (*See Condition No. 2.1 of the License*).

45. The Petitioner has alleged that the site on which the said hazardous waste is to be buried is a water catchment area. In its letter dated 6<sup>th</sup> July, 2017, one of the Lead Agencies, the Water Resources Authority, informed the 1<sup>st</sup> Respondent that it had failed to submit the Design of the landfill that it intends to dispose the asbestos waste, and that the disposal took place before the submission of the plan and without their approval. The authority went further to state as follows:

***“As you are aware, the said waste is a health hazard and its contact with the ground water and surface water will pollute the Thua River which is the source of water for the local community... The seepage to groundwater will also carry with it the same material...”***

46. The Respondents have not shown to this court any document or report to show that the above observation by the Authority is erroneous. It is trite that under the Constitution, the Environmental Management and Co-ordination Act, the Environment and Land Court Act, and the International Environment Law and principles, this court ought to be guided by the precautionary principle, amongst other principles, while dealing with Environmental disputes.

47. The precautionary principle is provided for under Principle 15 of the Rio Declaration which provides that “*where there are warnings of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason of postponing cost-effective measures to prevent environmental degradation.*” This principle has been repeated in the Environmental Management and Co-ordination Act and the Environment and Land court Act.

48. The precautionary principle is also found in the Convention of Biological Diversity and the UN Framework Convention for Climate Change which Kenya is signatory. The other principle which should guide an environmental court at all times is the “*prevention*” principle. Experience and scientific expertise demonstrate that prevention of environmental harm should be the golden rule for the environment, for both ecological and economic reasons. The extinction of a species of fauna or flora or loss of human life create irreversible situations. Indeed, the prevention principle gives rise to a multitude of legal mechanisms in environmental law, including prior assessment of environmental harm, licensing or authorization that set out the conditions for operation and the consequences for violation of the conditions.

49. It is on the basis of the principle of prevention that a properly conducted Environmental Impact Assessment (EIA) might serve as a standard for determining whether or not due diligence was exercised. Preventive mechanisms also include monitoring, notification and exchange of information with the public and the lead agencies, especially when dealing with hazardous waste, or any other project that is likely to have an environmental impact. The level of the due diligence that is required while dealing with hazardous waste seems not to have been undertaken in this matter by the Respondents.

50. Consequently, and on the basis of the Report of the Water Resources Authority, it is not plausible to argue, as the Respondents have argued, that there is no evidence to show that the asbestos are likely to degrade the water catchment area. Under the precautionary and prevention principles, and on the basis of the letter of the Water Resources Authority, lack of full scientific certainty of what will happen to the underground water cannot be a reason for this court not to issue interim conservatory orders.

51. The issue of who should pay for the relocation of the hazardous waste can only be handled after the hearing of the Petition. Suffice to say that the 1<sup>st</sup> Respondent, having moved the hazardous waste to the suit land, which has since been excavated and stored at the Kitui Stadium, should relocate the waste to another licensed site at its own cost pending the hearing and determination of the Petition.

52. For those reasons, I partially allow the Application dated 16<sup>th</sup> January, 2018 in the following terms:

***a. A mandatory injunction be and is hereby issued compelling the 1<sup>st</sup> Respondent to identify and relocate the asbestos which had been deposited on the suit land to a different and suitable site, within fifteen (15) days, for disposal of the waste in accordance with the provisions of the Environmental Management and Coordination Act pending the hearing and determination of the Petition.***

***b. A prohibitory injunction be and is hereby issued prohibiting the Respondents from depositing any hazardous waste on parcel of land known as Nzambani/Maluma/690 pending the hearing and determination of the Petition.***

***c. The Respondents to pay the Petitioner the costs of the Application.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**