



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 319 OF 2014**

**SIMON KAMAU NGANGA.....PLAINTIFF**

**VERSUS**

**KENYA PIPELINE COMPANY LTD .....DEFENDANT**

**RULING**

***(Application to enjoin NEMA to proceedings; plaintiff filing suit against defendant claiming that defendant has stopped him from quarrying his land; defendant stating that quarrying activities endanger its oil pipelines; defendant now filing application to enjoin NEMA as interested party; application dismissed on the reasoning that if the defendant has a complaint on the activities of the plaintiff, the best avenue is to file suit against the plaintiff and not to enjoin NEMA as interested party)***

1. The application before me is that dated 10 November 2016 filed by the defendant. It is an application seeking to enjoin the National Environmental Management Authority (NEMA) to these proceedings as an interested party. That application has not been opposed by the plaintiff but I did mention to the parties that I will make an independent assessment of the application and make a ruling on it.

2. The background is that this suit was filed on 17 November 2014 by way of plaint. The plaintiff pleaded to be the owner of the land parcel Gilgil/Gilgil Block 1/15544 (Kekopey) whereby he carries out quarrying activities. He pleaded that in the month of June 2014, the defendant invaded his land with a bulldozer and dug deep trenches on it and also placed heavy rocks thus blocking the plaintiff from accessing his quarry. This, the plaintiff has claimed, is an act of trespass by the defendant. In the suit, the plaintiff inter alia has asked for orders to have the defendant permanently restrained from interfering with his land.

3. In its defence, the defendant pleaded that the quarrying activities of the plaintiff endanger an oil pipeline laid by the defendant on adjoining property. It has denied trespassing into the land of the plaintiff but has averred that on safety reasons, it effected "such measures as are necessary to protect the oil pipeline...". It also pleaded that it reserved the right to lodge a counterclaim against the plaintiff on account of the activities that the plaintiff undertakes.

4. Through a motion filed on 6 October 2015, the plaintiff sought orders of injunction against the defendant so that the defendant may be restrained from trespassing into his land. In his supporting affidavit, he averred that the defendant was now erecting barriers so as to prevent him from accessing his land. In its reply, the defendant averred that the quarrying activities of the plaintiff have left huge trenches in the portion of land where the pipeline passes and that all it did was to refill the trenches with soil alongside "other measures to prevent the plaintiff from exposing the pipeline". These "other measures"

were however not defined. It was also averred that the plaintiff ought to be stopped from further quarrying activities for the interest of health and safety of persons surrounding the pipeline.

5. Before I could hear that application, the defendant filed the present application, which as I have mentioned, seeks to enjoin NEMA as interested party to these proceedings. The supporting affidavit is sworn by Gloria Khafafa who is the acting Company Secretary of the defendant. She has averred inter alia that the activities of the plaintiff are among those which require a licence from NEMA alongside environmental audits. She has contended that the plaintiff has failed to provide a licence confirming that NEMA has authorized him to undertake the activities in question. Its efforts to have NEMA undertake a feasibility study have not elicited any response.

6. I have considered the application and I am bound to decline it despite there being no objection by the plaintiff. I really do not see why the defendant wants NEMA to be enjoined as interested party. It does appear to me that what the defendant is contending is that the plaintiff does not have a licence from NEMA to utilize his land as a quarry and that the use of the plaintiff's land as a quarry is endangering its oil pipeline.

7. In my view, the best avenue vide which the complaints of the defendant may be addressed is not by enjoining NEMA as interested party, but by filing a separate suit or counterclaim, against the plaintiff and/or such other persons thought to be necessary, through which it may present its claims for adjudication. If the defendant is of the view that the plaintiff has no EIA licence, or that if there is one, the same was improperly procured, or that the quarrying activities endanger its pipeline and should not be allowed, then the defendant ought to file a suit to stop the plaintiff from undertaking quarrying activities and give reasons why it is entitled to such prayers. I do not see how joining NEMA to be interested party solves the dispute between the plaintiff and defendant on the user of the plaintiff's land. As noted earlier, the defendant did indeed in its defence, reserve the right to file a counterclaim to complain about the activities of the plaintiff. It is probably time to exercise that right.

8. It is for the above stated reasons that I decline the application.

9. Since the plaintiff did not oppose the application, I make no orders as to costs.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 16<sup>th</sup> day of February 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

Mr. Maina for the plaintiff/respondent

No appearance on the part of M/s Lilan & Koech Advocates for the defendant/applicant

CA: Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**