



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 321 OF 2016**

**ANTONY MBOGO NDERITU**

**T/A BUFFALO AUTO LAB.....PLAINTIFF/ APPLICANT**

**VERSUS**

**KENYA RAILWAYS STAFF**

**RETIREMENT BENEFIT SCHEME .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

Coming up before me for determination is the Notice of Preliminary Objection dated 20<sup>th</sup> April 2016 and filed on 21<sup>st</sup> April 2016 in which the 2<sup>nd</sup> Defendant has stated that this court lacks the jurisdiction to hear this suit against it as it offends the provisions of section 129 of the Environmental Management and Coordination Act (the “EMCA”) and the same should be struck out.

The case against the 2<sup>nd</sup> Defendant is set out in the Plaint dated and filed on 5<sup>th</sup> April 2016 and is to the effect that at all material times, the Plaintiff is the proprietor of a business known as Buffalo Auto Lab situated in Landmawe, Nairobi County and is a tenant of the 1<sup>st</sup> Defendant. The Plaintiff disclosed that he had contracted an environmental consultant to prepare an environmental assessment report on the business which was submitted to the 2<sup>nd</sup> Defendant on 16<sup>th</sup> March 2016. It was further stated that on 18<sup>th</sup> March 2016, the Plaintiff received a rejection of that report from the County Director of Environment, Nairobi County. It was the Plaintiff’s case that as a result of this rejection, the 1<sup>st</sup> Defendant issued the Plaintiff with an eviction notice. The Plaintiff contended that it has at all times complied with environmental safety to avoid pollution further to paying rent as agreed by the parties. As one of the prayers in the Plaint, the Plaintiff sought a permanent injunction against the 2<sup>nd</sup> Defendant from interfering with its business operations. It is noteworthy that the 1<sup>st</sup> Defendant acted pursuant to an Environmental Restoration Order dated 3<sup>rd</sup> March 2016 issued to it by the 2<sup>nd</sup> Defendant.

The 2<sup>nd</sup> Defendant contends that this court does not have the jurisdiction to determine the case against it

because this suit offends the provisions of section 129 of the EMCA. It provides as follows:

***“(1) Any person who is aggrieved by:-***

***(a) A refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;***

***(b) The imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder;***

***(c) The revocation, suspension or variation of his licence under this Act or regulations made thereunder;***

***(d) The imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder;***

***May within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.***

***(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.”***

The Environmental Restoration Order dated 3<sup>rd</sup> March 2016 which is the genesis of this suit was issued to the 1<sup>st</sup> Defendant. The Plaintiff's complaint against the 2<sup>nd</sup> Defendant is the Rejection of Environmental Audit Report dated 18<sup>th</sup> March 2016 through which the Plaintiff's Environmental Audit Report submitted to the 2<sup>nd</sup> Defendant on 16<sup>th</sup> March 2016 was rejected on the ground that it does not meet the guidelines provided in the EIA/EA Regulations of 2003.

Having regard to section 129(2) of the EMCA set out above, it is clear that the Plaintiff's case as against the 2<sup>nd</sup> Defendant squarely lies on the 2<sup>nd</sup> Defendant's decision to reject the Plaintiff's Environmental Audit Report. That being the case, the same legal provision directs that such a decision may be subject to an appeal to the Tribunal. That being the case, it is my finding that this court lacks jurisdiction to determine the issue between the Plaintiff and the 2<sup>nd</sup> Defendant. Accordingly, this Notice of Preliminary Objection is hereby upheld. The suit against the 2<sup>nd</sup> Defendant is hereby dismissed with costs to the 2<sup>nd</sup> Defendant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**