



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 355 of 2012**

**BART KIBATI – CHAIRMAN**

**PAUL OWORA – SECRETARY**

**DAVID AWORI – TREASURER**

***Suing as Officers and on behalf of GIGIRI VILLAGE ASSOCIATION***

**a duly registered Association as No 20554.....PLAINTIFFS/APPLICANTS**

**=VERSUS=**

**HARROW INVESTMENT LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CITY COUNCIL OF NAIROBI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The applicants are officials of Gigiri Village Association. The applicants filed a suit against the respondents on 19<sup>th</sup> June 2012 in which they sought orders that the respondents be ordered to demolish all the developments on **LR No. Block 91/160** and **LR No. Block No.91/161** and that the respondents do remove the debris from the same properties and restore the ground to its original status so as to protect the riparian reserve of Karura River.
2. The applicants accused the respondents of a number of mis-deeds ranging from *improper change of user, amalgamation of title, obtaining an Environmental Impact Assessment Licence, illegal acquisition of riparian land* among others. On 4<sup>th</sup> November 2015, the applicant filed a notice of motion dated the same day in which they sought leave to amend their Complaint to bring in National Environment Management Authority (NEMA) as a defendant. The applicants contend that it is necessary to bring on board NEMA so that the issues in this case can be canvassed. The reason for seeking inclusion of NEMA as a defendant is that NEMA blatantly issued an Environment Impact Assessment Licence to the first respondent without compliance with relevant governing laws.
3. The first respondent opposed the applicants application through grounds of opposition filed in Court on 18<sup>th</sup> February 2016. The first respondent contends that the applicants having failed to file an appeal to the National Environment Tribunal within 60 days against the decision of NEMA to issue an Environment Impact Assessment Licence cannot seek an amendment to attack that decision before this Court.

4. Directions were given that parties do file written submissions. The applicants filed their submissions on 29<sup>th</sup> February 2016. The first respondent filed their submissions on 18<sup>th</sup> May 2017. The second respondent's counsel indicated that they were not opposed to the application. I have considered the applicants application as well as the grounds of opposition to the same. I have also considered the submissions by the parties.

5. The only issue for determination in this application is whether the applicants should be allowed to bring in NEMA into these proceedings. It is trite law that amendments which are sought before hearing commences should be allowed freely. There is however a rider that these amendments should not cause injustice to the other side or should not be made where the same can defeat a defence filed by the other side. In the instant case, the applicants are seeking to bring in NEMA for purposes of attacking it in the manner it issued an Environment Impact Assessment Licence. This is clear from paragraph 6 (b) of the proposed draft amended Plaintiff.

6. The first defendant has raised the issue of grant of an Environment Impact Assessment Licence by NEMA as a ground of defence. It is the first respondent's contention that the applicants failed to challenge the issuance of the Environment Impact Assessment Licence by NEMA before the National Environment Tribunal within 60 days of the decision of NEMA to grant the licence. The first respondent is therefore contending that if the amendment is allowed, it will amount to giving the applicants an opportunity to raise an issue which should have been raised in the National Environment Tribunal. That period has long gone. The applicants should have filed an appeal against the decision of NEMA to the National Environment Tribunal and if they would have been defeated there, then they would have preferred an appeal to this court as provided for under the Environmental Management and Co-ordination Act of 1999 and rules made thereunder.

7. The first respondent relied on the decision from the Court of Appeal in **James Ochien'g Oduol T/A Ochieng Oduol & Co. Advocates Vs Richard Kuloba (2008) eKLR**. In this case, amendment had been allowed by the High Court. The appellant moved to the Court of Appeal where the appellant argued that the amendment which had been allowed would defeat his defence. In allowing the appeal, the Court of Appeal Judges held that it was wrong for the High Court to allow an amendment whose effect was to defeat the appellant's defence.

8. The Environmental Management and Co-ordination Act of 1999 has specifically provided for an appeal to the National Environment Tribunal in a case where a party is aggrieved by its decision. The aggrieved party is again granted a further opportunity to the Environment & Land Court on appeal from the decision of the National Environment Tribunal. The Act does not give original jurisdiction to the Environment & Land Court to deal with grievances arising from issuance of Environment Impact Assessment Licence. In **speaker of National Assembly Vs James Njenga Karume (1992) eKLR**, the Court of Appeal Judges held that where there is a clear procedure for redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. The Environmental Management and Co-ordination Act of 1999 with rules made thereunder provided for redress of issues pertaining to grant of Environmental Impact Assessment Licence to National Environment Tribunal. Section 130 (1) of the Act then gives this Court appellate jurisdiction to hear appeals from the National Environment Tribunal. It therefore follows that a party cannot seek to by-pass the National Environment Tribunal and seek to litigate on issues which should have been dealt with the Tribunal in the first instance. I therefore find that the applicant's application for amendment lacks merit. The same is hereby dismissed with costs to the first respondent.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **16<sup>th</sup>** day of **October, 2017**.

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Wachira for Mr Mutiso for Plaintiff

M/s Barasa for Mr Amoko for 1<sup>st</sup> defendant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**