



Nairobi Waldorf School Trust v National Environment Management Authority & another (Environment & Planning Appeal E009 of 2024) [2024] KEELC 7497 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & PLANNING APPEAL E009 OF 2024
AA OMOLLO, J
OCTOBER 31, 2024**

BETWEEN

NAIROBI WALDORF SCHOOL TRUST APPLICANT

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

**SAMORA SILKALIEH (CHAIRMAN) (SUING ON BEHALF OF KAREN
LANGA'TA DISTRICT ASSOCIATION) 2ND RESPONDENT**

RULING

1. The Applicant filed a Notice of Motion Application dated 8th May 2024 which was accompanied by a Supporting Affidavit sworn by James Kioko Muthusi. The Application was brought under Article 159 of *the Constitution*, Section 1A, 1B, 3A, 22 and 100 of the *Civil Procedure Act* and Order 51 (Rule 1) and 42 (Rule 6) of the Civil Procedure Rules under which the following orders were sought:
 - a.Spent
 - b.Spent
 - c.Spent
 - i. The Honourable Court be pleased to stay the execution of the judgement issued on the 12th March 2024 by the Honourable National Environment Tribunal vide Net No 4 of 2023 – Samora Sikalieh (Chairman) suing on behalf of the Karen Lang’ata District Association and Nairobi Waldorf Trust pending the hearing and determination of the appeal herein.
 - ii. The costs of this application be provided for.



2. The Application was based on several grounds including that :
 - a. The Tribunal made a pronouncement that:
 - i. The EIA license number NEMA/EIA/[PSL/22968](#) dated 29th November 2022 is hereby revoked.
 - ii. The construction of the semi-permanent classrooms, dining hall and other associated amenities on Plot LR No. 7336/76 is hereby stopped.
 - iii. The applicant was restrained from proceeding with the development unless and until a proper EIA License is issued by the 1st Respondent in compliance with the law.
 - b. At the time of the judgement being issued, the Applicant being an educational institution is set to reopen for its second term in early May, and will be prejudicial to the school going pupils to lack proper facilities and classrooms once they resume.
 - c. The intended development is a design of such that the classrooms and labs shall be built around a natural habitat which would have no effect to the natural flora and fauna.
 - d. The current construction activities at the premises are merely creating more classrooms for 300 minors currently studying at an adjacent property LR No 1055/57 where the lease has expired and the minors are expecting to resume studies.
 - e. The Respondent will not suffer any prejudice should the orders sought herein be granted as he can be compensated by way of costs and interest if he succeeds in the appeal.
3. The 2nd Respondent filed grounds of opposition dated 10th June 2024 premised on three main grounds; (i) that the application is incompetent and fatally defective, (ii) that the application is frivolous and amounts to gross abuse of the judicial process and (iii) that the Applicant has not demonstrated or pleaded any reason why they have not taken any steps to procure EIA license from NEMA prior to continuing with the construction as ordered by the Tribunal.
4. The 2nd Respondent equally filed written submissions dated 6th August 2024 seeking that the application be dismissed with costs on the premise of five main grounds:
 - a. The Applicant has no competent appeal before the Court.
 - b. There has been inordinate delay in filing the application on the part of the Applicant.
 - c. The application amounts to gross abuse of the Court process since the the school had not proven that a new EIA Licence had been issued.
 - d. The order of 12th March 2024 by NET is incapable of being stayed.
 - e. The Applicant has not demonstrated substantial loss if the judgement of the NET is not stayed.
5. The Applicant filed a further affidavit and submissions dated 12th July 2024 in which it was submitted that necessary mitigation had been put in place that could allow for the continuation of the pending construction. Additionally, it was averred that the process to acquire a new EIA License has commenced. It was further emphasised that the application was premised on public interest for the rights focused on the children's' access to basic essential amenities and proper classrooms to undertake their studies.
6. Having considered the application and supporting documents, it is clear that the main issue for determination is whether the application dated 8th May 2024 is merited?



Analysis and Determination

7. The Court is guided by Order 42 Rule 6 of the Civil Procedure Rules, 2010 which provide as follows;

“...No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

No order of stay shall be made under sub rule (1) unless-

- a The court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and
- b Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

8. This Court is cognizant of the delicate balance of the right to appeal vis a vis the right to enjoy the fruits of the Judgement. In the case of *Carter & Sons Ltd Vs. Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 OF 1997:

“... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.” [Emphasis Mine]

9. Section 67 (2) of the *Environmental Management and Co-ordination Act* (EMCA) outlines:

“...Whenever an environmental impact assessment licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the project which is the subject of the licence until a new licence is issued by the Authority. (3) The Authority shall maintain a register of all environmental impact assessment licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee...”

10. First, the notice of appeal was filed on 11th April 2024 (a typographical error noted as 2023 but instead 2024) which was within one month of delivery of the judgement after which the application was brought in May, therefore the threshold for unreasonable delay is half way met.

11. Secondly, is so far as security for costs has not been offered by the Applicant, I do believe the nature of the Tribunal’s orders can only be quenched through the issuance of a new EIA License. It is equated to a negative order for which if a stay is given will be nodding to the process without compliance. In light of the provisions of Section 67 (2) of EMCA quoted hereinabove, I hold that any amount of security of costs would be insufficient. Furthermore, the 2nd Respondent brought the claim as a representative of the Karen Langat’a District Association and not for himself.



12. The process of EIA licence issuance is not only a technical but in-depth process that requires sufficient consideration and in this instance, a day in Court where issues can be exhaustively ventilated. In so far as the Applicant averred that the process of acquisition of a new licence has begun, no evidence was placed before the Court in support of their submissions.
13. In the foregoing, the Court finds that the Notice of Motion dated 8th May 2024 is unmerited and hereby dismissed in its entirety. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

A. OMOLLO

JUDGE

