



**Ongong v Sukari Industries Ltd & another (Environment & Land Petition E045 of 2022) [2023] KEELC 15695 (KLR) (20 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15695 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND PETITION E045 OF 2022**  
**EK WABWOTO, J**  
**FEBRUARY 20, 2023**  
**IN THE MATTER OF ARTICLES 1, 2, 3, 22, 23 AND 70 OF**  
**THE CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF CONTRAVENTION OF ARTICLES 42**  
**AND 70 OF THE CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF CONTRAVENTION OF THE**  
**ENVIRONMENTAL MANAGEMENT AND COORDINATION**  
**ACT SECTIONS 3,57A AND 58**  
**AND**  
**IN THE MATTER OF THE LAND AND ENVIRONMENT COURT**  
**ACT NO 19 OF 2011 SECTION 13**  
**AND**  
**IN THE MATTER OF UNCONDITIONAL, UNLAWFUL AND**  
**UNPROCEDURAL PROPOSED SETTING UP OF SUKARI**  
**INDUSTRIES LTD. SUGAR FACTORY ON PLOT NO.**  
**TRANSMARA/MOYOI/1908 IN MOYOI LOCATION,**  
**TRANSMARA SOUTH, NAROK COUNTY**

**BETWEEN**

**SIMONG ONGONG ..... PETITIONER**

**AND**



## RULING

1. This Petition was instituted by a petition dated October 14, 2022. Simultaneous to the filing of the petition, the Petitioner filed a Notice of Motion of even date seeking for various orders.
2. Upon service of the Petition to the Respondents, the 1<sup>st</sup> Respondent filed an application dated November 14, 2022 together with a Notice of Preliminary Objection seeking for the petition to be struck out for having been instituted by a deceased person. The 2<sup>nd</sup> Respondent equally filed a Notice of Preliminary Objection dated February 10, 2023 which Preliminary Objection was raised on the following terms:
  - i. That the Petitioner is seeking determination of the question of Environmental Impact Assessment (EIA) license and related issues at the wrong forum since under section 129(1) (a) of the *Environmental Management and Co-ordination Act*, 1999 (“EMCA”), the Applicant ought to have first approached the National Environment Tribunal (NET) by way of appeal challenging the alleged grant and/or violation of the conditions of the EIA license, following the 1<sup>st</sup> Respondent’s submission of the Project Report and approval, and the issue is, therefore, not ripe for determination by this court while exercising its original jurisdiction on environmental matters.
  - ii. That the Petitioner ought to have first litigated the issue of issuance of EIA Licence before the NET before approaching this Honourable Court or any other as way of ensuring that internal mechanisms for appeal and/or review and all remedies available under any other written law are first exhausted. The instant petition should thus be struck out for violation of the provisions of section 9 (2) (3) of the *Fair Administrative Action Act*, No 4 of 2015.
  - iii. That without prejudice to the foregoing, the Notice of Motion dated October 14, 2022 and the Petition of even date are prematurely filed in this court as the questions raised in the same were supposed to be directed to the 2<sup>nd</sup> Respondent as a response to the Kenya Gazette Notice No 10050 dated August 26, 2022, as published by the 2<sup>nd</sup> Respondent calling for public comments on the proposed project in accordance with the provisions of section 59 of EMCA.
  - iv. That this petition has been brought to this court in clear disregard of the above statutory provisions and is thus an abuse of the due process of court.
3. Pursuant to the directions issued by the court, it was directed that the 1<sup>st</sup> Respondent’s application dated November 14, 2022 together with its Preliminary Objection of even date and the 2<sup>nd</sup> Respondent’s Preliminary Objection of February 10, 2023 be canvassed by way of written submissions upon which this court would render its ruling which was reserved for delivery on February 20, 2023.



4. On February 13, 2023, the Petitioner filed a Notice of Withdrawal of the main petition. The Notice clearly stated that the Petitioner has wholly discontinued and withdrawn the entire petition.
5. Rule 27(1) of the *constitution of Kenya (Protection of rights and fundamental freedoms) practice and Procedure Rules*, 2013 provides that the Petitioner may:
  - a. On notice to court and Respondent, apply to withdraw the petition or
  - b. With leave of the court discontinue the proceedings.
6. In view of the foregoing and having considered the said notice, I do hereby proceed to allow the withdrawal of the petition with no orders as to costs. This file is subsequently marked as closed.

It is so ordered.

**Dated, Signed and delivered virtually at Nairobi this 20<sup>th</sup> day of February 2023.**

**E.K. WABWOTO**

**JUDGE**

In the presence of

Mr. Mkhan for the Petitioner

Mr. Olendo for 1<sup>st</sup> Respondent.

Mr. Ngararu Maina for 2<sup>nd</sup> Respondent.

Court Assistant – Caroline Nafuna.

**E.K. WABWOTO**

**JUDGE**

