



Muthangya & 2 others v Director General National Environment Management Authority & another (Tribunal Appeal 24 of 2022) [2023] KENET 205 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KENET 205 (KLR)

REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 24 OF 2022
MOHAMED S BALALA, CHAIR, BAHATI MWAMUYE,
WAITHAKA NGARUIYA & KARIUKI MUIGUA, MEMBERS
APRIL 18, 2023

BETWEEN

JOHN MATI MUTHANGYA 1ST APPELLANT

JAMES MUNYI NGANGO 2ND APPELLANT

JACKSON SABAI MARWA 3RD APPELLANT

AND

**DIRECTOR GENERAL NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY 1ST RESPONDENT**

WINCHESTER VANTURES KENYA CO LTD 2ND RESPONDENT

RULING

1. The Appellants filed a Petition dated April 29, 2022 in which they sought the cancellation of Environmental Impact License (EIA) number Nema/EIA/PSL/18400 issued to the 2nd Respondent by the 1st Respondent on April 12, 2022.
2. An executive summary of the grounds of the Appeal are that the contested EIA License was granted in violation of the law as there was no public participation, the project would cause human and vehicular congestion, the project is proposed to be erected on a one-acre plot of land to be occupied by at least 2340 people, the project will cause pollution but the revocation of the EIA Licence shall safeguard both the health and environment of the residents and the neighborhood generally.
3. On August 12, 2022, the 1st Respondent filed a Notice of Preliminary Objection praying that the Appeal be struck out as the same is time barred under section 129(1) of the [Environmental Management and Co-ordination Act](#) (EMCA) thus the Tribunal lacks jurisdiction to hear and determine the Appeal.



4. The Appellants annexed the contested EIA Licence in the Appeal and the same is dated April 12, 2022. The jurisdiction of the Tribunal is set out under section 129 of EMCA in a clear and precise manner as cited hereinbelow:

“Section 129. Appeals to the Tribunal

- (1) Any person who is aggrieved by—
- a. the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, 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 amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
 - e. 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.”

5. The Appeal before the Tribunal was filed on 27th July April 2022 while the contested EIA licence was issued on April 12, 2022. An Appeal to the Tribunal against the grant of an EIA Licence can only be lodged at the Tribunal within 60 days of the issuance of the said decision but in the instant case, the Appeal was filed 106 days after the grant of the Licence.
6. As it is, the Tribunal does not have powers to enlarge time within which such an Appeal can be filed in spite of availability of reasonable grounds that may be availed for the failure to file within the statutory period. This effectively means that the Tribunal does not have jurisdiction to take any further step in the matter. See *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1.
7. In the circumstances, the Tribunal makes the following orders:
- a. The Appeal dated April 29, 2022 is struck out;
 - b. Parties are at liberty to approach the Tribunal under Rule 39 of the *National Environmental Tribunal Rules* and address it on the question of costs.

DATED AND DELIVERED AT NAIROBI, THIS 18TH DAY OF APRIL 2023.

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MOHAMMED BALALA

CHAIRPERSON

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BAHATI MWAMUYE



MEMBER

.....

WATHAKA NGARUIYA

MEMBER

.....

KARIUKI MUGUA

MEMBER

