



**Dharani & 7 others v Director General National Environment  
Management Authority & another (Tribunal Appeal  
34 of 2023) [2023] KENET 1370 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KENET 1370 (KLR)

**REPUBLIC OF KENYA**  
**IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI**  
**TRIBUNAL APPEAL 34 OF 2023**  
**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI**  
**MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**  
**NOVEMBER 24, 2023**

**BETWEEN**

**RAHIM DHARANI ..... 1<sup>ST</sup> APPELLANT**  
**ROSE ALI ..... 2<sup>ND</sup> APPELLANT**  
**DINAH CHELAL ..... 3<sup>RD</sup> APPELLANT**  
**PAUL OCHIENG MSINGO ..... 4<sup>TH</sup> APPELLANT**  
**GEOFFREY BARASA ..... 5<sup>TH</sup> APPELLANT**  
**VALLABHAI DAHYABHAI PATEL ..... 6<sup>TH</sup> APPELLANT**  
**ABIGAIL CHEMUTAI ..... 7<sup>TH</sup> APPELLANT**  
**PINKU SHAMIK PATEL ..... 8<sup>TH</sup> APPELLANT**

**AND**

**THE DIRECTOR GENERAL NATIONAL ENVIRONMENT MANAGEMENT**  
**MANAGEMENT AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**  
**CANAAN IFRATECH LLP ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In response to the Appellants' application dated 26<sup>th</sup> October 2023, the 2<sup>nd</sup> Respondent herein filed a Notice of Preliminary Objection dated 30<sup>th</sup> October 2023 premised on the following grounds:



- a. The Appeal is statute-barred by dint of Section 129(1) of the [Environmental Management and Co-ordination Act](#), 1999 and Rule 4 of the National Environment Tribunal Procedures Rules, 2003;
  - b. The Appeal lacks merit, is fatally defective and is a clear abuse of the judicial process as it is malicious, frivolous and vexatious.
2. The Notice of Preliminary Objection was canvassed by way of written submissions. We have considered the rival arguments made by the respective parties and find that the singular issue that presents itself for determination is whether the instant appeal is statute-barred by dint of Section 129 (1) of the [Environmental Management and Co-ordination Act](#) 1999 and Rule 4 of the National Environment Tribunal Procedures Rules, 2003
- Whether the instant appeal is statute-barred by dint of Section 129 (1) of the [Environmental Management and Co-ordination Act](#) 1999 and Rule 4 of the National Environment Tribunal Procedures Rules, 2003
3. Before addressing our minds to this limb of the argument, a brief factual history of the dispute is necessary. The Appellants vide a notice of appeal dated 19<sup>th</sup> October 2023 and filed on even date challenge the 1<sup>st</sup> Respondent's decision to issue EIA License No. NEMA/EIA PSL/27800 to the 2<sup>nd</sup> Respondent. The impugned license was issued on 22<sup>nd</sup> August 2023.
  4. The 2<sup>nd</sup> Respondent contends that the instant appeal is statute-barred, having been filed outside the 60 days stipulated under Section 129 (1) of the Environmental Management and Coordination Act 1999. They contend that the 60 days stipulated under EMCA lapsed on 20<sup>th</sup> October 2023.
  5. On the other hand, the Appellant contends that the failure to institute the impugned appeal within the 60 days is curable under section 57(b) of the [Interpretation and General Provisions Act](#) (Cap 2 Laws of Kenya), which states as follows:-

“In computing time for the purpose of a written law, unless the contrary intention appears-

- a. a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which that event happens, or the act or thing is done;
  - b. if the last day of the period is Sunday, or a public holiday or official non-working days (which days are in this Section referred to as excluded days), the period shall include the next following day not being an excluded day;
  - c. where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done on the next day afterwards, not being an excluded day.
  - d. where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.”
6. Two positions can be gleaned from the 2<sup>nd</sup> Respondent's arguments. First, time started to run the day after the event (issuance of license, being 23<sup>rd</sup> August 2023). Secondly, public holidays (10<sup>th</sup> and 20<sup>th</sup> October) and non-working (21<sup>st</sup> and 22<sup>nd</sup> October) are excluded from the computation of the days. These positions, though appealing, when stripped to the bone, result in a wild goose chase.



7. In answering the 1<sup>st</sup> limb of the Appellant's argument, we turn to the wise counsel of Hon. Justice Wabwoto in *Pearl of Riverside Garden Ltd & another vs. National Environment Management Authority & another* (Environment and Land Appeal E071 of 2022) [2022] KEELC 13802:

This is the gravamen of the appellants appeal. This issue raised by the appellants is not new to the tribunal and neither is it new to this court. The tribunal has held in the several cases that the computation of time in respect to filing of an appeal before it, is computed from the date of the licence and not from the next day for the purposes of section 129(1) of EMCA. In the ruling of the tribunal delivered on July 20, 2022, the tribunal cited the case of *Nairobi ELC Appeal No 60 of 2019 Runda Association –v- National Environment Management Authority & 3 others* (2020) eKLR which was also an appeal from the Tribunal that had sought to challenge the tribunal's computation of time in respect to appeals filed by parties under section 129 (1) of EMCA. The ELC court upon considering the said appeal held that time starts to run from the date when the licence was issued and that the said timeline cannot be extended by the tribunal since its stipulated by statute.

6. It follows that time started running from 22<sup>nd</sup> August 2023 when the impugned license was issued, and not 23<sup>rd</sup> August 2023 as strenuously argued by the Appellants.
7. The 2<sup>nd</sup> limb of the Appellant's argument is informed by a misreading of section 57(d) of the *Interpretation and General Provisions Act*. Excluded days are only to be factored in when computing time not exceeding six days. This is not an idle position. It has found judicial expression in a long line of authorities. One such authority is *Peter Munga v African Seed Investment Fund LLC* [2017] eKLR, where the Court held as follows

True, the first two days in the computation of time fell on a Saturday and a Sunday. Saturdays are official non-working days within our civil service. The last day also fell on a Sunday. It must however be noted that section 57(d) of the *Interpretation and General Provisions Act* (Cap 2) stipulates that excluded days (being Sundays, public holidays and official non-working days) are not to be reckoned in the computation of time where the act or proceeding is directed or allowed to be done or taken within any time not exceeding six days. Where the period exceeds six days then the excluded days are to be reckoned in. They count. I am satisfied that the application was filed outside the prescribed time line." (Emphasis Added)

6. Having established that the Appeal was filed outside the 60 days encapsulated under section 129(1) of EMCA, and cognisant of the fact that as a Tribunal, we are not reposed with the power to enlarge time in respect of appeals filed under section 129(1) of EMCA, we are begrudgingly compelled to perform the final rites on the instant appeal.

#### **Order**

6. We accordingly uphold the 2<sup>nd</sup> Respondent's Notice of Preliminary Objection dated 30<sup>th</sup> October 2023 and strike out the Appellant's Notice of Appeal dated 19<sup>th</sup> October 2023.

**DATED AND DELIVERED ELECTRONICALLY THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023**

**EMMANUEL MUMIA - CHAIRMAN**

**WINNIE TSUMA - VICE-CHAIR**

**KARIUKI MUIGUA - MEMBER**

**DUNCAN KURIA - MEMBER**

**RONALD ALLAMANO - MEMBER**

