



**Abdalla & 5 others v National Environment Management Authority & another
(Tribunal Appeal 39 of 2022) [2023] KENET 475 (KLR) (1 September 2023) (Ruling)**

Neutral citation: [2023] KENET 475 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 39 OF 2022
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
SEPTEMBER 1, 2023**

BETWEEN

**MOHAMMED AHMED ABDALLA 1ST APPELLANT
SALIM SAID 2ND APPELLANT
AMIN S. SALIM 3RD APPELLANT
ABDULAZIZ ABBAS 4TH APPELLANT
RICHARD A. S 5TH APPELLANT
BHARAT DEVIDAS VAITHA KETAN DOSHI 6TH APPELLANT**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT
KHANSA DEVELOPERS LIMITED 2ND RESPONDENT**

RULING

1. The appellant moved this tribunal by way of a notice of appeal dated October 21, 2022. Their appeal seeks the revocation and/or cancellation of Environmental Impact Assessment License No NEMA/EIA/PSL/21084 issued on August 23, 2022 by the 1st respondent to the 2nd respondent.
2. The respondents entered appearance and filed their responses to the notice of appeal, and the same are dated February 21, 2023 and February 20, 2023 respectively.
3. When parties appeared before us on April 3, 2023 it was urged that the issues before us had been substantially dealt with by the Environment and Land Court in ELC petition No 16 of 2022. We,



therefore, directed that the judgment rendered by the ELC court in the said appeal be availed before us for the purpose of appraising ourselves of its contents.

4. On August 18, 2023, we directed that parties file and exchange submissions addressing us on the import of the judgment on the proceedings before us. The only submissions forming our record are those filed by the 2nd respondent.

Analysis and Determination

5. We have considered the judgment rendered by the ELC court in detail. In its final orders, the court found as follows:
 - a. That judgement be and is hereby entered in favour of the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th petitioners herein with costs.
 - b. That the “counter claim”/cross-petition by the 1st respondent dated October 4, 2022 be and is hereby dismissed with costs.
 - c. That a declaration be is and hereby issued that the proposed development of 18 floors storey building on plot number Mombasa/Block/ xxvi 595 is irregular, illegal and wrongful for failure to fully comply with the provisions of articles 10, 40, 42 and 69 of the Constitution of Kenya, 2010.
 - d. That a declaration be and is hereby issued that the development approvals issued by the 3rd and 4th respondents for the proposed development of 18 floors storey building situated on all that parcel of land known as land reference number Mombasa/Block xxvi/595 without complying with the provisions articles 10, 40, 42, 47 and 69 of the Constitution of Kenya, 2010 are all illegal, irregular, wrongful and therefore null and void ab initio.
 - e. That costs of the petition and for the dismissal of the cross-petition herein be and is hereby awarded to the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th petitioner herein.
6. The nature of reliefs granted by the ELC court addresses the issues that are materially and substantially in issue in the present appeal, litigated by the same parties before us. We are mindful of the status of the ELC court as a superior court and do not entertain the misguided notion that we enjoy concurrent jurisdiction with the court.
7. It therefore follows that the notice of appeal dated October 21, 2022 ought to be struck out for offending the hallowed doctrine of *res judicata*. We now address our minds on the issue of costs. Exceptional circumstances referred by the Supreme Court in Jasbir Singh Rein & others v Torcholan Rein & other [2014] eKLR have not been demonstrated as to depart from the general rule that costs ought to be awarded to the successful party. The conduct of the appellants, discernable from the record before us, leaves a lot to be desired.

Orders

8. Accordingly, the tribunal strikes out the appellant’s notice of appeal dated October 21, 2022 with costs to the 2nd respondent.

DATED AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR



KARIUKI MUIGUA.....MEMBER
DUNCAN KURIA.....MEMBER
RONALD ALLAMANO.....MEMBER

