



**Noonkopir Parkview Community (CBO) v National Environment
Management Authority & another (Tribunal Appeal 8 of 2023)
[2023] KENET 494 (KLR) (Environment and Land) (20 September 2023) (Ruling)**

Neutral citation: [2023] KENET 494 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND
TRIBUNAL APPEAL 8 OF 2023
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
SEPTEMBER 20, 2023**

**BETWEEN
NOONKOPIR PARKVIEW COMMUNITY (CBO) APPELLANT
AND
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT
COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT**

RULING

A. Introduction

1. Coming up before us for determination is a Notice of preliminary objection dated March 10, 2023 premised on the following grounds;
 - a. That this Tribunal lacks jurisdiction to hear and determine the matters raised in this Appeal and the Application in view of the provisions of section 129 of the *Environment Management and Coordination Act* No. 8 of 1999 and section 31 of the *Sustainable Waste Management Act* No. 31 of 2022;
 - b. The 1st respondent has not made any decision to warrant any action under section 129 of *EMCA* or section 31 of the *Sustainable Waste Management Act*.
 - c. That in so far as there is no decision by the Authority on the complaint by the Appellant, there is no legal basis for the appeal and the application, and the Honourable Tribunal therefore lacks jurisdiction to entertain this appeal.



- d. The Appeal and the Application filed herein is thus bad in law, defective, an abuse of the Tribunal process and the same ought to be dismissed with costs.
2. A brief background of the case is that the appellant herein instituted this Appeal vide the Notice of Appeal dated February 20, 2023, and filed on February 21, 2023, on the grounds of non-enforcement and non-compliance of the recommendations of the National Environment Complaints Committee (NECC) in NEC No. 17 of 2022. These recommendations included closure and relocation of the NoonKopir Dumpsite as a result of poor waste management resulting to environmental degradation of the said dumpsite located in Kitengela, Kajiado County.
3. The appellants, in addition to the Appeal, filed an application under Certificate of Urgency dated February 20, 2023 seeking inter alia, injunctive orders on the dumping of waste and suspension of issuance of licences by the 1st Respondent to waste collectors, pending hearing and determination of the main Appeal.
4. The Tribunal, on March 2, 2023, issued a temporary order of injunction on further dumping along NoonKopir road and on the adjacent area pending determination of the application dated February 20, 2023 by the appellant. Subsequent to this, the 1st respondent filed its notice of preliminary objection dated March 10, 2023 subject to determination herein.
5. The 1st respondent, 2nd respondent and the appellant filed Written Submissions dated March 29, 2023, April 20, 2023 and April 10, 2023 respectively.

Determination

6. Having read the preliminary objections and the Written Submissions filed by the parties herein, the primary issue for determination is whether the notice of preliminary objection dated March 10, 2023 has merit.
7. The Supreme Court in *Hassan Ali Jobo & another v Suleiman Said Shabbal & 2 others* cited the leading decision on preliminary objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696, where the court held as follows:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.
8. In view of the foregoing, this Tribunal shall seek to establish whether the grounds outlined in the Preliminary Objection herein, have met the threshold set out in the aforementioned case.
9. The first ground contends that the Tribunal lacks jurisdiction to hear and determine the matters raised in this Appeal and the Application in view of the provisions of section 129 of the *Environment Management and Coordination Act* No. 8 of 1999 and section 31 of the *Sustainable Waste Management Act* No. 31 of 2022.



10. Section 129 (1) provides as follows:

- “ 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 its regulations;
 - b. the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;
 - c. the revocation, suspension or variation of the person’s licence under this Act or its regulations;
 - d. the amount of money required to be paid as a fee under this Act or its regulations;
 - e. the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations,

May within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.”

11. Further, section 31 of the [*Sustainable Waste Management Act*](#) No. 31 of 2022 provides that “Any person or an entity aggrieved by—
- a. a refusal to grant a license under this Act;
 - b. the imposition of any condition, limitation or restriction on a license granted under this Act;
 - c. any fee payable under this Act; or
 - d. the imposition of a restoration order in accordance with section 30, may, within sixty days of the occurrence of the event with which the person or entity is aggrieved, appeal to the National Environment Tribunal.”
12. With respect to the Appeal herein, the Tribunal notes that nothing has been placed before us in the form of a licence pursuant to section 31 of the [*Sustainable Waste Management Act*](#) which issues herein fall under, or a license under section 129 (1) [*EMCA*](#) or decision made by the Director-General, the Authority or Committees of the Authority pursuant to section 129 (2) [*EMCA*](#), in which the Appellant is aggrieved by. The gravamen of the Appellant is that the 1st and 2nd respondents have failed to comply with the recommendations of NECC.
13. Further, in their submissions, the Appellant submitted that the jurisdiction of this Tribunal is of a “general purposive” nature which is “far more wide and unfettered in relation to issues falling within the Act as provided in section 126”. This is an incorrect interpretation of the law. Section 126 provides for proceedings of this Tribunal and Section 129 is where it obtains its jurisdiction. Additionally, the jurisdiction of the Tribunal is obtained in various other Acts of Parliament including section 31 of the Sustainable Waste Management Act.
14. This is to say that the jurisdiction of the Tribunal is very limited to matters falling under the specific provisions of statutes providing it with the said jurisdiction. Hearing and determining this appeal will



be arrogating ourselves jurisdiction which we do not have. As was observed in the Supreme Court case of *Samuel Kamau Macharia v Kenya Commercial Bank & 2 others*, Civil Appl No 2 of 2011

“...the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings...Where the *Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

15. Accordingly, it is our finding that the Preliminary Objection succeeds to the extent that this Tribunal lacks jurisdiction to hear and determine the matter. We shall down our tools at this point.

Orders

16. The Appeal dated February 20, 2023 is hereby struck out for lack of jurisdiction.
17. Each party shall bear their own costs.

DATED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2023

EMMANUEL MUMIA.....CHAIRPERSON

WINNIE TSUMA.....VICE- CHAIRPERSON

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

