



**Lakeview Residents' Association & 4 others v Director General, National Environment
Management Authority & another; Amiha Investments Limited (Interested Party)
(Tribunal Case 163 of 2015) [2023] KENET 1247 (KLR) (Civ) (1 December 2023) (Ruling)**

Neutral citation: [2023] KENET 1247 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
CIVIL**

TRIBUNAL CASE 163 OF 2015

**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE
CHAIR, KARIUKI MUIGUA & DUNCAN KURIA, MEMBERS**

DECEMBER 1, 2023

BETWEEN

**LAKEVIEW RESIDENTS' ASSOCIATION 1ST APPELLANT
SOUNDERS CLOSE RESIDENTS' ASSOCIATION 2ND APPELLANT
KITUSURU RESIDENTS' ASSOCIATION 3RD APPELLANT
FARASI LANE RESIDENT'S ASSOCIATION 4TH APPELLANT
MITINI LIMITED 5TH APPELLANT**

AND

**DIRECTOR GENERAL, NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY 1ST RESPONDENT
SHILOAH INVESTMENTS LIMITED 2ND RESPONDENT**

AND

AMIHA INVESTMENTS LIMITED INTERESTED PARTY

RULING

1. This Ruling is in respect of the Appellants' application dated 4th April 2023 and the 2nd Respondent's application dated 12th April 2023.
2. Following the filing of the Appellants' application, the Tribunal issued an order stopping all construction activities for the proposed mixed development on LR No. 295/434 pending the hearing



of the Appellants' application inter-partes. The 2nd Respondent's application dated 12th April 2023 primarily seeks to have the Tribunal set aside the injunctive orders issued on 4th April 2023.

3. Both applications were canvassed by way of written submission pursuant to the directions of this Honourable Tribunal.

Issues for Determination

4. The twin applications before us were filed behind the backdrop of a consent dated 2nd November 2020, whose effect was to compromise the instant appeal in the following terms:
 - a. That the 2nd Respondent shall, as soon as reasonably practicable, redesign the intended project on LR No. 2 9 5 1 / 4 3 4 to provide for a mixed-use development (commercial/residential/ and recreational facilities) and submit such redesigned project proposal to the Appellants for their consideration.
 - b. That the Appellants shall provide to the 2nd Respondent comments and feedback on the redesigned project proposal for its consideration within a period of 6 weeks of receipt of the redesigned proposal, and for this purpose, the Appellants and 2nd Respondents may hold direct consultations to clarify and or refine the proposal.
 - c. That on the basis of the redesigned project proposal, the 2nd Respondent shall apply to the 1st Respondent, National Environmental Management Authority, NEMA, for variation of the EIA license No. NEMA/ELA/PSL/2407.
 - d. That subject to paragraphs 1 & 2 above, the Appellants shall not by themselves, proxies or persons acting on their behalf, object to the approval and execution of the redesigned project by the 2nd Respondent or any assignee or nominee of the 2nd Respondent or other entity acting on its behalf.
 - e. That each party shall bear its own costs.
5. The import of the Appellants' application is to invite the Tribunal to set aside the consent dated 2nd November 2020. The issue the Tribunal must now address is whether the consent dated 2nd November can be varied, rescinded and/or set aside by the Tribunal.

Whether the consent dated 2nd November 2020 can be varied, rescinded and/or set aside by the tribunal
6. The appeal before the Tribunal was marked as 'settled' upon recording the consent. To our mind, the consent, as recorded by parties acting through their duly appointed advocates, had the import of discharging the Tribunal of its adjudicatory role over the issues forming the substratum of the Appeal. In other words, the consent resolved the dispute before the Tribunal in terms negotiated and agreed upon by the parties. Upon being recorded, the consent assumed the weight and import of a Judgment rendered by the Tribunal.
7. The Appellants argue that the consent dated 2nd November 2020 was conditional in nature, and, therefore, the failure by the Appellants to abide by the conditions set out therein provides a sufficient basis for the variation, rescission and/or setting aside of the consent. We shall return to this limb of the Appellants' argument later in the Ruling.



8. The grounds upon which a consent judgment can be set aside were laid out in Samson Munikah practising as *Munikah & Company Advocates v Wedube Estates Limited* Nairobi Civil Appeal No. 126 of 2005 as follows:

“Prima Facie, any order made in the presence and with the consent of the counsel is binding on all parties to the proceedings or action and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement”.

9. Applying our minds to the facts as pleaded by the respective parties, and more specifically, the Appellants, we find that the grounds upon which a consent judgment can be set aside do not obtain in the instant application.
10. The Appellants’ claim in their application of 4th April 2023 is that the express terms of the consent entered into between the parties on 2nd November 2020 have not been fulfilled by the 2nd Respondent. Indeed, during the site visit conducted on 7th November 2023 by the Tribunal, it was evident that the Appellants’ grievance lay in the manner the consent was being implemented.
11. Having established that the consent has the weight and import of a Judgment of this Tribunal, the only recourse available to the Appellants, in our view, is the institution of contempt proceedings against the 2nd Respondents. As and when the Tribunal is appropriately moved, we shall address our minds on the failure of the 2nd Respondent to comply with the terms of the consent order, which we find to be fairly straightforward and issue appropriate sanctions and/or directions. To proceed otherwise will be a nullity as the Tribunal was rendered functus officio upon recording the consent.
12. We hasten to point out that it is not open to the parties before us to cherry-pick which of the terms contained in the consent of 2nd November 2023 to respect and fulfil, the consent is in the nature of a Judgment of this Tribunal and must be respected and fulfilled as such.

Orders

13. The Tribunal makes the following orders:
- The Appellants’ application dated 4th April 2023 is dismissed in its entirety, while the 2nd Respondent’s application dated 12th April 2023 is allowed in terms of prayers (c) and (d)
 - Parties are directed to ensure strict adherence to the terms of the consent dated 2nd November 2020, failure to which either party be at liberty to institute contempt proceedings.
 - Each party is to bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 1ST DAY OF DECEMBER 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

