



**Centre v National Environment Management Authority & another (Tribunal
Appeal 11 of 2023) [2023] KENET 478 (KLR) (Civ) (22 August 2023) (Ruling)**

Neutral citation: [2023] KENET 478 (KLR)

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

TRIBUNAL APPEAL 11 OF 2023

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

AUGUST 22, 2023

BETWEEN

KAY GROUP CENTRE APPELLANT

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

KENYA URBAN ROADS AUTHORITY 2ND RESPONDENT

RULING

1. The Appellant instituted this appeal vide a Notice of Appeal dated March 17, 2023. The Appeal is brought under Rule 4 (1) of the *National Environmental Tribunal Procedure Rules*, 2003. The appeal is against:
‘The decision to construct a foot bridge just outside of Kay Group Centre’
2. The appellants raised the following grounds of appeal:
 - a. The Construction of the foot bridge is being done in breach of the law and in particular the Constitution, the Environment Management and Co-ordination Act and the Environmental (Impact Assessment and Audit) Regulations 2003.
 - b. The construction has caused great havoc to the Kay Group Centre including flooding, weakening of the perimeter fence of the Centre, destruction of property.
3. The Appellant further attached a detailed statement of its grounds of appeal.



4. The 1st respondent, vide its preliminary objection dated April 6, 2023, raised a preliminary objection on grounds that:
 - a. The appellant's suit offends the provisions of section 129 of the [*Environmental Management & Co-ordination Act*](#), No. 8 of 1999.
 - b. The Honourable Tribunal lacks the jurisdiction to hear, determine and grant the prayers sought by the appellant.
 - c. The appellant's suit as drafted and filed raises no cause of action capable of being heard and determined before this honourable tribunal.

Issues For Determination

5. Having considered the appellants' appeal, the 1st respondent's preliminary objection, the 1st Respondent's written submissions and all other documents filed by the parties, the Tribunal has identified the following issues for determination:
 - i. Whether the appeal is time barred;
 - ii. Whether this Tribunal has Jurisdiction; and
 - iii. What orders should the Tribunal make?

i. Whether the appeal is time barred

6. It is the 1st Respondent's submission that from the pleadings filed in this matter, it is evident that the Appeal has been filed thirteen years after the EIA License was issued on March 3, 2011 and that this timeline is way after the statutory sixty days provided for under section 129 of the [*EMCA*](#).
7. Additionally, the 1st Respondent submits that even if the Appellant was appealing against the decision of the 1st Respondent to grant a variation of the initial EIA license based on the variation issued on January 13, 2021, the Appellant's suit would still meet the same fate having been filed two years after the provided statutory timelines.
8. The Legal framework on appeals to the Tribunal is enshrined under section 129 (1) of the [*Environment Management and Co-ordination Act*](#) No.8 of 1999 (EMCA) which 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 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. (emphasis ours)

9. The Legal framework on appeals to the Tribunal is buttressed by the *National Environmental Tribunal Procedure Rules*, 2003. Rule 4 (1) thereof provides that:

‘An appeal to the Tribunal shall be made by written notice and where the Tribunal has approved a form of notice for the purpose, in the form so approved.’

Rule 4 (2) further provides that:

‘The appellant shall send or deliver six copies of the Notice of Appeal to the Tribunal so as to reach it not later than sixty days after the date on which the disputed decision was given or served upon him.’ (emphasis ours)

10. Vide the replying affidavit sworn by Martina Aloo Dawson dated March 29, 2023, the deponent states that an Environment and Social Impact study preceded the project and license granted by the 2nd respondent herein, (NEMA) as license No. 0008151 of 3rd March 2011.
11. Additionally, the Deponent states that the license was further varied to accommodate additional works through license No. 0001577 of 1st August 2014; and further revised on January 13, 2021 to facilitate the construction of the footbridges. She attached, in her bundle of documents, the aforesaid NEMA Licenses.
12. On the other hand, the Appellant vide the Notice of Appeal dated March 17, 2023 at Paragraph 5, indicated that a complaint was filed with the National Environmental Compliance Committee on October 26, 2022 but no feedback has been given by the Committee on the Complaint filed.
13. In its bundle of documents, the Appellant has attached the letter dated June 3, 2022 to the National Environment Complaints Committee lodging a complaint regarding construction of Ngong Road Footbridge, Nairobi – KURA/DEV/HQ/337/2019-2020.
14. The Appellant further attached the letter dated October 18, 2022 to the National Environment Complaints Committee requesting for a response to its earlier letter dated June 3, 2022.
15. Pursuant to section 129 (1) of the [EMCA](#) the statutory timeline should start running within sixty days after the occurrence of the event against which the person is dissatisfied.
16. It is evident from the evidence adduced by the appellant, that it was aware of the decision/action it is appealing against from June 3, 2022 when it wrote the letter dated June 3, 2022 to the National Environment Complaints Committee lodging a complaint regarding construction of Ngong Road Footbridge, Nairobi – KURA/DEV/HQ/337/2019-2020.
17. Having considered the above, the Tribunal finds that the Notice of Appeal dated March 17, 2023 has been filed out of time contrary to section 129 (1) of the [EMCA](#) and hence it is time-barred.

ii. Whether This Tribunal Has Jurisdiction

18. In [Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 others](#), Civil Appl. No. 2 of 2011, The Supreme Court of Kenya observed that:

‘A court’s jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that 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.'

19. The Tribunal finds that the appellant's Appeal has been filed out of time and it does not have jurisdiction to entertain this appeal.

iii. Orders

20. For the above reasons, the Tribunal makes the following orders:

- a. The 1st respondent's preliminary objection is hereby allowed;
- b. The Appeal is hereby struck out; and
- c. Each party to bear their own costs.

21. Parties' attention is drawn to provisions of section 130 of the *Environment Management and Co-Ordination Act*.

DATED AT NAIROBI THIS 22ND DAY OF AUGUST 2023

EMMANUEL MUMIA.....CHAIRPERSON

WINNIE TSUMA.....VICE CHAIRPERSON

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIAMEMBER

RONALD ALLAMANOMEMBER

