

REPUBLIC OF KENYA
IN THE NATIONAL ENVIROMENT TRIBUNAL AT NAIROBI
TRIBUNAL APPEAL NO. NET 28 OF 2008

FRANCIS MUNENE HIRAM
THE NAIROBI SOUTH 'C' RUBBY ESTATE ASSOCIATION----- APPELANTS

VERSES

DIRECTOR GENERAL/NEMA----- 1ST RESPONDENT
NKUGWE INVESTMENT LTD-----2ND RESPONDENT
AHMED SHEIKH ABDI RAHMAN-----3RD RESPONDANT

RULING

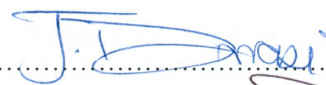
1. On the 20th August 2008, the Appellants herein lodged an Appeal in the Tribunal against the decision by the National Environment Authority (NEMA) to issue Environmental Impact Assement licenses to the 2nd Respondent herein without following the proper procedures. Attached to the said Appeal is a letter dated 22.7 2008, addressed the Director, National environment Management Authority (NEMA), the 2nd Appellant herein.
2. On the 16.1.2009, after a number of Preliminaries, the Appellant herein filed an Amended Appeal under Rule 10(1) of the National Environmental Tribunal Procedure Rules, 2003 in which it named the current Respondents but amplified the grounds of Appeal against the said defendants.
3. In his summary of the Grounds of Appeal, the Appellants case against both the 2nd and 3rd Respondents relates to the grant of a license to construct houses on public utility land which is used as the playground of the children of the Apellants.The Appellants further contend that the licenses given to the 2nd and 3rd Respondents were given by the 1st respondent without consultations with the Appellants who were directly affected by the development. Further, that the Appellants were not notified by the 1st Respondent after the licenses had been issued and thereby depriving them of their rights to make representations as required under the Environmental Management and Co-ordination Act ,1999
4. The relief sought under the Amended Appeal is the revocation of the Environmental Impact Assessment license issued by the 1st respondent to the 2nd respondent on the 2nd May 2008 in respect of Plot No LR 209/10722/88 and that issued to the 3rd respondent in respect of Plot No LR209/10722/89. Lastly, is a prayer for a Stop Order pursuant to the provisions of section 129(4) of EMCA.
5. On the 24.4.2009, the Appellant herein having duly served the Respondents with the amended Appeal and only having received Appearances from the 1st

and 2nd Respondents opted to request for judgment under Rule 32(a) of the national Environmental Tribunal Procedure Rules 2003.

6. On 11.5.2009 the application dated 24th April 2009 came up for consideration by the Tribunal. Despite evidence of service of Hearing notice to the Advocates for the 1st and 2nd Respondents, none of them appeared. According to Mr. Wainaina for the Appellant, neither the 1st Respondent nor the 2nd Respondent had amended their pleadings despite service with the amended Appeal. Similarly the 3rd Respondent had not cared to file any response to the Appeal. He explained that this Appeal took an indefinite direction with the filing of an Appeal by the 2nd Respondent against the an earlier Ruling of this Tribunal. He confirmed that there is a pending Appeal in the High Court. Mr. Wainaina however submitted that the entering of Judgment against the 3rd respondent would not prejudice the pending Appeal between the Appellant and the 2nd Respondent
7. The Tribunal takes the view that once an Appeal is lodged against any of its decisions, then, unless it has been served with the proceedings of the High Court, it would not act to prejudice the rights of any parties litigating before it. The Appellants counsel has not informed the Tribunal of the detailed nature of the proceedings before the High Court. In the premises, the question as to whether or not the 3rd Respondent will be prejudiced by a judgment against it is not open for this Tribunal to decide at this stage. The Appeal filled by the Appellants against the 2nd and 3rd respondent touches on the licenses issued by the 1st Respondent. The Tribunal takes the view that judgment against the 3rd Respondent will not only prejudice the 3rd Respondent but also the 1st Respondent and the proceedings before this Tribunal.
8. This case ought to proceed to hearing on the merits once the Appeal filed against the Tribunal's Ruling is determined by the High Court. The upshot of this matter is that the Tribunal declines to grant the order prayed for.

Delivered at Nairobi this 21st .day of May 2009

Mr. Donald Kaniaru..........Chairman

Dwasi Jane..........Member

Stanley Waudu..........Member

Joseph Njihia..........Member

Tom Ojienda..........Member