



REPUBLIC OF KENYA

IN THE NATIONAL ENVIRONMENT TRIBUNAL AT NAIROBI

TRIBUNAL APPEAL NUMBER 113 OF 2013

Maraba Lwatingu Residents Association.....1st Appellant

Andrew Omtatah Okoiti & Oyugi Neto Agostino

(Suing as Registered Trustees of Kenyans for Justice and

Development (KEJUDE) Trust)..... 2nd Appellant

Nashoro Amis, Musa Rodenyo, Wycliffe Olumasai

& 500 Others 3rd Appellants

Versus

National Environment Management Authority.....1st Respondent

Lake Victoria North Water Services Board.....2nd Respondent

Attorney General.....3rd Respondent

County Government of Kakamega.....4th Respondent

JUDGMENT

1. The Appellants commenced this appeal vide a Notice of Appeal dated 9/02/2013 and filed in the Tribunal on 15/02/2013. The Notice of Appeal is filed in respect of the following decisions:

a) The approval and issuance of the EIA license by NEMA to the 2nd Respondent for the construction of human waste sewage ponds in Lwatingu area of Maraba village without the approval and or consent of the Project Affected Persons (PAPs), affected Lwatingu area community and interested parties;

b) The construction of open human waste sewage ponds for storage of human waste in the midst of a residential area without creating awareness of its effects on properties and or lives and or plants and or animals and or business and or the environment of the project affected communities;

c) The construction of sewage ponds without creating set back space/buffer area to prevent PAPs from the long-term impacts of the project;

d) The approval/licensing and construction of human waste sewage ponds without following EMCA 1999, The Tribunal's ruling,

World Bank Policy Guidelines and other relevant statutes.

2. The Notice of Appeal contains a summary of the grounds of appeal. Other Grounds of Appeal are attached to the Notice of Appeal. The Appellants seek the following reliefs from the Tribunal:

- i. Cancellation of the EIA license issued by NEMA to lake Victoria North Water Services Board for the construction of Maraba Sewage Ponds;
- ii. Stop the construction of human waste sewage ponds at their cultural bull fighting grounds;
- iii. Stop the construction of the three main sewer lines passing through peoples homesteads in Maraba Lwatingu village to the proposed human waste sewage ponds;
- iv. Truth, Justice and Reparation in the form of restitution, compensation together with interest accrued, rehabilitation, satisfaction and guarantee of Non- Repetition; and
- v. Environmental restoration, easement, conservation and guarantee of non-repetition.

3. A subsequent Notice of Appeal was filed by the Appellants dated 03/02/2014 and filed in the Tribunal on 06/02/2014. This Notice of Appeal contains the same information as the previous Notice of Appeal except that the 3rd Respondent, Attorney General, is omitted as a party in the proceedings.

4. The Second Appellant filed Grounds in Support of the Notice of Appeal in which it sets out the decisions/actions appealed against and the grounds of appeal. The Second Appellant seeks the following reliefs:

- (1) Stop the 2nd Respondent and Kakamega County Government from carrying out compulsory acquisition in the affected Lwatingu Community;
- (2) Stop the sewage project;
- (3) Cancel the EIA License Number 0013949; and
- (4) Issue an order for environment restoration, easement, conservation and guarantee of non-repetition.

RESPONDENTS' RESPONSE

5. The 1st Respondent filed its reply to the Notice of Appeal in which it sets out the grounds for opposing the Appellants' appeal. In the end the 1st Respondent asks the Tribunal to strike out the appeal for having been filed out of time and to dismiss the appeal with an award of costs in its favour.

6. The 2nd Respondent filed a Reply to Appeal dated 24/04/2013 filed in the Tribunal on 26/04/2013 in which it sets out the reasons for opposing the appeal. The 2nd Respondent asks the Tribunal to dismiss the appeal and award it costs.

7. The 3rd Respondent filed a reply to the appeal in the form of an affidavit sworn by Eng. Peter Ouma on 29/03/2016 and filed in the Tribunal on the same day. The 3rd Respondent states its reasons for opposing the appeal and urges the Tribunal to decline the reliefs sought by the Appellants and dismiss the appeal. Although the affidavit refers to some documents as exhibits, the documents are not attached to the affidavit. The exhibits were filed in the Tribunal on 11/07/2016. The Appellants opposed admission of the documents as evidence since they were filed later after other parties had presented and closed their cases. The Tribunal vide a ruling delivered on 27/02/2017 dismissed the 3rd Respondent's application for admission of the additional documents.

8. The 4th Respondent filed a Replying Affidavit sworn by Christabell Ashiono on 11/12/2014 and filed in the Tribunal on the same date. The 4th Respondent urges the Tribunal to allow the construction of the intended sewerage plant to proceed and dismiss the

appeal with an award of costs in its favour.

SUBMISSIONS

APPELLANTS' SUBMISSIONS

9. The 1st Appellants did not file written submissions in support of the Appeal.

10. The 2nd Appellant filed its submissions on 20/02/2018. After giving an introduction and stating the background context of the matter, the 2nd Appellant highlights the issues that it would like the Tribunal to determine. The 2nd Appellant argues that the Respondents did not effectively involve the public while implementing their project. The grounds of this submission are set out at paragraph 27 of the 2nd Appellant's submissions. It is the 2nd Appellant's contention that the 1st Respondent negated the spirit of public participation as enshrined in the Constitution by failing to take the views of the public before making the decision whether or not to acquire and implement the project. It maintains that there was no sufficient and appropriate public participation and urges the Tribunal to make an order to the effect that the project be scrapped in toto so that the Respondents can follow the law if they wish to implement it.

11. It is further contended by the 2nd Appellant that the EIA report prepared for the project is defective and incompetent. The grounds for this submission are set out under paragraph 56 of the submissions and include the following among others:

- a) The EIA report is not clear about the nature of the project being undertaken in Lwatingu village of Maraba ward in Kakamega. The report refers to a non-existent waste water project yet on the ground the proponent is constructing mega sewerage ponds;
- b) The EIA report is not clear about the location of the project including the physical area that will be affected by the project's activities;
- c) The report does not provide for the activities to be undertaken during the project construction, operation and decommissioning phases; and
- d) The EIA report is short on environmental impacts and mitigation measures.

12. The 2nd Appellant argues that since Dr. Zablon Oonge, the EIA expert who prepared the project report, declined to be cross-examined by the Appellants about the contents of the report the latter is not evidence sufficiently useful to prove anything in the proceedings. The 2nd Appellant protests that Dr. Oonge's refusal to be cross-examined with regard to the report violated the Appellants' right to a fair trial, access to justice, fair hearing and the right to challenge evidence. The 2nd Appellant urges the Tribunal to exclude the evidence given by Dr. Oonge since it contravenes the Appellants' constitutional rights and it has no probative value.

13. It is also submitted by the 2nd Appellant that the Respondents should be prohibited from implementing the project for several reasons stated between paragraphs 75 – 94 of the submissions. The 2nd Appellant urges the Tribunal not to make an award for costs in favour of the Respondents in the event that the appeal is not successful. In the end the Tribunal is asked to:

- i. Cancel the 2nd Respondent's EIA license for the construction of sewage treatment ponds and the laying of waste water pipes in Lwatingu area of Shieywe location, Kakamega Municipality Sub County, Kakamega County in Western Kenya;
- ii. Stop all works or the construction of sewage treatment ponds and the laying of sewage pipes in Maraba and Lwatingu area of Shieywe location in Kakamega;
- iii. Stop the construction of human waste sewage lakes at the cultural bull fighting grounds;
- iv. Stop the construction of three main sewer lines passing through peoples homesteads and or houses in Maraba and Lwatingu villages to the proposed human waste sewage lakes;

- v. Stop the construction of the proposed human waste sewerage ponds in Lwatingu area;
 - vi. Compel the Respondents to restore the affected community in the form of restitution, satisfaction and guaranteeing that the ills will not be repeated;
 - vii. Compel the Respondents to restore the environment, easement, conservation and guarantee not to repeat the violations; and
 - viii. Compel the Respondents to pay the costs of the appeal.
14. The 3rd Appellants did not file written submissions in support of the appeal.

RESPONDENTS' SUBMISSIONS

1ST RESPONDENT'S SUBMISSIONS

15. The 1st Respondent filed its submissions on 08/05/2018. The 1st Respondent submits that it initially received from the 2nd Respondent an EIA project report titled "*Environmental Impact Assessment Report for the proposed water supply and sanitation program Nzoia Cluster Phase II (Kakamega, Busia, Nambale)*" dated June 2011 for review. Subsequently, it received responses from lead agencies being the District Public Health Officer and the District Environment Officer. Both offices did not have any objections to the project. However, the 1st Respondent wrote to the 2nd Respondent requiring it to conduct an EIA study due to the uncertainties and magnitude of the project. The 2nd Respondent submitted an EIA study report titled, "*Environmental and Social Impact Assessment Study Report: Detailed Design for Maraba Waste Stabilization Ponds*" dated December 2011 for review.

16. It is submitted that the 1st Respondent received various comments from residents of Lwatingu community and from the 1st Appellant on behalf of the residents. The residents were opposed to the project. The 1st Respondent reviewed the EIA study report and approved it in accordance with the Environment Management and Coordination Act Cap. 387 and the Environment (Impact Assessment and Audit) Regulations 2003. The 1st Respondent argues that it was satisfied that all adequate mitigation measures were put in place in respect of the project and that the conditions of licence are also adequate to address any anticipated challenges or concerns from the Appellants. It maintains that the EIA Study Report submitted by the 2nd Respondent was comprehensive, adequate and proper within the confines of the applicable provisions of the law.

17. The 1st Respondent submits that the public was consulted prior to the issuance of the license. It argues that it is not a legal requirement for each and every affected person to be consulted before a license is issued. The law requires an acceptable/satisfactory sample of affected persons to be consulted. With regard to the buffer zone, the 1st Respondent submits that when the Tribunal visited the site on 22/07/2015, it was evident that the project site location was already fenced with guards at the site. Further there are no homesteads next to the project and the area has been sealed off.

18. In conclusion, the 1st Respondent argues that the Appellants have not proved that the matters raised in the appeal would negatively impact the environment in ways that could not be mitigated by the measures proposed in the EIA report and license. It urges the Tribunal to dismiss the appeal with costs to the Respondents.

2ND RESPONDENT'S SUBMISSIONS

19. The 2nd Respondent filed its submissions on 02/05/2018. The 2nd Respondent submits that it submitted an Environmental Impact Assessment study in compliance with the law and the Tribunal's ruling of 28th June 2010. It argues that the project study that was conducted incorporated public participation in full compliance with the Environment Management and Coordination Act, 1999.

20. With regard to Dr. Oonge's refusal to be cross-examined by the Appellants, the 2nd Respondent argues that the Appellants should have simply made an application for the witness to be compelled to undergo cross-examination. However, the Appellants did not have justifiable grounds or reasons to persuade the Tribunal to compel the witness to be cross-examined on his report.

21. The 2nd Respondent contends that there are no national standards set for the size of a buffer zone and that legislation in Kenya does not provide for a buffer zone. In addition, it is submitted that the Appellants cannot be heard to challenge the EIA report

prepared by Dr. Oonge since they never engaged an expert to conduct a study and prepare a report that contradicts the one prepared by Dr. Oonge.

22. The 2nd Respondent maintains that it obtained the license to undertake the project legally after conducting a full and comprehensive EIA report in accordance with relevant laws and regulations. It accuses the Appellants of pursuing their private interests instead of promoting the public good through the litigation brought before the Tribunal. The 2nd Respondent contends that the Appellants have failed to precisely outline, contradict or point out specific harm they would suffer as a result of the project in question.

23. The Tribunal is urged to uphold the 1st Respondent's decision to issue license number 0013949 in its favour and dismiss the appeal with costs. Alternatively, in the event that the Tribunal finds merit in the appeal it should order the 2nd Respondent to address specific areas of non-compliance with the law and regulations.

3RD RESPONDENT'S SUBMISSIONS

24. The 3rd Respondent did not file written submissions.

4TH RESPONDENT'S SUBMISSIONS

25. The 4th Respondent filed its submissions on 05/03/2018. It argues that the Environmental Impact Assessment Report for the Proposed Water Supply and Sanitation Program Nzoia Cluster Phase II was produced in evidence and was not countered by the Appellants whether by expert evidence or otherwise. It contends that the Appellants' fears with respect to the alleged effects of the implementation of the project are addressed in the report and that the Appellants agreed during the hearing that they would have no problem with the implementation of the project if the mitigating measures are attended to.

26. It is further submitted that the Appellants admitted that there was public participation through which they and the Project Affected Persons (PAPs) were involved. In addition, the 4th Respondent submits that if the Appellants and other Project Affected Persons make claims of compensation they will be compensated in accordance with the relevant Constitutional and Statutory Provisions on compulsory acquisition of land.

27. In conclusion, the 4th Respondent submits that this appeal is based on anticipated apprehensions of what might or might not happen and the Tribunal cannot give remedies based on unfounded fears since the remedies and mitigating measures can only be implemented simultaneously as the project. The Tribunal is urged to dismiss the petition with costs to the 4th Respondent.

ANALYSIS AND DETERMINATION

28. Upon considering all the pleadings filed by the parties, the evidence adduced at the hearing and the representations made through written submissions and case law authorities, the following issues fall for determination:

- a. Whether there was effective public participation before an EIA license was issued to the 2nd Respondent to undertake the project;
- b. Whether the project adheres to the Environment Management and Coordination (Water Quality) Regulations, 2006;
- c. Whether the project adheres to the Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009 and The Environmental Management And Co-Ordination (Air Quality) Regulations, 2014; and
- d. What orders should the Tribunal make in the circumstances"

Whether there was effective public participation before an EIA license was issued to the 2nd Respondent to undertake the project

29. The chief bone of contention between the Appellants and the Respondents is that the Appellants were not effectively involved in

the implementation of the 2nd Respondent's project from the initial stage of conducting the Environmental Impact Assessment study. The Appellants contend that they were not effectively involved when the 2nd Respondent undertook its EIA study. Therefore, the subsequent report that was prepared and submitted to the 1st Respondent did not address all their concerns with the result that implementation of the project has caused a breach of their right to a clean and healthy environment.

30. On the other hand, the Respondents maintain that they fully engaged the Appellants and other residents of Lwatingu during the EIA study and gathered their views which formed part of the study report which was submitted to the 1st Respondent. The Respondents contend that while there are Lwatingu residents who accepted and welcomed the project there are others who rejected the project. It was submitted that although the Appellants were opposed to the project, upon review of the study report prepared by the 2nd Respondent the Authority found that the concerns raised by the Appellants would be addressed through the mitigation measures provided for in the report.

31. The germane legal provisions with regard to public participation are Regulations 17 and 21 of The Environmental (Impact Assessment and Audit) Regulations, 2003. Regulation 17 provides as follows:

1) During the process of conducting an environmental impact assessment study under these Regulations, the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.

2) In seeking the views of the public, after the approval of the project report by the Authority, the proponent shall –

a) publicize the project and its anticipated effects and benefits by –

i. posting posters in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project;

ii. publishing a notice on the proposed project for two successive weeks in a newspaper that has a nation-wide circulation; and

iii. making an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks;

b) hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments;

c) ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and

d) ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.

Regulation 21 provides as follows:

1) The Authority shall, within fourteen days of receiving the environmental impact assessment study report, invite the public to make oral or written comments on the report.

2) The Authority shall, at the expense of the proponent –

a) publish for two successive weeks in the Gazette and in a newspaper with a nation-wide circulation and in particular with a wide circulation in the area of the proposed project, a public notice once a week inviting the public to submit oral or written comments on the environmental impact assessment study report; and

b) make an announcement of the notice in both official and local languages at least once a week for two consecutive weeks in a radio with a nation-wide coverage.

3) The invitation for public comments under this regulation shall state –

- a) the nature of the project;
- b) the location of the project;
- c) the anticipated impacts of the project and the proposed mitigation measures to respond to the impacts;
- d) the times and place where the full report can be inspected; and
- e) the period within which the Authority shall receive comments.

32. The Tribunal has perused the documents filed by the parties. The Respondents produced copies of public notices published in the Daily Nation on 28/03/2011, 02/02/2012 and 08/02/2012. It appears that the first public notice published on 28/03/2011 was publicized during the conduct of the EIA study. This is because it was published before the EIA study report was submitted to the 1st Respondent. The subsequent public notices dated 02/02/2012 and 08/02/2012 were published after the EIA study report was submitted to the 1st Respondent.

33. The motion which now falls to be determined is whether the 1st and 2nd Respondents adhered to the provisions of the above stated regulations when involving the public in the project. The 2nd Respondent demonstrated publication of only one public notice while collecting views from the public during the EIA Study. This fell short of the required public notices, which should be two in number. The 2nd Respondent neither demonstrated that it held at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments nor did it demonstrate that it made an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks.

34. While the 1st Respondent demonstrated that it published a public notice in a newspaper with a wide coverage at least once a week for two successive weeks (that is on 02/02/2012 and 08/02/2012), it did not demonstrate that it made an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks yet part of the compliant by the Appellants is they were not informed about the 2nd Respondent's project in a language they understand.

35. The result is that both the 1st and 2nd Respondents did not comply with the Environmental (Impact Assessment and Audit) Regulations 2003 and the Tribunal finds that public participation was not carried out effectively during the Environmental Impact Assessment Study and prior to issuance of the EIA license by the 1st Respondent.

Whether the project adheres to the Environment Management and Coordination (Water Quality) Regulations, 2006

36. The Appellants charge that the project that is being undertaken by the 2nd Respondent is located near the banks of a stream known as Lwatingu. They complain that during the rainy season, this area is usually flooded. Therefore, implementation of the project will be hazardous since the effluent discharged from the ponds might be swept away by floods into Lwatingu stream. The water from the stream is used by some households for domestic purposes and residents use the stream for religious and cultural practices.

37. According to the design of the 2nd Respondent's project, the effluent received in the sewerage ponds will undergo a maturation process before it is discharged into Lwatingu stream.

38. Regulation 4 (1) of the Environment Management and Coordination (Water Quality) Regulations, 2006 provides that every person shall refrain from any act which directly or indirectly causes, or may cause immediate or subsequent water pollution, and it shall be immaterial whether or not the water resource was polluted before the enactment of these Regulations. Regulation 4 (2) provides that no person shall throw or cause to flow into or near a water resource any liquid, solid or gaseous substance or deposit any such substance in or near it, as to cause pollution.

39. Regulation 6 (a) requires every person to obtain a valid effluent discharge licence issued in accordance with the provisions of the Environment Management and Coordination Act before discharging any effluent from sewage treatment works into a water body.

40. The Tribunal has perused the Environment Impact Assessment Study report prepared by the 2nd Respondent and particularly mitigation measures at paragraph 6.5.4 at page 6-69 of the report. The Tribunal finds the mitigation measures inadequate to avert the risks for contamination of Lwatingu stream. Besides, the 2nd Respondent did not demonstrate to the Tribunal that it has obtained a valid effluent discharge licence as required in the regulations.

41. We find that the 2nd Respondent's project does not adhere to the Environment Management and Coordination (Water Quality) Regulations, 2006.

Whether the project adheres to the Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009 and The Environmental Management and Co-Ordination (Air Quality) Regulations, 2014

42. The Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009 define wetlands as areas permanently or seasonally flooded by water where plants and animals have become adapted; and include swamps, areas of marsh, peat land, mountain bogs, bank of rivers, vegetation, areas of impeded drainage or brackish, salt or alkaline; including areas of marine water the depth of which at low tide does not exceed 6 meters. It also incorporates riparian and coastal zones adjacent to the wetlands.

43. Regulation 11 provides the permitted sustainable uses of a wetland for which the regulations do not apply. The 2nd Respondent's project does not fall in the category of the permitted sustainable uses.

44. Section 42 of the Environment Management and Coordination Act bars any person from depositing any substance in a lake, river or wetland or in, on or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake, sea or wetland without the prior written approval of the Authority given after an environmental impact assessment. Regulation 12 of the Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009 requires a license to be issued by the relevant lead agency and EIA licence to be issued by the Authority before a wetland is put into any other use.

45. A lead agency is defined in the regulations as a Government ministry, department, state corporation or local authority in which any law vests functions of control or management of any element of the environment or natural resource.

46. The location of the 2nd Respondent's project fits the definition of a wetland since evidence was led to show that it is usually flooded during the rainy season. The 2nd Respondent did not lead evidence to show that it obtained the necessary license from the relevant lead agency in order to implement its project on a wetland.

47. Consequently, the Tribunal finds that the 2nd Respondent's project does not adhere to the Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009.

48. The Environmental Impact Assessment Study report prepared by the 2nd Respondent records at paragraph 6.5.11 that the operation of waste stabilization ponds is normally associated with generation of odours and vectors. The report also states the mitigation measures that the 2nd Respondent will take to mitigate air pollution.

49. Regulation 5 of the Environmental Management And Co-ordination (Air Quality) Regulations, 2014 provides that:

No person shall-

(a) act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution; or

(b) emit any liquid, solid or gaseous substance or deposit any such substance in levels exceeding those set out in the First Schedule.

50. The Appellants gave evidence that the waste stabilization ponds will be a source of foul smell for the residents of Maraba. Evidence was led to the effect that some residents have houses which are located less than 300 meters from the site of the Waste Stabilization Ponds. During the Tribunal's site visit the Residents complained about air pollution and cited Kambi Somali which was a source of foul smell and respiratory diseases.

51. The Tribunal has considered the mitigation measures indicated in the 2nd Respondent's Study Report. It finds the mitigation measures inadequate. Apart from stating that the anaerobic ponds have been satisfactorily designed on the basis of volumetric BOD loading, that the 2nd Respondent will ensure proper operation and maintenance of the Waste Stabilization Ponds and maintaining high performance of biological treatment of waste water and chemical treatment of sludge the rest of the mitigation measures relate to mitigation measures during the construction period.

52. The 2nd Respondent's project will undoubtedly cause unmitigated air pollution in the Appellants' environment and particularly for the residents of Maraba. Therefore, the Tribunal finds that the 2nd Respondent's project does not adhere to the Environmental Management and Co-ordination (Air Quality) Regulations, 2014.

What orders should the Tribunal make in the circumstances"

53. The provisions of Regulations 17 and 21 of The Environmental (Impact Assessment and Audit) Regulations, 2003 are couched in mandatory terms. Therefore, the regulations demand unquestionable compliance by both the proponent of a project and the National Environmental Management Authority. A failure to adhere to the regulations inevitably leads to an outcome that is legally invalid. In addition, a project that does not adhere to the Environment Management and Coordination (Water Quality) Regulations, 2006, the Environment Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulations, 2009 and the Environmental Management And Co-ordination (Air Quality) Regulations, 2014 which are meant to protect the environment and natural resources cannot enjoy the sanction of this Tribunal.

54. **Section 129 (3) of the Environment Management and Co-Ordination Act, No. 8 of 1999** empowers the Tribunal to make either of the following orders upon hearing an appeal:

- a) Confirm, set aside or vary the order or decision in question;
- b) Exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- c) Make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just.

55. In this case the Tribunal allows the Appellant's appeal and makes the following orders:

- a) The Environmental Impact Assessment License No. 0013949 issued by the 1st Respondent on 14/11/2012 is hereby revoked.
- b) The construction of waste water stabilization ponds being undertaken by the 2nd Respondent is hereby stopped.
- c) An environmental restoration order is hereby issued against the 2nd and 4th Respondent. The 1st Respondent shall enforce the order at the cost of the 2nd and 4th Respondents. This order requires the demolition and removal of the waste water stabilization ponds and all other related features already constructed, the restoration of all soils, flora and natural features therein, together with the supervised removal of all building materials and sources or causes of pollution and/or environmental hazard or damage on the Suit Premises; within sixty (60) days after the lapse of the period set out under Section 130 (1) of the Environmental Management and Co-ordination Act; and
- d) The costs of the Appeal are awarded to the Appellants and to be borne by the 2nd and 4th Respondents.

Dated at Nairobi this 5th day of March 2019

MOHAMMED S BALALA.....CHAIRPERSON

CHRISTINE KIPSANG.....VICE-CHAIRPERSON

BAHATI MWAMUYE..... MEMBER

WAIHAKA NGARUIYA..... MEMBER

KARIUKI MUIGUA MEMBER



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