

**REPUBLIC OF KENYA**  
**IN THE NATIONAL ENVIRONMENT TRIBUNAL AT NAIROBI**  
**TRIBUNAL APPEAL NO. 8 OF 2024**

**BONCORD LIMITED..... APPELLANT**

**VERSUS**

**PAVO RESIDENCES LIMITED..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR GENERAL,  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant moved this Honorable Tribunal by way of the Notice of Appeal and Ground of Appeal all dated 12<sup>th</sup> March 2024 seeking the following reliefs:
  - a) *An order be issued by this Honorable Tribunal cancelling and revoking the EIA license in the event it has already been issued to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent or if the license is issued during the pendency of this appeal.*
  - b) *Without prejudice to prayer (a) this Honorable Tribunal may issue an order varying the EIA license to be in character with the rest of the neighboring properties in the event it has already been issued to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent or if the license is issued during the pendency of this appeal.*
  - c) *A stop order be issued by this Honorable Tribunal to the 1<sup>st</sup> Respondent directing that the 1<sup>st</sup> Respondent cease any form of construction on L.R NO. 209/4910/2 and to cease selling subject properties in the event that the 2<sup>nd</sup> Respondent has already issued the EIA license to the 1<sup>st</sup> Respondent or if the license is issued during the pendency of this appeal.*
  - d) *The Appellant be awarded the costs of this Appeal.*
  - e) *Any further and or other reliefs that this Honorable Tribunal may deem fit.*
2. Contemporaneously, the Appellant filed an application under certificate of urgency of the same date seeking various interim orders.
3. In response to the appeal and the Application, both the 1<sup>st</sup> & 2<sup>nd</sup> Respondents have filed their respective preliminary objections all dated 18<sup>th</sup> March 2024 challenging the jurisdiction of this Tribunal to hear and determine the appeal herein.

4. Having considered the Appellant's appeal and the accompanying application, the preliminary objections filed by the Respondents, and the parties' respective submissions, the Tribunal has isolated the following as the only issue arising for determination at this juncture:

- **Whether the Tribunal has jurisdiction to hear and determine the Appellant's appeal and the accompanying application.**

5. As already pointed out hereinabove, the Respondents are challenging the jurisdiction of the Tribunal to hear and determine the Appellant's appeal and the accompanying application. The basis of the Respondents' objection is that there is no decision capable of being challenged under Section 129(1) & (2) that has been made.

6. The Supreme Court in the case of **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**, held 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.

7. The jurisdiction of the Tribunal emanates from Section 129 of EMCA. The said provision provides as follows:

***Appeals to the Tribunal***

***(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.***

***(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose***

8. From a reading of the above provision, it is evident that a decision of either the Director General, the Authority or Committees of Authority or its agents is a *sine quo non* to the invoking of the jurisdiction of the Tribunal either under Section 129(1) or 129(2) of EMCA. No such decision has been placed before us, and it is, therefore, our finding that the Tribunal does not have jurisdiction to entertain the Appellant's appeal together with the accompanying application.
9. The Appellant is seeking cancellation and, in the alternative, variation of the EIA license in the event that the same has been issued. It appears that the Appellant's appeal is speculative. The subject EIA license has not been issued, and it is clear that the 2nd Respondent has yet to make a decision one way or another regarding the issuance of the said license for the proposed project. It is, therefore, our finding that the Appellant's appeal is premature. Metaphorically speaking, this is a case of putting the cart before the horse.
10. The Tribunal is guided by its decision in **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)**, where we held as follows:

***‘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.’***

11. Be that as it may, we note that in its submissions that the Appellant submits that its case is premised on the 2<sup>nd</sup> Respondent’s decision to deny the Appellant access to information in its custody. We further note that in its application the Appellant is seeking to compel the 2<sup>nd</sup> Respondent to produce the file in its custody and confirm the status of the issuance of the EIA license. Curiously, this prayer does not feature anywhere in the main appeal.
12. It is trite law that an application must be premised on a suit. We also add that a golden thread must be established as to the law and reliefs forming the substratum of the suit and the law and reliefs upon which a subsequent application is premised. Indeed, the main suit is the legs upon which an application stands. Accordingly, seeking an interlocutory order that is not tied to any of the reliefs sought in the main appeal is untenable.
13. In any event, the 2<sup>nd</sup> Respondent is a public body and therefore access of information under its custody is governed by the provisions of the Access to Information Act. The said Act provides an elaborate procedure for getting information from a public institution. Section 8 of the Act provides that an application to access information shall be made in writing in English or Kiswahili, and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.
14. Further, Section 14 of the Act provides that where a request for information has been denied, the aggrieved party may apply for review of that decision to the Commission on Administrative Justice. It has not been demonstrated that after the 2<sup>nd</sup> Respondent allegedly failed to provide the requested information, that the Appellant applied for review of that decision to the Commission on Administrative Justice.

15. As such, having failed to follow the statutorily prescribed procedure for getting information from a public body such as the 2<sup>nd</sup> Respondent, the Appellant cannot be allowed to leapfrog to the Tribunal for assistance. To do so would be a mockery of the doctrine of exhaustion. Indeed, the Court of Appeal in the case of **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, held as follows:

*‘... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed*

16. Deriving from the foregoing, we find that the Respondents’ Objections are merited and that the Tribunal lacks the jurisdiction to hear and determine this matter. Consequently, the Appellant’s appeal dated 12th March 2024 and the accompanying application are hereby struck out with an order that each party bears its own costs.

**DATED AND DELIVERED AT NAIROBI, THIS 26<sup>TH</sup> DAY OF MARCH 2024**

**EMMANUEL MUMIA.....CHAIRMAN**  
**WINNIE TSUMA.....VICE-CHAIR**  
**DUNCAN KURIA.....MEMBER**  
**RONALD ALLAMANO.....MEMBER**