



Peter Kinuthia Mwaniki, et al. v. Peter Njugana Gicheha, et al.

Civil Case 313 of 2000

Country: Kenya

Region: Africa

Year: 2006

Court: High Court at Nairobi

Health Topics: Environmental health, Water, sanitation and hygiene

Human Rights: Right to a clean environment, Right to water and sanitation

Facts

Plaintiffs sought a permanent injunction to prevent Defendants from continuing to construct a slaughterhouse situated next to their homes, claiming that such construction violated certain environmental statutory provisions and Plaintiffs' basic right to a clean and healthy environment. The slaughterhouse was almost completely built but had not started operating at the time of the suit.

Plaintiffs based their claim on the Environmental Management and Coordination Act (the Act), sections 58 and 75 of which require certain licenses, and section 3 of which provides "every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment." Defendants did not appear in this proceeding so the Court accepted the Plaintiffs' evidence as true. Their evidence established that the slaughterhouse was not built with any waste disposal system and so blood would flow onto adjacent property inhabited by the Plaintiffs. Plaintiffs complained that a foul, intrusive smell would result from slaughterhouse operations and that the cattle for slaughter would carry diseased ticks, thus causing harm to neighboring families, crops, and animals.

Evidence also established that Defendants defied 1999 orders from the Municipality to cease any further construction until they could prove ownership of the parcel where the slaughterhouse was being built and until they obtained approval from the relevant authorities. Defendants filed a defense contending that the slaughterhouse was being constructed in accordance with International Standards and with specific regard to water, waste disposal and in accordance with all relevant provisions of the law and council by-laws.

After the lower court dismissed the Plaintiffs' complaint to stop the construction of the slaughterhouse, they filed this appeal.

Decision and Reasoning

The Court granted a permanent injunction to restrain Defendants from continuing to construct the slaughterhouse and commencing operations therein. The injunction was necessary to preserve a clean and healthy environment protected under section 3 of the Act. The court also found that because Defendants failed to provide any waste disposal system and the slaughterhouse was almost ready for use, Defendants were likely to violate section 75 of the Act (requiring a license of businesses emitting effluent). The Court rejected the Defendants' defense as unsupported by evidence on record, and indeed contradicted by evidence establishing that no waste disposal system was built.

Decision Excerpts

"I reject this defence, going by the evidence on record which shows that no system of waste disposal has been provided by the defendants. I also reject the defence in para 8 because I believe the plaintiffs' evidence which shows that the defendant breached the relevant provisions of the Environmental Management and Coordination Act, 1999, especially sections 58 of the application for an Environment Impact Assessment License, which the defendants did not and still do not have." Page 9.

"In order to preserve a clean and healthy environment, in this locality, as spelt out in the Act, I grant a further injunction order to restrain the defendants, their agents, and or servants from commencing the slaughter of animals in the building they have been constructing and are about to complete." Page 10.