



**Greenpark Management Limited v Superior Homes (Kenya) PLC & 3 others
(Tribunal Case E018 of 2023) [2024] KEET 1 (KLR) (4 January 2024) (Ruling)**

Neutral citation: [2024] KEET 1 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
TRIBUNAL CASE E018 OF 2023
D.K MWIRIGI, VICE CHAIR, B.H WASIOYA & F.S IBRAHIM, MEMBERS
JANUARY 4, 2024**

BETWEEN

GREENPARK MANAGEMENT LIMITED APPLICANT

AND

SUPERIOR HOMES (KENYA) PLC 1ST RESPONDENT

ENERGY AND PETROLEUM REGULATORY AUTHORITY & 2

OTHERS 2ND RESPONDENT

RULING

A. Procedural History

1. Gems Management Limited (“the Applicant”) filed this suit against Superior Homes Kenya PLC (“the 1st Respondent”) and three Government Agencies being the Energy and Petroleum Regulatory Authority (“the 2nd Respondent” or “EPRA”), the Physical and Land Use Planning Department of Machakos County (“the 3rd Respondent” or “PLUPD”) and the National Environmental Management Authority (“the 4th Respondent” or “NEMA”).
2. The Applicant is the Management company which offers management services to the home owners and residents of Greenpark Estate within Mavoko Municipality along Mombasa Road (“the Estate”), while the 1st Respondent has been granted licences/approvals by, among others, the 2nd, 3rd and 4th Respondents to construct a petrol station on a piece of land known as LR No. 27409 which is adjacent to the Estate.
3. The Applicant, under Certificate of Urgency dated 19th October 2023 prays for judgement against the four Respondents for:
 - a. A declaration that the petrol station on LR No. 27409 within Mavoko Municipality along Mombasa Road under construction by the 1st Respondent is illegal and constitutes



infringement of the right to a clean and healthy environment for the residents of Greenpark Estate.

- b. A permanent injunction to restrain the 1st Respondent either by himself, his servants, agents, lessees, assignees, representatives or any other person from proceeding with any construction of a fuel service station or any other construction on LR No. 27409 within Mavoko Municipality along Mombasa Road.
 - c. A declaration that the 2nd, 3rd and 4th Respondents irregularly licensed the construction of the petrol station by the 1st Respondent.
 - d. General Damages.
 - e. Costs and interest of the suit.
 - f. Any other relief that the Tribunal deems fit to grant.
4. The 1st Respondent filed a Preliminary Objection dated 31st October 2023 seeking to have the matter struck out on the grounds that:
- a. This Tribunal lacks jurisdiction to hear and determine the dispute herein as it offends the provisions of sections 23 and 36 of the *Energy Act*, 2019; section 129 of the *Environmental Management and Co-Ordination Act* No. 8 of 1999 (EMCA) and section 80 of the *Physical and Land Use Planning Act* No. 13 of 2019 (PLUPA).
 - b. This Tribunal does not have the jurisdiction to hear or determine the dispute as filed by the Applicant to the extent that the dispute is based on alleged environmental hazards, public participation, and building approvals.
 - c. This suit is misconceived and does not disclose any reasonable cause of action against the Respondents within the *Energy Act*, 2019.
 - d. These proceedings lack merit and should be dismissed with costs to the 1st Respondent.
5. As directed by the Tribunal, the Notice of Preliminary Objection was canvassed by way of written submissions. The Applicant and the 1st and 2nd Respondent filed their submissions, while the 3rd and 4th Respondents did not file any submissions.
6. On 23rd November 2023, the Tribunal dismissed the Preliminary Objection, stating, among others, that the matter was, in essence, an appeal against the decision of EPRA to grant a Construction Permit for the petrol station to the 1st Respondent, therefore well within the jurisdiction of the Tribunal.
7. The Tribunal directed all Parties to file their responses and submissions on the main suit.
8. The Applicant and 1st Respondent complied as directed, while the 2nd Respondent indicated that they would rely on the responses and submissions made in respect of the Preliminary Objection. The 3rd and 4th Respondents did not file any submissions.

B. Applicant's Case

9. The Applicant avers that the 1st Respondent is constructing a petrol station on a piece of land known as LR No. 27409 within Mavoko Municipality along Mombasa Road, adjacent to Greenpark Estate comprising homes whose owners and residents are apprehensive of environmental hazards such as pollution and imminent fires since the residents use gas cookers and mobile phones, items which in their view should not be used near a petrol station.



10. Despite the Applicant's objection, the 2nd, 3rd and 4th Respondents have issued irregular licences whose references are EPRA/PET/5/468, MVK/4381/07/2021 and NEMA/EIA/PSL/26193, respectively, sanctioning construction of the petrol station.
11. The 2nd Respondent issued a Construction Permit to the 1st Respondent allowing them to commence construction of the petrol station despite an Environmental Impact Assessment (EIA) and meaningful public participation not having been conducted.
12. Out of the 500 residents of Greenpark Estate, only ten (10) people were involved in the Public Participation where eight (8) people opposed the construction with two (2) people being amenable.
13. The Applicant filed an objection against issuance of a license for construction of the petrol station at PLUPD who indicated that the objection was filed out of time and that the Applicant would only be assisted by appealing to the Machakos County Physical and Land Use Planning Liaison Committee (PLUPLC).
14. Despite numerous letters to the 3rd Respondent seeking permission to lodge an appeal out of time, they never responded and instead proceeded to issue a licence to the 1st Respondent.
15. Vide letter dated 3rd October 2022 and received on 24th October 2022, the Applicant lodged an objection to the construction of the proposed petrol station with the 4th Respondent herein, NEMA, citing environmental pollution such as air pollution, noise pollution, spillage and noting that the community draws water from Stony Athi River which would then be contaminated.
16. Vide letter dated 23rd November 2022, NEMA took note of the objection raised and directed that an EIA be undertaken and must include meaningful public participation and stakeholder engagement in order to make a decision in licensing construction of the petrol station. The public participation and inclusive stakeholder engagement were expected to involve home owners and residents as the Project Affected Persons (PAPs) in order to give their objective views on the project.
17. The basis on which the 4th Respondent issued a licence for the construction of the project without a successful EIA remains a mystery.
18. The 2nd Respondent, EPRA, in response to a letter from one of the stakeholders namely Gibtech Consolidated Company Limited, indicated that they found that public participation had been conducted but further arranged for a meeting on 12th May 2023 with the goal of ascertaining the real issues surrounding the project.
19. After the meeting held on 12th May 2023, the Applicant wrote to EPRA noting that no public participation was conducted when the EIA was being done if any, since out of ten (10) signatures collected only two (2) were not opposed to the construction of the petrol station.
20. The 1st Respondent has since commenced construction of the petrol station despite numerous objections raised with the three Government Agencies.
21. The Applicant is counselled by its lawyers that the construction of the petrol station poses great dangers to the residents of the Estate given that it is too close to the Estate and Stony Athi River where the society draws drinking water from.
22. The 2nd Respondent responded to the Applicant's letters, insinuating that that they had already issued a licence to the 1st Respondent, a process which, according to the Applicant, took place in unknown circumstances.



23. The 2nd Respondent failed to carry out their mandate in rejecting an application for permit, necessitating the Applicant to appeal in this Honourable Tribunal as provided for under the [Energy Act, 2019](#).
24. Section 75 of the [Petroleum Act, 2019](#) states that the licensing authority shall, in granting or rejecting an application for a licence or permit, take into consideration the impact of the undertaking on the social, cultural or recreational life of the community; the need to protect the environment and to conserve natural resources in accordance with the environmental laws, maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority, land use or the location of the undertaking.
26. The 2nd Respondent did not take into consideration the above-mentioned requirements and ignorantly proceeded to issue a permit and while they claim that they did, is a fact to be determined by this Tribunal.
27. The 3rd and 4th Respondents were joined in the suit in order to assist this Honourable Tribunal in understanding the Applicant's claim against the 1st Respondent and 2nd Respondent as pertains to environmental factors and whether appropriate land use were put into consideration by the 2nd Respondent before issuing the Construction Permit.
28. The reliefs sought by the Applicant are those that this Honourable Tribunal is able to grant as they are equitable in nature being injunctions as provided for under section 36 of the [Energy Act, 2019](#).
29. In the consultative meetings held between all the parties herein, the residents of the Estate managed by the Applicant appended their signatures objecting to the construction of the petrol station.
30. Unless restrained, the 1st Respondent will continue to interfere and set up a petrol station causing the residents of the Estate irreparable damage with the likelihood of irreversible air, noise and water pollution, to their detriment.

C. First Respondent's Response And Submissions

31. The 1st Respondent denies the claims by the Applicant through a replying affidavit sworn on 7th December 2023 by Shiv Arora, the Chief Executive Officer of Superior Homes Kenya PLC.
32. The 1st Respondent is a real estate developer, and specifically in relation to this dispute, is the developer of the Greenpark Estate which is a master planned gated community with over 500 completed and occupied homes as well as a wide array of amenities such as schools, a hotel with conference facilities, a restaurant and bar, a swimming pool, a gym, wedding grounds, a football turf, a retail strip mall, and a retirement village.
33. Since inception of the Estate, the 1st Respondent has expended significant time and effort to put up various improvements on the Estate to ensure a quality standard of living for its residents. The improvement of the Estate is an ongoing process and there are still several future projects that the 1st Respondent will continue to implement to maintain the quality standard of living within and surrounding the Estate.
34. In efforts to increase the social amenities within and adjacent to the Estate, the 1st Respondent embarked on a project which entailed constructing a fuel service station which is adjacent to the Estate (the "Project"). Prior to commencing the Project, the 1st Respondent complied with all applicable laws and specifically the regulatory requirements of the 2nd, 3rd, and 4th Respondents.



35. Prior to embarking on the Project, the 1st Respondent commissioned Gitbench Consolidated Company Limited (“Gitbench”), an environmental consultancy firm, to conduct an environmental and social impact assessment (ESIA) of the Project before its commencement. The aim of the ESIA is to ensure that decision makers consider the ensuing environmental and social impacts when deciding whether or not to proceed with the project. While the positive benefits are welcome, it is vital that adequate mitigation measures are put in place to counter the negative impacts.
36. On 25th October 2021, Gitbench, on behalf of the 1st Respondent, submitted an ESIA Study Report (“Project Report”) in respect of the Project to the 4th Respondent, which was received under reference number NEMA/PR/MKS/5/2/5293.
37. Upon review of the Project Report, the 4th Respondent called for comments from the members of the public, which included the Applicant, as well as consulted with the lead government agencies (specifically the 2nd and 3rd Respondents) on different dates between October 2022 and May 2023. Copies of minutes of public consultation meetings held on 8th October 2022, 11th and 16th November 2022 have been provided.
38. Following the informative public participation meetings, several concerns/negative impacts were raised by the Applicant, and for each negative impact, the 1st Respondent proposed appropriate mitigation measures as summarized below.
 - a. Negative Impact: The Project will pose a health risk to a clean and healthy environment as envisaged under Article 42 of *the Constitution* of Kenya Mitigation Measure: The proposed service station tanks and pumps have automated fail switches that shut off automatically in case any leakages are detected.
 - b. Negative Impact: The Project will be in a highly populated area and as such it will not be safe to construct a service station within its vicinity due to the risk involved in storage and sale of petroleum products Mitigation Measure: There are double skin tanks with the highest rating which have been tested and used in other service stations without any incident
 - c. Negative Impact: The Project will entail storage of petroleum in huge quantities which pose a threat to security of the home owners and residents Mitigation Measure: A 2.4m high boundary wall has been constructed along Cluster Boundary with frontage. Buffer distance of 4.5 meters has been kept from the residential wall. The 1st Respondent would also onboard an established brand to provide security within the service station
 - d. Negative Impact: The proposed service station’s earmarked area is too close to residential homes thereby potentially creating nuisances such as noise pollution due to loading, unloading and storage of petroleum products and equipment, volatility of chemicals used that are carcinogenic Mitigation Measure: Portable barriers have been provided to shield compressor and other small stationery equipment and where necessary there would be noise suppressors or silencers. There was also a considerable distance between the residents’ wall and the proposed service station
 - e. Negative Impact: There will exist health hazards such as air pollution, explosions, spillage, high demand of/strain, high spillage of/strain on and interference of sewerage and water services Mitigation Measure: The underground storage tanks include double skin fabrication technology and enclosed in a reinforced concrete tank farm. The highly advanced technology would enable detection of any leaks/spills and avoid any pollution in extreme cases.



- f. Negative Impact: Pollution of Stony Athi River will be imminent noting that Mavoko Water draws its drinking water from it and therefore concerns on contamination are imminent.
Mitigation Measure: There were surface drainages which would ensure all surface drain passes through the Oil Water Separator (OWS) before being released into the roadside drainage
- g. Negative Impact: The 1st Respondent allegedly destroyed trees
Mitigation Measure: The 1st Respondent has never engaged in unlawful destruction of trees in any manner whatsoever
- h. Negative Impact: The home owners and residents of the Estate are not aware of members of the 1st Respondent and as such do not know who they would be dealing with.
Mitigation Measure: Management of the 1st Respondent and the home owners as well as residents of the Estate have been involved in several stakeholder engagements with the 1st Respondent and therefore had knowledge of the 1st Respondent's representatives.
39. Upon conclusion of the public participation meetings as well as nil objections from the lead government agencies, the 4th Respondent on 8th June 2023 issued an EIA Licence No. NEMA/EIA/PSL/26193 (the Licence) to the 1st Respondent subject to conditions that were attached to the Licence.
40. The 1st Respondent, subsequent to issuance of the Licence has been in consultation with officers of the 4th Respondent to ensure that the conditions provided in the Licence are adhered to. Several meetings have been held at the Project site between the representatives of the 1st and 4th Respondents on matters relating to the site conditions. A copy of the most recent site visit report by the 4th Respondent on 19th October 2023 has been available in the 1st Respondent's bundle of documents.
41. The Applicant and other members of the public, actively participated in several public meetings before commencement of the Project as noted in the minutes of the above referenced meeting.
42. Even as it has undertaken remedial measures pursuant to the Applicant's concerns, the 1st Respondent has not had any further conditions imposed upon its Licence by the 4th Respondent other than the initial conditions that were attached to the Licence on the date of its issuance on 8th June 2023.
43. In addition to the approvals issued by the 3rd and 4th Respondents, the 1st Respondent also obtained approvals from other government agencies such as the Kenya National Highways Authority and the 2nd Respondent, namely:
- a. Approval for access construction works to the proposed retail development on parcel LR No. 27409 along Nairobi Mombasa (A8) Road issued by the Kenya National Highways Authority on 27th June 2022; and
 - b. A Petroleum Construction Permit issued by the 2nd Respondent on 12th October 2023. Copies of the aforesaid approvals have been made available in the 1st Respondent's bundle of documents.
44. The Project being undertaken by the 1st Respondent has been reviewed by all the necessary environmental experts and was being undertaken in compliance with the conditions of the Licence issued by the 4th Respondent, prior to the Machakos ELC Petition No. E007 of 2023 Paul Onyera & 7 Others vs Superior Homes Kenya Limited & 3 Others issuing interim conservatory orders stopping construction of the Project.



45. The Applicant claims that the licences issued by the 2nd and 4th Respondents approving the Project were issued unlawfully and without considering the Applicant's objections. To the contrary, both the 2nd and 4th Respondent acted within their mandate and conducted all the necessary assessments required by the law before making informed decisions to lawfully issue the licences.
46. The 4th Respondent ordered conduct of an Environmental Impact Assessment and the report consequently prepared was submitted to the 2nd Respondent for review as is required under the law.
47. The 2nd Respondent proceeded to review the report and documents provided and even requested provision of some documentation which was missing. Additionally, the 2nd Respondent visited the Project Site as part of its due diligence and upon satisfying itself that the 1st Respondent had complied with all the requirements, issued a Letter of No Objection and thereafter a Construction Permit upon application by the 1st Respondent.
48. The Applicant has failed to demonstrate how, despite due procedures being followed and their concerns being addressed through mitigation measures prior to commencement of construction, the Project still allegedly infringes on their constitutional rights to a clean and healthy environment.
49. The Applicant has also failed to show the basis upon which it is claiming that the licences issued to the 1st Respondent are unlawful.
50. The 1st Respondent has been advised by Cecil Kuyo which advice we verily believe to be true that the 1st Respondent has a right under Article 40 of *the Constitution* of Kenya to enjoy the use of its property. This Tribunal must therefore consider the competing rights of parties when determining any alleged constitutional violations.
51. The 1st Respondent has also been advised by Cecil Kuyo which advice we verily believe to be true that two of the Applicant's directors (Paul Onyera and Hezron Arunga) alongside other residents of the Estate have instituted a constitutional petition in Machakos ELC Petition No. E007 of 2023 Paul Onyera & 7 Others vs Superior Homes Kenya Limited & 3 Others where they are seeking similar orders as they seek before this Tribunal. It is therefore evident that the Applicant is forum shopping with a view of abusing judicial process. Copies of the Petition and official search results for the Applicant (CR 12) have been made available in the 1st Respondent's bundle of documents.
52. The Applicant has failed to meet the threshold for the grant of a permanent injunction as sought in the Application.
53. In view of the foregoing, this Application is without merit and should be dismissed with costs.

D. Second Respondent's Response And Submissions

54. As earlier stated, the 2nd Respondent indicated that they would rely on their response and submissions in respect of the Preliminary Objection. The Tribunal reviewed the same and extracted the averments set out in paragraphs 54 to 68 hereunder.
55. Section 10(hh) of the *Energy Act*, 2019 gives the 2nd Respondent the role of protecting the interests of consumers, investors and other stakeholders.
56. In protecting the interests of a particular stakeholder, the 2nd Respondent has to act in the best interests of all the other stakeholders and therefore consider all relevant factors surrounding any decision it makes within its mandate as elaborated within the *Energy Act*, 2019.
57. In licensing of projects under its statutory mandate, the 2nd Respondent ordinarily relies on the 4th Respondent's findings and decision on issues relating to environment since it is the body mandated by



- law to adjudicate on the same. This is in line with Section 87 of the [Petroleum Act](#), 2019 which requires that the 2nd Respondent takes into consideration all relevant Government policies, guidelines and compliance to relevant environmental, safety, planning, maritime laws and County Government laws.
58. The 2nd Respondent responded to the Applicant in addressing all issues of concern with regard to the Applicant's objection to the 2nd Respondent's issuance of No Objection to the subject project and or issuance of a permit. In particular and building up to the 2nd Respondent's response to all issues raised, the 2nd Respondent participated and witnessed several public consultative meetings between the Applicant and the 1st Respondent whose purpose was to address the issues raised by the community. In addition, the 2nd Respondent consulted both the Applicant and the 1st Respondent in order to seek clarity and or seek further information as it legally undertook its mandate.
 59. The 2nd Respondent ensured that the 1st Respondent held public consultation on the subject project as envisaged under [the Constitution](#) of Kenya, 2010, the [Statutory Instruments Act](#) No. 23 of 2013 and the [Energy Act](#), 2019.
 60. In line with Section 11(g) of the [Energy Act](#), 2019 the 2nd Respondent reviews ESIA reports submitted by the 4th Respondent for all proposed petroleum and electricity related projects for technical compliance. On review of the ESIA reports, the 2nd Respondent responds to the 4th Respondent with comments of either Objection or No Objection.
 61. On the foregoing, the 2nd Respondent received from the 4th Respondent an ESIA report dated 29th October 2021 prepared on behalf of the 1st Respondent for a proposed petrol station on Plot L.R. No. 27409 in Athi River.
 62. The 2nd Respondent reviewed the ESIA report in line with the provisions of Legal Notice No. 7 of 2014, The Energy (Retail Facility Construction and Licensing) Regulations, 2013 and KS EAS 980 of 2020 (The Petroleum Facilities - Retail and Consumer Outlets - Classification).
 63. The Applicant and the 1st Respondent held several public/consultative meetings on the subject project between February and 2022 and May 2023 towards resolving the Applicant's grievances.
 64. On 30th May 2023, the 2nd Respondent, after following the law as earlier laid out, and in accordance with Section 87 of the [Petroleum Act](#), 2019, issued a Letter of No Objection to 4th Respondent.
 65. On 12th September 2023, the 2nd Respondent received an application for a Construction Permit for a retail dispensing station from the 1st Respondent.
 66. On 11th October 2023, the 2nd Respondent having satisfied itself that the 1st Respondent had fulfilled the requirements for a Construction Permit for a retail dispensing site including amongst other requirements the ESIA Licence from the 4th Respondent, which meant that the social issues between the 1st Respondent and Plaintiff had been resolved, granted Construction Permit No. EPRA/PET/5/468.
 67. To ensure integrity in the 2nd Respondent's role and mandate, once the construction of the retail dispensing site has been completed, the 2nd Respondent will undertake a final inspection to ascertain the conformity of the facility to the Kenyan Standards prior to issuance of an operational licence pursuant to Section 10(hh) of the [Energy Act](#), 2019.
 68. The 2nd Respondent acted in good faith, fairness and adhered to the applicable laws and regulations in granting the Construction Permit No. EPRA/PET/5/468 to the 1st Respondent.
 69. Considering the facts at hand, it is our humble submission and we humbly pray that the Application dated 19th October 2023 filed by the Applicant be dismissed in its entirety with costs.



E. Analysis And Determination

70. Having considered the record and submissions made by both the Applicant and the 1st and 2nd Respondents herein as well as the law, we have established that the issues for determination are:
- A. Whether the 2nd, 3rd and 4th Respondents irregularly licensed the construction of the petrol station by the 1st Respondent.
 - B. Whether the proposed Petrol Station constitutes an infringement of the right to a clean and healthy environment for the residents of Greenpark Estate.
71. It is to be noted that while the Applicant prays for damages, no pleadings were made on the same.

(A) Whether the 2nd, 3rd and 4th Respondents irregularly licensed the construction of the petrol station by the 1st Respondent

72. It is to be noted that the thrust of the Applicant's case is that the 2nd Respondent, EPRA, issued the Construction Permit to the 1st Respondent authorizing construction of the petrol station despite an EIA and meaningful public participation not having been conducted.
73. The 1st Respondent set out in detail all the steps taken in carrying out the environmental and social impact assessment (ESIA) of the Project, on the basis of which the 4th Respondent issued EIA Licence No. NEMA/EIA/PSL/26193 to the 1st Respondent on 8th June 2023.
74. With regard to public participation in the process leading to licensing or otherwise of the proposed Project, the 1st Respondent has demonstrated, and the same corroborated by the 2nd Respondent, that several informative public participation meetings were held where concerns were raised, which concerns were addressed by the 1st Respondent.
75. From the minutes of the public consultation meeting held on 8th October 2022 involving the Applicant and residents of the Estate, representatives of all the four Respondents and the Machakos County as well National Government officers, the residents of the Estate not only refused to sign the attendance register but also did not give a chance to the Respondents to demonstrate to them how their concerns on their rights to a clean and healthy environment had been addressed. It would appear that they had a predetermined objective that the Project be disallowed, but if not, the Applicant would conclude no EIA had been conducted and that the public participation was inadequate and not meaningful.
76. Whereas both the 3rd and 4th Respondents did not file any responses to the Applicant's allegation that the 2nd, 3rd and 4th Respondents irregularly licensed the construction of the petrol station by the 1st Respondent, the 1st and 2nd Respondents have demonstrated to the satisfaction of the Tribunal that the Applicant's allegation is without merit.

(B) Whether the proposed Petrol Station constitutes an infringement of the right to a clean and healthy environment for the residents of Greenpark Estate

77. At the centre of the Applicant's objection to the construction and subsequent operation of the proposed petrol station are the adverse environmental effects including imminent fires that could be triggered by gas cookers and mobile files from the homes close to the petrol station; air and noise pollution as well as contamination of Stony Athi River.



78. The Applicant's concerns and apprehension about infringement of the rights to a clean and healthy environment for the homeowners and residents of the Estate would only be legitimate in the absence of appropriate and adequate mitigation measures.
79. The ESIA Study Report provided by the 1st Respondent has set out all the negative impacts on the environment throughout the project cycle, together with the proposed mitigation measures. The EIA licence issued on 8th June 2023 by the 4th Respondent includes a comprehensive list of conditions to ensure compliance by the 1st Respondent of all the mitigation measures for purposes of protecting the environment.
80. The 1st Respondent set out in detail the proposed mitigation measures, which were not contested, that it will put in place against the negative impacts of the proposed petrol station on the environment to ensure that the rights of the residents of Greenpark Estate to a clean and healthy environment are not violated.
81. The Tribunal did however note some errors in the ESIA Study Report, including reference to Kaplong Narok Maai Mahiu Road as location of the project and references to repealed legislation such as the [Energy Act](#), 2006; the [Water Act](#), 2002 and the Wayleaves Act. It is not clear to the Tribunal how such errors were dealt with by the 1st, 2nd and 4th Respondents.
82. The 2nd Respondent did not offer any response to or submissions on the Applicant's concerns and apprehension about infringement of the rights to a clean environment for the homeowners and residents of the Estate, despite its:
 - a. Statutory role as the lead agency vested with the functions of control and management of the environment in the energy and petroleum sector as provided for in, among others, sections 12, 49, 54, 56A, 57A, 60, 69 and 147 of the [Environmental Management and Co-ordination Act](#) No. 8 of 1999.
 - b. Functions and powers sections 10(a) and 11(g) of the [Energy Act](#), 2019, respectively, to inter alia, regulate storage and sale of petroleum products as well as to formulate, set, enforce and review environmental, health, safety and quality standards for the energy sector in coordination with other statutory authorities.
 - c. Mandate as set out under, among others, sections 73 to 76 as well as sections 85 and 86 of the [Petroleum Act](#), 2019 on licensing of petroleum businesses.

F. Disposition

83. In the end therefore, having given due consideration to the pleadings, submissions and the law and taking into account the circumstances of this case, we are satisfied that the Application dated 19th October 2023 is without merit.
84. The Tribunal therefore makes the following orders:
 - a. The Application dated 19th October 2023 filed by the Applicant is dismissed in its entirety.
 - b. The 2nd and 4th Respondents to discharge their statutory obligations diligently so as to ensure that as the 1st Respondent continues to construct the petrol station, all the conditions of licences issued to the 1st Respondent are complied with so that the rights of the home owners and residents of Greenpark Estate to a clean and healthy environment are not violated.
 - c. Each party to bear their own costs.



DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JANUARY 2024.

MS. DORIS KINYA MWIRIGI..... VICE CHAIRPERSON

ENG. BUGE HATIBU WASIOYAMEMBER

MR. FEISAL SHARIFF IBRAHIMMEMBER

SIGNED BY: DORIS KINYA MWIRIGI

