



**IN THE SUPREME COURT OF KENYA
KILIAVO FRESH LIMITED V. THE NATIONAL ENVIRONMENTAL TRIBUNAL & 4
OTHERS**

SC SPETITION NO. E025 OF 2025

DATE OF JUDGEMENT: 30TH JANUARY 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court dismissed the appeal in this matter with no orders as to cost.

BACKGROUND

The Appellant undertook an integrated mixed-use farming project on its parcels of land known as Loitoktok/Kimama-Tikondo/4209, 4210 and 4211, measuring approximately 180 acres and located in Amboseli, Kajiado County. It obtained an Environmental Impact Assessment (EIA) Report (Ref. No. NEMA/PR/KJD/5/5408) and was issued with EIA Licence No. 0068059 by the National Environment Management Authority (NEMA).

On 8th and 9th September 2020, NEMA issued Notices to Show Cause requiring the Appellant to halt further development on the ground that the project was situated within a designated wildlife corridor, contrary to the Amboseli Ecosystem Management Plan, and that key stakeholders had not been adequately consulted during the EIA approval process.

The Appellant appealed to the National Environmental Tribunal (NET), which granted interim orders restraining implementation of the notices and extended the validity of the EIA licence. However, when the appeal came up for hearing on 26th April 2021, the Appellant and its advocates were absent, leading to the dismissal of the appeal for want of prosecution.

The Appellant subsequently filed judicial review proceedings before the Environment and Land Court (ELC) challenging the Tribunal's decision. The ELC dismissed the application, holding that under section 130 of the Environmental Management and Co-ordination Act, decisions of the Tribunal were only challengeable by way of an appeal. Aggrieved, the appellant filed an appeal to the Court of Appeal. The Court of Appeal agreed with the High Court and dismissed the appeal.

Undeterred, the Appellant filed the present appeal before the Supreme Court. In response, the 1st Respondent raised a preliminary objection contending that the appeal failed to meet the jurisdictional threshold under Article 163(4)(a) of the Constitution.

The Court framed the following issues for determination:

- a) *Whether the Appellant has properly invoked this Court's jurisdiction under Article 163(4)(a) of the Constitution; and*
- b) *Whether the Court of Appeal erred in its decision of 4th April 2025.*

Upon consideration, the Supreme Court has dismissed appeal for the following reasons:

1. **Issue 1:** The Appellant failed to explain, to the satisfaction of the court, the manner in which the superior courts interpreted and applied the Constitution one way or the other. Upon reading the impugned decisions, it was apparent that the two superior courts below did not engage in the interpretation and application of the Constitution. Therefore, the Court was not vested with the requisite jurisdiction to hear and determine the appeal pursuant to the provisions of Article 163(4)(a) of the Constitution.
2. **Issue 2:** Having determined that it lacks jurisdiction to hear and determine the appeal, the Court saw no purpose in addressing this issue.

Accordingly, the Supreme Court grants the following orders:

- i. ***The 1st Respondent's Preliminary Objection dated 3rd June 2025 is hereby upheld.***
- ii. ***Petition of Appeal dated 9th May 2025 and filed on 12th May 2025 is hereby struck out.***
- iii. ***Each party shall bear their own costs.***
- iv. ***We hereby direct that the sum of Kshs.6,000/=, deposited as security for costs upon lodging of this appeal, be refunded to the Appellant.***

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