



## Center For Justice Governance And Environmental Action

### **PRESS RELEASE**

On 16<sup>th</sup> July 16, 2020 the Honorable Justice Anne Omollo delivered Judgement on petition no. 1 of 2016. This is the Owinouhuru Class Action Suit filed at the Land and Environment Court of Mombasa.

The highlights of her 101-page ruling being that: -

### **LIABILITY**

In summary under liability I find the liability of the 5th Respondent (Mombasa County Government) is negligible. For the remainder of the respondents I apportion liability in the following ratio:

- (i) 2nd Respondent (Ministry of Environment water and Natural Resources) – 10%
- (ii) 3rd Respondent (Ministry of health) – 10%
- (iii) 4th Respondent (NEMA) – 40%
- (iv) 6th Respondent – (EPZA) 10%
- (v) 7th Respondent – (Metal Refinery EPZ) 25%
- (vi) 8th Respondent (Hezron Awiti's Penguin Paper and Book Co.) – 5%

### **COMPENSATION**

- 1) I shall award **Kshs.1.3 Billion** due and payable to the 1st – 9th petitioners (The Owinouhuru community) and persons claiming through them. The 2nd, 3rd, 4th, and 6th – 8th Respondents shall pay in accordance with apportionment of their liability in paragraph 158 above the total sum of Kshs.1.3 Billion within a period of 90 days from the date hereof and in default, the petitioners are at liberty to execute. The court further directs the named liable respondents to within 4 months (120 days) from date of this judgment to clean-up the soil, water and remove any wastes deposited within the settlement by the 7th respondent. In default, the sum of **Ksh. 700,000,000** comes due and payable to the 10th petitioner (**Center for Justice Governance & Environmental Action**) to coordinate the soil/environmental clean-up exercise.

2) The petitioners also prayed to be awarded costs of the petition. The 1st – 6th Respondents also submitted that the petition should be dismissed with costs. The practice of the courts has been not to award costs in constitutional petitions. However, before costs are waived a basis must be laid for the same. The history of this petition reveals non-action by the Respondents inspite of several complaints received from the petitioners and failing to act on their own (Respondents) recommendations to remedy the environment. Therefore their inaction having led to the filing of this suit, it is my considered view and **I so hold that the petitioners are entitled to costs of the petition.**

### **PRAYERS GRANTED**

- (i) Declaration of their rights to a clean and healthy environment.
- (ii) Declaration of rights to the highest attainable standard of health and right to clean and safe water guaranteed by Article 43 of the Constitution.
- (iii) Declaration on the Right to life as guaranteed by the provisions of Article 26

I also allow **prayer (viii)** and do hereby issue an order of mandamus against the 1st, 2nd and 4th Respondents directing them to develop and implement regulations adopted from best practices with regard to lead and lead alloys manufacturing plants.

**I allow all the above**

### **PRAYERS DENIED**

- (iv) a declaration that the systematic denial of access to information about how exposure to lead would affect them amounted to a violation of Article 35.
- (vi) had also been done going by the reports filed in this petition. I decline to grant the same. **Prayer (vii)** shall lie in the event that the monetary award given in terms of **prayer (v)** is not honored. Otherwise granting this prayer will amount to doubling the award on compensation and soil clean up.
- (ix) Is declined as in this court's opinion the provisions of the Constitution and EMCA together with other sectoral laws on the environment is sufficient if adhered to.