

DECLARATION

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CC	Complaints Committee
CEC	County Environmental Committee
EIA	Environment Impact Assessment
ELC	Environment and Land Court
ELR	Environmental and Land Reports
EMCA	Environmental Management and Co-ordination Act
KFS	Kenya Forest Service
KLR	Kenya Law Report
MDGs	Millennium Development Goals
NEC	National Environmental Council
NECC	National Environmental Complaints Committee
NEMA	National Environmental Management Authority
NET	National Environmental Tribunal
SD	Sustainable Development
SDGs	Sustainable Development Goals
SFI	Sustainable Financial Initiative
SoE	State of Environment report
UN	United Nations
UNEP	United Nations Environmental Programme
UNDP	United Nations Development Programme
WCED	World Commission on Environment and Development
WMO	World Meteorological Organization
WSSD	World Summit on Sustainable Development

ABSTRACT

The Environment in Kenya has been in a bad state over the years. As a result of this, EMCA was enacted in 1999 to try and solve the environmental challenges. Later on, the Constitution of Kenya, 2010 directed the establishment of the Environment and Land Courts (ELC) to further deal with these challenges. The ELC was established in 2011 after the enactment of the ELC Act in 2011. With all these improvement in legislation and institutions, one would think that environmental challenges would have been resolved. However, this has not been the case: environmental management has not been achieved.

This research investigated whether the environmental laws in Kenya are sufficient to deter environmental pollution hence enabling environmental management. It did this by studying the laws, the sanctions and their effects to the public. By doing this, the research was trying to gather the reasons as to why environmental management has not been achieved.

The qualitative data collection method was used to gather and analyze secondary data which was obtained from law reports, books, journals, legal papers and cases.

From the outcome of this research, it is evident that environmental management has not been achieved due to a discrepancy in the laws, its implementation and insufficiency of the sanctions. The research recommends a revision of the laws to correct this discrepancy. It also suggests a close monitoring and evaluation of the implementation of these laws. It further suggests serious education to the public on the crucial role of the environment to Kenya's development agenda.

CHAPTER ONE

Introduction

1.1. Background

Environmental management is the basis of environmental law.¹ Environmental management is the protection, conservation and sustainable use of the various components of the environment.²

The environment in Kenya is in a bad state; for example, the forest cover in Kenya occupies about 5.9% of the country.³ This call for more action in this area; better implementation of the laws and more environmental litigation.

Although Kenya has enacted progressive legislation, this has not translated to better environmental management. This is observed by Franceschi “we think we have protected them (our resources) just because we have written about the environment in some laws...”⁴ This illustrates that the environmental laws in Kenya may either not be sufficient for environmental management or there may be a discrepancy in the implementation of these laws.

The Environmental Management and Co-ordination Act (EMCA) was assented to in 1999 and commenced in 2000. Its main aim was to establish an appropriate legal and institutional framework for environmental management.⁵

EMCA established several institutions to enable environmental management. These institutions are: the National Environmental Management Authority⁶ (NEMA) whose

¹ D Tarlock, *‘History of environmental law’* 2.

² Section 2, Environmental Management and Co-ordination Act, Act No. 8 of 1999.

³ Mwenda A; Kibutu T N, “Implications of the new Constitution on environmental management in Kenya” *Law, Environment and Development Journal* (2012) 80.

⁴ <http://www.nation.co.ke/oped/blogs/dot9/franceschi/-/2274464/2622380/-/12fynui/-/index.html> on 28 February 2015.

⁵ The preamble, EMCA (Act No. 8 of 1999).

⁶ Section 7, EMCA (Act No.8 of 1999).

functions are to exercise general supervision and co-ordination of all matters relating to the environment and to implement all policies relating to the environment;⁷ the National Environmental Council⁸ (NEC) whose functions are to formulate policies and set priorities for the protection of the environment and to promote co-operation among other institutions concerned with environmental management⁹; The National Environment tribunal¹⁰(NET) whose functions are to deal with the appeals of NEMA's decisions.¹¹Further, the Constitution of Kenya¹² and the Environment and Land Court Act¹³ established the Environment and Land court (ELC) to deal with environment and land cases.

Prior to the enactment of EMCA, most environmental cases were affected by the issue of lack of *locus standi* (the right to sue); an individual lacked the capacity to institute a public litigation. The Attorney General was the only one with the power to do this.¹⁴ An example of such a case is the historical **Wangari Maathai's case**.¹⁵ In this case, Professor Wangari Maathai sued the Kenya Times Trust Limited for their plan to build a 60 storey building on Uhuru Park. This case was however dismissed because she lacked *locus standi* to institute such a case.

Later, judges adopted a more liberal approach on this issue. In 1989, Khamoni J stated that an applicant only needed to demonstrate that he or she had a "sufficient interest" in the matter before the court; this is in compliance with the procedural requirements of Order 53 of the Civil Procedure Rules, so as to be granted standing.¹⁶

⁷ Section 7 (1) as read with section 9 (1), EMCA (Act No. 8 of 1999).

⁸ Section 4, EMCA (Act No. 8 of 1999).

⁹ Section 4 (1) as read with section 5, EMCA (Act No. 8 of 1999).

¹⁰ Section 125, EMCA (Act No. 8 of 1999).

¹¹ Section 129 (1), EMCA (Act No. 8 of 1999).

¹² Article 162(2), Constitution of Kenya (2010).

¹³ Section 4, Environment and Land Court (Act No. 19 of 2011).

¹⁴ Order VI rule 13, Civil Procedure Rules.

¹⁵ *Maathai v Kenya Times Media Trust Ltd* [1989] KLR.

¹⁶ *Republic v Minister for Information & Broadcasting and Ahmed Jibril, ex parte East African Television Network Limited* [1989] KLR 267.

EMCA further emphasized this approach by making it possible for an individual to institute a suit in the ELC¹⁷ when he or she feels that his or her right to a clean and healthy environment is being or may be violated.¹⁸ The Constitution of Kenya ensures access to justice for all persons¹⁹ and a fair and public hearing before a court or tribunal²⁰. This was interpreted in two cases; one decided in 2001²¹ and the other in 2002²². The courts stated that in cases where a person seeks to prove his or her right to a clean and healthy environment, he or she does not need to demonstrate a right or interest in the land alleged to be invaded.

There has been lack of proper sensitization of the judges and lawyers involved, on environmental management. This has resulted in decisions that ridicule the laws with legal inconsistencies.²³ This is evident in the **Orbit Chemical case** where the court fined a company Kshs. 20,000 for failing to obtain a Kshs. 100,000 license.²⁴ In such circumstances, one would prefer to pay the fine rather than obtaining the license.

As illustrated above, there is a discrepancy either in the environmental laws and sanctions or in their implementation. These challenges directly affect the achievement of environmental management.

1.2. Statement of Problem

The sanctions provided in the environmental laws in Kenya do not sufficiently deter environmental pollution and consequently they are not adequate in achieving environmental management.

¹⁷ Section 2 (2), EMCA (Amendment) Act No. 5 (2015).

¹⁸ Section 3(3) read with section 4, EMCA (Act No. 8 of 1999).

¹⁹ Article 48, Constitution of Kenya (2010).

²⁰ Article 50 (1), Constitution of Kenya (2010).

²¹ R M Nzioka and others v Tiomin Kenya Limited, Mombasa High Court Civil Suit No. 97 of 2001.

²² A Ruturi and others v Minister for Finance and Another [2002] 1 KLR 54.

²³ D Kamweti; D Osiro; D A Mwiturubani, 'Nature and extent of environmental crime in Kenya' (2009) Institute of Security Studies (ISS) 52.

²⁴ D Kamweti; D Osiro; D A Mwiturubani, 'Nature and extent of environmental crime in Kenya' (2009) Institute of Security Studies (ISS) 69.

1.3. Statement of objectives

1. To assess the sanctions in environmental law.
2. To assess the implementation of these sanctions by the courts.
3. To assess the extent to which these sanctions sufficiently deter environmental pollution.

1.4. Research Questions

1. What are the sanctions in environmental law?
2. How are these sanctions implemented by the courts?
3. To what extent are these sanctions sufficient in deterring environmental pollution?

1.5. Justification of the study

As explained in the background, the environment in Kenya is in a bad state. This is evident from the forest cover which is about 5.9%²⁵ instead of the required, at least 10%²⁶ of the land area.

According to a research conducted in Kenya in 2009,²⁷ the number of environmental offences is rising. It is necessary to assess this rise in order to find out the reasons for the rise. This is in the effort of dealing with environmental offences, in order to ensure environmental management which is paramount to the country's achievement of vision 2030.²⁸

Over the years there have been the enactment of environmental laws and the establishment of institutions to ensure environmental management. However, environmental management has not been achieved. There is, therefore, need to study the

²⁵Mwenda A and Kibutu T N, "Implications of the new Constitution on environmental management in Kenya" Law, Environment and Development Journal (2012) 80.

²⁶ Article 69 (1) (b), Constitution of Kenya (2010).

²⁷D Kamweti; D Osiro; D A Mwiturubani, '*Nature and extent of environmental crime in Kenya*' (2009) Institute of Security Studies (ISS).

²⁸D Kamweti; D Osiro; D A Mwiturubani, '*Nature and extent of environmental crime in Kenya*' (2009) Institute of Security Studies (ISS) 69.

laws and sanctions available and their implementation in order to find out what is hindering environmental management.

1.6. Literature Review

In assessing the development of environmental laws in Kenya, Dr Migai²⁹ looks at the Kenyan position before and after the enactment of the EMCA. The previous laws provided lenient sanctions for environmental offences. These sanctions were insufficient in deterring polluters and dissuading others. As a result of that, EMCA revised these sanctions to make them more serious and effective.³⁰

Dr Migai's article was, however, prepared before the enactment of the new Constitution of Kenya and the establishment of the ELC. This research looks at these revised sanctions considering the provisions in the new Constitution and the presence of the ELC. It also looks at the available remedies and assess their impact on deterring polluters and enhancing environmental management.

In assessing the effectiveness of criminal liability as a sanction, Friedman³¹ looks at its implementation in the United States (US). According to him and a research conducted there, criminal sanctions have been the most effective means of deterring deliberate non-compliance. There was also a decrease in the number of environmental violation cases between 1997 and 1998; the numbers decreased from 278 to 266.³² Criminal enforcement is, however, said to be a lengthy process and thus discouraging many people.³³

The Friedman article suggests that criminal liability improves compliance with laws. However, the same result may not be achieved in Kenya as the hypothesis is based on a

²⁹Dr J M Migai Akech, 'Land, the environment and the courts in Kenya' (2006) *the environment and the land reports* 19.

³⁰Dr J M Migai Akech, 'Land, the environment and the courts in Kenya' (2006) *the environment and the land reports* 19.

³¹F B Friedman, 'Practical Guide to Environmental Management' in Friedman 10th edition, *Environment Law Institute*, 2006, 20.

³²Friedman, 'Practical Guide to Environmental Management', 46 (footnote No.43).

³³Friedman, 'Practical Guide to Environmental Management', 22.

research conducted in the US. This research looks at the criminal liability sanctions in the Kenyan environmental laws and their enforcement. It further looks at their impacts on environmental management.

In a research on the state of the environment in Kenya, the offences committed against the environment and the legal frameworks in the country are listed,³⁴ it is evident that there is a rise in environmental offences. The research recommends enacting legislation and policies to deal with this rise.³⁵

This research was, however, conducted before the enactment of EMCA, the Constitution of Kenya (2010) and the establishment of the ELC. The research assesses the new legislation in this field and the establishment of ELC to find out whether it has reduced environmental offences.

In a commentary on the effectiveness of the establishment of NET it is evident that it is a necessary tool for environmental management.³⁶ Prior to its establishment, environmental matters were heard by the High Court, where the judges had no expertise in environmental matters. The article recommends the professional training of the NET judges in order to ensure the efficient functioning of NET.³⁷

The commentary gives an overview of how environmental matters were handled before and after the new Constitution. However, the commentary was published before the establishment of the ELC. The research, therefore, looks at the impacts of the establishment of this court and how it relates with NET. It also assesses the functions of the court in implementing the environmental laws sanctions.

³⁴D Kamweti; D Osiro; D A Mwiturubani, *'Nature and extent of environmental crime in Kenya'* (2009) Institute of Security Studies (ISS).

³⁵ D Kamweti; D Osiro; D A Mwiturubani, *'Nature and extent of environmental crime in Kenya'* (2009) Institute of Security Studies (ISS) 69.

³⁶ A Mehta, *'Commentary on the National Environmental Tribunal established in Kenya'* (2011).

³⁷ A Mehta's, *'Commentary on the National Environmental Tribunal established in Kenya'* (2011) 7.

CHAPTER TWO

Theoretical Framework and Methodology

2.1. Theoretical Framework

The study is based on the principle of sustainable development (SD) and the polluter pays principle. SD as defined by the Brundtland Report is the development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs.³⁸

Kenya shares the same definition but takes it a notch further; “SD is the development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems.”³⁹ The Constitution of Kenya also recognizes SD; “... the right to have the environment protected for the benefit of present and future generations...”⁴⁰ It also recognizes SD as a national value and a principle of governance.⁴¹

SD goes hand in hand with the principles of sustainable use and the polluter pays principle. The principle of sustainable use means “the present use of the environment or natural resources which does not compromise the ability to use the same by the future generations or degrade the carrying capacity of supporting ecosystems.”⁴²

On the other hand, the polluter pays principle means “the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the

³⁸ Report of the World Commission on Environment and Development, UN document A/42/427, Oxford University Press (1987).

³⁹ Section 2, EMCA (Act No. 8 of 1999).

⁴⁰ Article 42 (a), Constitution of Kenya (2010).

⁴¹ Article 10 (2) (d). Constitution of Kenya (2010).

⁴² Section 2, EMCA (Act No. 8 of 1999).

foregoing, is to be paid or borne by the person convicted of pollution under EMCA or any other applicable law.”⁴³

A person seeking redress for any violation relating to an environmental matter is meant to seek such a redress from the High Court.⁴⁴ In exercising this jurisdiction, the High Court should be guided by the principle of SD and the other principles of SD which include: sustainable use and the polluter pays principle among others.⁴⁵

Most principles of the Stockholm Declaration⁴⁶ are based on this principle. For example the second principle states,

“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”⁴⁷

Although the declaration does not mention ‘SD’, it alludes to it when it mentions ‘for the benefit of the present and future generations’.

The Rio Declaration⁴⁸ is also based on this principle; the third principle states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.⁴⁹ The fourth principle goes ahead to mention SD and how to achieve it. According to this principle, environmental protection should constitute an integral part of development and it (development) cannot be considered in isolation of it (environmental protection).⁵⁰

⁴³ Section 2, EMCA (Act No. 8 of 1999).

⁴⁴ Section 3, EMCA (Act No. 8 of 1999).

⁴⁵ Section 5 (d) and (e), EMCA (Act No. 8 of 1999).

⁴⁶ The Declaration of the United Nations Conference on the Human Environment (1972).

⁴⁷ Principle 2, Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration of 1972).

⁴⁸ The Declaration of the United Nations Conference on Environment and Development (1992).

⁴⁹ Principle 3, Rio Declaration on Environment and Development, in the Report on United Nations Conference on Environment and Development (1992).

⁵⁰ Principle 4, Rio Declaration on Environment and Development, in the Report on United Nations Conference on Environment and Development (1992).

There are three pillars of SD; economic development, social development and environmental protection.⁵¹ That is; for SD to be achieved, the three pillars should be considered and emphasized.

The World Commission on Environment and Development (WCED) focused on the nexus between environmental factors and economic growth. According to the WCED, the two are interrelated and cannot be viewed in isolation.⁵² This, however, is not the reality as many countries, especially the developing countries, are focused on economic development while disregarding environmental protection. This was evident during the UN conference on the human environment⁵³ where there was a divergence of interests between the developing and the developed countries; the developing countries advocated for development in their countries while the developed countries advocated for a global environmental ethic.⁵⁴ A compromise had to be agreed upon whereby; both environmental protection and economic development would be catered for. This compromise is known as ‘sustainable development’.⁵⁵

Kenya has recognized the need for the government to match economic development goals with environmental protection and has enshrined this in the Kenya’s vision 2030.⁵⁶

The Millennium Development Goals (MDGs) were adopted by the UN secretariat for 15 years (2000 to 2015).⁵⁷ The main aim of the MDGs was to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty.”⁵⁸ The MDGs focused on development rather than a balance between development and environmental

⁵¹Rajamani L, ‘From Stockholm to Johannesburg: the anatomy of dissonance in the international environmental dialogue’ 29.

⁵²United Nation, Report of the World Commission on Environment and Development (1987) at Brundtland.

⁵³The UN conference on the human environment was held at Stockholm in 1972. This is the conference that resulted in the Stockholm Declaration.

⁵⁴Rajamani L, ‘From Stockholm to Johannesburg: the anatomy of dissonance in the international environmental dialogue’ 24.

⁵⁵Rajamani L, ‘From Stockholm to Johannesburg: the anatomy of dissonance in the international environmental dialogue’ 24.

⁵⁶Kenya State of the Environment and Outlook (2010) 20.

⁵⁷Rakhyun E k and Bosselmann, ‘Operationalizing sustainable development: Ecological integrity as the grundnorm of international law’ (2015) 1.

⁵⁸Foreword, ‘The Millennium Development Goals Report’ United Nations New York (2015) 3.

protection; out of the eight MDGs, only one, MDG 7; Ensure environmental sustainability, focused on environmental protection.⁵⁹

The MDGs achieved their main aim⁶⁰ but a new agenda is emerging to transform the world to better meet human needs and transform the economy while protecting the environment, ensuring peace and realizing human rights⁶¹. SD enables the achievement of this agenda⁶² and therefore, there was a need to come up with other goals that would achieve this purpose (SD).

The Sustainable Development Goals (SDGs) were adopted as a result of the new agenda.⁶³ The main aim of the SDGs is to end poverty, fight inequality and injustice, and tackle climate change by 2030.⁶⁴ The SDGs provides a balance between development and environmental protection; each goal has both a developmental and environmental agenda thus ensuring the achievement of SD.

Critics of SD claim that it is a paradoxical concept as it aims at development and environmental conservation. According to them, genuine sustainability and genuine development are irreconcilable.⁶⁵ They suggest that there should be a single priority goal which ought to be top of the hierarchy of other goals. SD does not qualify for this position as it contains two goals which are contradictory making its achievement impractical.⁶⁶ The critics further propose that 'ecological integrity' be the grundnorm or fundamental principle. Ecological integrity or

⁵⁹Rakhyun E k and Bosselmann, 'Operationalizing sustainable development: Ecological integrity as the grundnorm of international law' (2015) 1.

⁶⁰Overview, 'The Millennium Development Goals Report' United Nations New York (2015) 4.

⁶¹The Millennium Development Goals Report' United Nations New York (2015) 9.

⁶²The Millennium Development Goals Report' United Nations New York (2015) 9.

⁶³During the United Nations Sustainable Development Summit on the 25 September 2015, the 2030 Agenda for Sustainable Development, which includes the 17 SDGs, was adopted. The SDGs will officially come into effect on 1 January 2016 upon the expiry of the MDGs. The SDGs will run till 2030.

⁶⁴<http://www.undp.org/content/undp/en/home/mdgoverview/post-2015-development-agenda.html> on 26 November 2015.

⁶⁵Rakhyun E k and Bosselmann, 'Operationalizing sustainable development: Ecological integrity as the grundnorm of international law' (2015) 4.

⁶⁶Rakhyun E k and Bosselmann, 'Operationalizing sustainable development: Ecological integrity as the grundnorm of international law' (2015) 8.

ecological sustainability is “the earth’s ability to support life systems”.⁶⁷ Ecological integrity is basically the safeguarding and protecting the earth’s ability to support life.

Ecological integrity seems like a great principle but in the Kenyan context, as like other developing countries, it may not be practical at the moment. Developing countries’ main aim is development. SD is a better option in such circumstances. This is due to the possibility of incorporating environmental conservation in the development agenda.

This research is based on the SD and the polluter pay principles as they provide a test for the environmental laws and sanctions in Kenya. Through these principles, the sufficiency of these laws and sanctions are examined to see whether the achievement of environmental management possible through them. The polluter pays principle, in particular, provide a test as to whether the available laws and sanctions are able to restore the environment and compensate the victims after pollution.

The achievement of SD ought to enable environmental management as SD encourages sustainable use of the environment. This should deter environment pollution and where there is such pollution, it should encourage owning up and making good the wrong (the polluter pays principle). However, this has not been the case in Kenya. This raises the concern that the real problem of environmental management may not be the insufficiency of the laws but rather their implementation.

⁶⁷Rakhyun E k and Bosselmann, ‘Operationalizing sustainable development: Ecological integrity as the grundnorm of international law’ (2015) 8-14.

2.2. Methodology

The research was based on the qualitative data collection method. The qualitative method was used to gather and analyze secondary data as that was the relevant data in this research.

2.2.1. Data Collection

Secondary data was obtained from the cases contained in the Kenya Law Reports (KLR) and Environment and Land Reports (ELR). These cases proved useful in ascertaining the implementation of the environmental laws by the Kenyan courts. Also, the different cases provided a study of the different sanctions for environmental violations.

Data was also obtained from literature written on the same topic. This entailed the use of journal articles, books, law reports, blog articles newspaper articles and legal papers. These provided useful ideas and solutions on the different aspects of this research.

2.2.2. Data Analysis

The secondary data obtained, from the above methods, was extensively reviewed and analyzed. This was to provide answers to the research questions and as a consequence, the achievement of the research objectives.

CHAPTER THREE

Legal and Institutional Framework for Environmental Management and the Sanctions available

3.1. Legal Framework for Environmental Management

Kenya has legislations which aim at the conservation and protection of the environment. These legislations are:

3.1.1. Constitution of Kenya

Kenya highly respects and treasures the environment. This is evident in the preamble of the Constitution of Kenya; "... Respectful of the environment, which is our heritage and determined to sustain it for the benefit of future generations..."⁶⁸ The Constitution also recognizes SD as a national value and a principle for governance.⁶⁹

It also recognizes the right to a clean and a healthy environment for both the present and future generations and prescribes that its protection shall be through legislative measures among other methods.⁷⁰ This has made it easier for environmental litigations as one does not have to prove their interest or right in the land polluted.⁷¹

The state is the steward of the environment. It is, therefore, tasked with the responsibility to ensure sustainable utilization, exploitation, management and conservation of the environment and ensuring equitable sharing of the accruing benefits.⁷² It (the state) is also supposed to work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya and to eliminate processes and activities that are likely to endanger the environment.⁷³

⁶⁸The Preamble, Constitution of Kenya (2010).

⁶⁹ Article 10 (2) (d), Constitution of Kenya (2010).

⁷⁰ Article 42 (a), Constitution of Kenya (2010).

⁷¹ A Ruturi and others v Minister of finance and another [2002] 1 KLR 54.

⁷² Article 69 (1) (a), Constitution of Kenya (2010).

⁷³ Article 69 (1) (b) as read with Article 69 (1) (g), Constitution of Kenya (2010).

The constitution also give each individual a duty in environmental protection; every person has the task to cooperate with the state organs and other people to protect and conserve the environment and ensure SD.⁷⁴ The state is supposed to encourage this public participation.⁷⁵

When a person alleges that their right to clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, he or she may apply to the Environment and Land Court for redress or any other legal remedies.⁷⁶ The ELC has the expertise to listen and resolve environmental litigation better than the previous court: the High court.

In the above circumstances, the Court should either make any order or give any direction to prevent, stop any act or omission that harms the environment.⁷⁷ It may also make orders to provide compensation for the victim(s) of the violation.⁷⁸ This is in line with the polluter pays principle which advocates for the compensation of the victims and the restoration of the environment by the offender or polluter.

The Constitution also provided for the establishment of the Environment and Land Court to hear and determine environmental and land disputes. This court has the same status as the High Court.⁷⁹ This court was established in 2011. This is a step towards ensuring that the right of fair hearing is achievable.⁸⁰

The Constitution, however, does not outline environmental sanctions. The effect of having environmental sanctions in the Constitution would have given such sanctions more weight and, therefore, better implementation. However, the inclusion of such provisions would make the Constitution bulky and this should be avoided in all circumstances as the Constitution should be brief and clear for all to understand.

⁷⁴ Article 69 (2), Constitution of Kenya (2010).

⁷⁵ Article 69 (1) (d), Constitution of Kenya (2010).

⁷⁶ Article 70 (1), Constitution of Kenya (2010) as read with Section 3, EMCA (Act No. 8 of 1999).

⁷⁷ Article 70 (2) a), Constitution of Kenya (2010).

⁷⁸ Article 70 (2) (c), Constitution of Kenya (2010).

⁷⁹ Article 162 (2) (b), Constitution of Kenya (2010).

⁸⁰ Article 50, Constitution of Kenya (2010).

3.1.2. Environmental Management and Co-ordination Act and Environmental Management and Co-ordination (Amendment) Act

This Act was assented in 1999 and it commenced in 2000. Its main aim was establishing an appropriate legal and institutional framework for environmental management.⁸¹ There is an amendment⁸² to this Act which changes some words, for example; from the word minister to cabinet secretary and from the word High Court to the Environment and Land Court (ELC).⁸³

EMCA and EMCA (Amendment) Act provides the following sanctions:

A person who refuses to comply with the requirements of the National Environmental Complaints Committee (NECC); formerly known as Complaints Committee (CC)⁸⁴, or hinders its operation shall be liable to a fine not exceeding Kshs. 50,000.⁸⁵

The same liability applies to anyone found guilty of discharging dangerous materials, substances, oil or oil mixtures to the land, water, air or aquatic environment.⁸⁶ The offender is further expected to pay the full cost of cleaning up the polluted environment and removing the effects of the pollution. They are also expected to compensate the third parties.⁸⁷

Here the law alludes to the polluter pays principle. However, the fine to be paid may not be sufficient to deter such pollution. This is because the oil business is a very lucrative one, therefore, an individual or company which is involved in such a business has a lot of money and paying a fine of Kshs. 50,000 may have no impact on them.

A person guilty of water pollution shall be liable to imprisonment for a period not exceeding 2years or to a fine not exceeding Kshs. 1 million or both the imprisonment and the fine.⁸⁸ In

⁸¹The preamble, EMCA (Act No. 8 of 1999).

⁸² The Amendment was assented to on 27 May 2015 and it commenced on 17 June 2015.

⁸³ Section 2 (2), EMCA (Amendment) Act No. 5 (2015).

⁸⁴ Section 22, EMCA (Amendment) Act No. 5 of 2015.

⁸⁵ Section 33 (3) as read with section 33 (2), EMCA (Act No. 8 of 1999)

⁸⁶ Section 142 (1), EMCA (Act No. 8 of 1999)

⁸⁷ Section 142 (2) and (3), EMCA (Act No. 8 of 1999)

⁸⁸ Section 72 (1), EMCA (Act No. 8 of 1999)

addition, the person found guilty is required to pay for the cost of removing the substances that caused the pollution and compensate third parties who were affected by the pollution.⁸⁹

The same applies to a person guilty of withholding, falsifying or tampering with the information relating to trafficking in hazardous or other.⁹⁰ The person is further expected to remove the waste from Kenya and to safely dispose it.⁹¹

The same liability is incurred by a person found guilty of any offence relating to pesticides or other toxic.⁹² Furthermore, the pesticide or the toxic substances shall be seized by NEMA.⁹³

A person who is guilty of the offences of failing to manage, the importing, mislabeling hazardous wastes, chemical and radioactive substances is liable of the same liability.⁹⁴

A person guilty for emissions that cause air pollution is liable to imprisonment for a period not exceeding 2years or to a fine not exceeding Kshs. 500,000 or both the imprisonment and the fine.⁹⁵ The person is also expected to pay for the cost of removing the pollution and compensate the affected third parties.⁹⁶

The same applies to any person found guilty of failing to comply with the requirements of an environmental inspector, hinders their operation, deny them access to records and documents, misleads or impersonates them.⁹⁷

The same liability is incurred by a person found guilty of using the environment or the natural resources in a wasteful and destructive manner contrary to the measure and standards prescribed in EMCA.⁹⁸

⁸⁹ Section 72 (2), EMCA (Act No. 8 of 1999)

⁹⁰ Section 91 (6), EMCA (Act No. 8 of 1999)

⁹¹ Section 91 (7), EMCA (Act No. 8 of 1999)

⁹² Section 98 (3), EMCA (Act No. 8 of 1999)

⁹³ Section 99 (1), EMCA (Act No. 8 of 1999)

⁹⁴ Section 141, EMCA (Act No. 8 of 1999)

⁹⁵ Section 78 (2), EMCA (Act No. 8 of 1999)

⁹⁶ Section 78 (3), EMCA (Act No. 8 of 1999)

⁹⁷ Section 137, EMCA (Act No. 8 of 1999)

⁹⁸ Section 140, EMCA (Act No.8 of 1999)

A person guilty of discharging hazardous substance, chemical, oil or a mixture containing oil into water or the environment is liable to any sentence that the court may seem fit, the cost of restoration and the cost for the compensation of third parties.⁹⁹

A person found guilty of any offences relating to radioactive materials is liable to imprisonment for a period not exceeding 2years or to a fine not exceeding Kshs. 550,000 or to both the fine and the imprisonment.¹⁰⁰ Furthermore, the radioactive material may be seized, impounded and destroyed or disposed by NEMA.¹⁰¹

This sanction is insufficient owing to the seriousness and the long term effects of such pollution. This is in relation to the effects still experienced in Japan over 70 years after radioactive bombs were released there during the World War II. Therefore, the fine and imprisonment need to be more severe to deter such pollution.

A person found guilty of failing to comply with an environmental restoration order, an environmental easement or an environmental conservation order is liable to a fine not exceeding Kshs. 500,000 or to imprisonment for a period not exceeding 1year or to both the imprisonment and the fine.¹⁰²

Any person is guilty of failing to submit a project report and an EIA report is liable to a fine not exceeding Kshs. 2 million or to imprisonment for a period not exceeding 2years or to both the imprisonment and the fine.¹⁰³

A person who fails to keep the records required by EMCA, fraudulently alters them or fraudulently makes false statements in them is guilty of an offence and is liable to a fine not exceeding Kshs. 500,000 or to imprisonment for a period not exceeding one and a half years or to both the imprisonment and the fine.¹⁰⁴

⁹⁹ Section 93, EMCA (Act NO. 8 of 1999)

¹⁰⁰ Section 106 (1), EMCA (Act No. 8 of 1999)

¹⁰¹ Section 106 (2), EMCA (Act No. 8 of 1999)

¹⁰² Section 143, EMCA (Act No. 8 of 1999)

¹⁰³ Section 138, EMCA (Act No. 8 of 1999)

¹⁰⁴ Section 139, EMCA (Act No. 8 of 1999)

Any person guilty of any offence whose liability is not provided in the Act¹⁰⁵ is liable to imprisonment for a period not exceeding one and a half years or to a fine not exceeding Kshs. 350,000 or both to the fine and the imprisonment.¹⁰⁶

3.1.3. The Environment and Land Court Act

This Act was assented to on 27 August 2011 and commenced on 30 August 2011 to give effect to the requirement by the Constitution¹⁰⁷ as it establishes the ELC. This court is a superior court of record with the same status as the High Court.¹⁰⁸

The ELC is guided by the principles of SD which include the principle of public participation and the polluter pays principle.¹⁰⁹ The court disregards technicalities in its procedure¹¹⁰ in order to ensure justice for all. The court may adopt the alternative dispute resolution (ADR) mechanisms in accordance with the Constitution.¹¹¹ A party of the proceeding may either act in person or be represented by a duly authorized person.¹¹²

The disregard of the technicalities, the adoption of ADR and the possibility of self representation makes access to justice for environmental pollution victims easier.

The ELC Act outlines the following sanction: Any person who refuses or fails to obey an order or direction of the ELC commits an offence and is liable to a fine not exceeding Kshs. 20million or to imprisonment for a term not exceeding 2years or to both the fine and the imprisonment.¹¹³

This sanction is very severe making it possible to deter such actions. However, there has been no evident enforcement of this sanction as there is no case available in the Kenya law reports or the Environment and land reports regarding this.

¹⁰⁵ Section 47 (4), 42 (5), 64 (2), 65 (5), 102 (4) and 127 (2) (e), EMCA (Act No. 8 of 1999)

¹⁰⁶ Section 144, EMCA (Act No. 8 of 1999)

¹⁰⁷ Article 162 (2) (b), Constitution of Kenya (2010).

¹⁰⁸ Section 4 (2), ELC Act No.19 of 2011 as read with Article 162 (2) (b), Constitution of Kenya (2010).

¹⁰⁹ Section 18 (a) (i), (v), ELC Act No.19 of 2011.

¹¹⁰ Section 19 (1), ELC Act No. 19 of 2011.

¹¹¹ Section 20 (1), ELC Act No. 19 of 2011 as read with Article 159 (2) (c), Constitution of Kenya (2010).

¹¹² Section 22, ELC Act No. 19 of 2011.

¹¹³ Section 29, ELC (Act No. 19 of 2011)

3.2. Institutional Framework for Environmental Management

There are various institutions in Kenya that are tasked with the responsibility of environmental management. These institutions are:

3.2.1. The Ministry of Environment and Natural Resources

The ministry has the mandate to protect, conserve and manage the environment and natural resources for socio-economic development.¹¹⁴

All the institutions of environmental management fall in this ministry. These institutions are discussed below.

3.2.2. National Environmental Management Authority (NEMA)

NEMA was established by EMCA¹¹⁵ with the functions of exercising general supervision and coordination of all matters relating to the environment and the implementation all policies relating to the environment.¹¹⁶

NEMA was formed on 1 July 2002 with the merger of 3 departments; the National Environment Secretariat (NES), the Permanent Presidential Commission on Soil Conservation and Afforestation (PPCSCA) and the Department of Resource Surveys and Remote Sensing (DRSRS).¹¹⁷

NEMA is tasked with the responsibility of preparing the state of environment (SoE) report, which should be prepared annually and presented to the National Assembly by the cabinet secretary within 21 days after its preparation.¹¹⁸ NEMA is also supposed to advise the government on legislative and other measures for environmental management¹¹⁹. It is also

¹¹⁴<http://www.environment.go.ke> on 29 November 2015.

¹¹⁵Section 7, EMCA (Act No.8 of 1999).

¹¹⁶Section 7 (1) and section 9 (1), EMCA (Act No. 8 of 1999) as read with section 2 (2) of EMCA (Amendment) Act No. 5 of 2015.

¹¹⁷<http://www.nema.go.ke> on 29 November 2015.

¹¹⁸Section 9 (2) (p) as read with section 9 (3), EMCA (Act No. 8 of 1999).

¹¹⁹Section 9 (2) (g), EMCA (Act No.8 of 1999).

supposed to advise the government on regional and international conventions, treaties and agreements to which Kenya is a party to and follow up on their implementation.¹²⁰

3.2.3. The Environment and Land Court

The ELC was established as an implementation of the Constitution¹²¹ and the ELC Act.¹²² The main aim of this court was to hear and determine disputes relating to the environment and the use and occupation of and the title to land.¹²³ This court is a superior court of record with the same status as the High Court.¹²⁴

The ELC have the original and appellate jurisdiction to hear and determine environment and land disputes.¹²⁵ It hears appeals from the NET.¹²⁶ Its decisions are final; one cannot appeal to any higher court.¹²⁷

3.2.4. Other institutions

(a) National Environment Tribunal (NET)

NET¹²⁸ has the functions to deal with the appeals of the decisions made by NEMA.¹²⁹

Appeals of the decisions made by NET shall be made to the ELC¹³⁰. However, aggrieved persons petition the ELC directly without going through NET. This has made NET dysfunctional.

¹²⁰ Section 9 (2) (g), EMCA (Act No. 8 of 1999).

¹²¹ Article 162 (2) (b), Constitution of Kenya (2010).

¹²² Article 4, ELC Act No. 19 (2011).

¹²³ The Preamble, Environment and Land Court Act No. 19 of 2011.

¹²⁴ Section 4 (2), ELC Act No.19 of 2011 as read with Article 162 (2) (b), Constitution of Kenya (2010).

¹²⁵ Section 13 (1), ELC Act No. 19 of 2011.

¹²⁶ Section 130 (1), EMCA (Act No. 8 of 1999).

¹²⁷ Section 130 (5) EMCA (Act No. 8 of 1999) as read with section 2, EMCA (Amendment) Act No. 5 of 2015.

¹²⁸ Section 125, EMCA (Act No. 8 of 1999).

¹²⁹ Section 129 (1), EMCA (Act No. 8 of 1999).

¹³⁰ Section 130, EMCA (Act No.8 of 1999) as read with section 2, EMCA (Amendment) Act No. 5 of 2015.

(b) National Environmental Council (NEC)

NEC¹³¹ has the functions to formulate policies and set priorities for the protection of the environment and to promote co-operation among other institutions concern in environmental management.¹³²

(c) The National Environmental Complaints Committee (NECC)

This is the institution that investigates all the environmental complaints or allegations concerning any person or against NEMA. This institution also prepares reports concerning these allegations and submits them to the NEC¹³³

Prior to the amendment of EMCA in 2015, the department was known as the Complaints Committee (CC).¹³⁴

(d) The County Environmental Committee (CEC)

This institution is responsible in the management of the environment within the county and the developments of the county's strategic environmental plan every 5years.¹³⁵

There has been no visible step or outcome from these CFC of any of the 47 counties in the country.

3.3. Conclusion

This chapter provides an overview of the legal and institutional framework of environmental law. It also provides the sanctions available. It is evident that the framework is remarkable and the results ought to be the achievement of environmental management. However, this is not the case; there seems to be a disconnect somewhere: Is the disconnect in the implementation of these laws?

¹³¹Section 4, EMCA (Act No. 8 of 1999).

¹³²Section 4 (1) as read with section 5, EMCA (Act No. 8 of 1999).

¹³³ Section 32, EMCA (Act No. 8 of 1999).

¹³⁴ Section 21, EMCA (Amendment) Act No. 5 of 2015.

¹³⁵ Section 30, EMCA (Act No. 8 of 1999) as read with section 19, EMCA (Amendment) Act No. 5 of 2015.

As explained above, some of the available sanctions are insufficient. The next chapter looks at the implementation of the laws by the institutions involved. This is to investigate whether the disconnect is in the implementation of the laws.

It is also evident that the Environment and land reports do not provide evidence, through its reporting, of the enforcement of these sanctions. This makes it difficult to assess the implementation of both the laws and sanctions.

CHAPTER FOUR

The Implementation of the Environmental Laws

4.1. Right to a Clean and Healthy Environment

The right to a clean and healthy environment is a right guaranteed by the Constitution¹³⁶ and EMCA¹³⁷. EMCA also makes it everyone's responsibility to cooperate with the state organs in the protection and conservation of the environment.¹³⁸

In *Mwaniki & 2 others v Gicheha & 3 others*¹³⁹ the plaintiffs filed a suit seeking a permanent injunction against the defendants who were constructing a slaughter house in their neighborhood in Limuru. The plaintiffs claimed that this construction interfered with their right to a clean and healthy environment.

The court granted an injunction after it established that the plaintiffs had a right to sue the defendants because of the interference with their right to a clean and healthy environment by the construction of the slaughter house. This was granted despite the plaintiffs not being the land owners of the land in question as this right had been guaranteed by the Constitution¹⁴⁰ and EMCA¹⁴¹. The plaintiffs were granted their prayer.

This case makes it clear that the courts are adhering to the provisions of EMCA¹⁴² and the Constitution¹⁴³ that advocate for the right to a clean and healthy environment to any aggrieved person. This is a departure from the previous stand where such suits could only be allowed where the plaintiff were the land owners.

¹³⁶ Article 42, Constitution of Kenya (2010).

¹³⁷ Section 3 (1), EMCA (Act No. 8 of 1999) as read with section 3 (a), EMCA (Amendment) Act No. 5 of 2015.

¹³⁸ Section 2A, EMCA(Amendment) Act No. 5 of 2015.

¹³⁹ [2006] eKLR (E&L) 1.

¹⁴⁰ Article 70 (1), Constitution of Kenya (2010).

¹⁴¹ Section 3 (3), EMCA (Act No. 8 of 1999).

¹⁴² Section 3 (1), EMCA (Act No. 8 of 1999) as read with section 3 (a), EMCA (Amendment) Act No. 5 of 2015.

¹⁴³ Article 42, Constitution of Kenya (2010).

4.2. *Locus Standi*

Prior to the enactment of EMCA, many environmental cases failed because of the lack of *locus standi*. This is evident from the famous **Wangari Maathai case**.¹⁴⁴ This changed with the enactment of EMCA¹⁴⁵ which enabled individuals to approach the court for redress for environmental issues, which is a public litigation, which was earlier preserved for the AG.

In **Joseph Leboo & others v Director of Kenya Forests services**¹⁴⁶ the applicants petitioned for an injunction to bar the respondent from permitting the harvesting of trees from certain blocks of the Lembus forest. The issue before the court was whether the applicants had *locus standi* to petition the court.

The court granted an injunction as it had established *locus standi* of the applicants. This is because of the provisions in the Constitution enabling a person to petition the court when he or she feels that their right to a clean and healthy environment has been, is being or is likely to be infringed.¹⁴⁷

4.3. Environment Impact Assessment (EIA)

EMCA requires that before financing, commencing or executing a project, the proponent of the project should submit a project report to NEMA and undertake EIA. The proponent should prepare an EIA study report and submit it to NEMA. NEMA shall use this report to approve or disprove the project.¹⁴⁸

In **Phenom limited v NEMA & another**¹⁴⁹ the appellant appealed against the respondent for their involvement and disapproval of its proposed housing development where the appellant wished to construct 21 housing units in an 8-storey building in the Riverside gardens, Riverside drive, Nairobi.

¹⁴⁴Maathi v Kenya Times Media Trust Ltd [1989] KLR.

¹⁴⁵Section 3 (3), EMCA (Act No. 8 of 1999) as read with section 3 (c) (i), (ii), EMCA (Amendment) Act No. 5 of 2015.

¹⁴⁶[2013] eKLR 273.

¹⁴⁷Article 70 (1) as read with Article 42, Constitution of Kenya (2010).

¹⁴⁸Section 58, EMCA (Act No. 8 of 1999).

¹⁴⁹[2005] eKLR.

The respondent claimed that the project would cause adverse impacts on the environment as the multi-storey dwelling and office blocks were to be built beside a river. However, the appellant claimed that no aspect of the project would cause such impact. The appellant also claimed that the Nairobi city council had the mandate to approve such development as it had earlier approved its 4-storey above the ground and the 3-storey below.

It was held that, the respondent (NEMA) has the authority to intervene in such matters because of the right convene to it be section 58 of EMCA.¹⁵⁰ Therefore, the respondent has the mandate to approve projects in order to facilitate sustainable development and environmental management.

In addition, the Environmental (Impact Assessment and Audit) Regulations¹⁵¹ provide that no licensing authority shall issue any licence, permit or approval to the issuance of an EIA. In case such licences are issued, these licences shall be issued in nullity.

The appellant was then required to conform to the requirements of the respondent. After this, the respondent would then issue an EIA licence to the appellant.

4.4. Sustainable Development

According to SD, development should be in a way that both the current and the future generations are able to meet their needs. However, the current generation does not consider the needs of the future generations. This may be attributed to greed which makes them want to acquire as much as they can for themselves without considering others needs.

The unsustainability of the development patterns and the unsustainable use of natural resources are evident from the rising poverty levels in the country. If the natural resources could have been

¹⁵⁰EMCA requires project proponents to conduct EIA despite having other licence that the appellant may have received

¹⁵¹Regulation 4, Environmental (Impact Assessment and Audit) of 2003.

utilized sustainably and the development patterns sustainable, then the poverty levels in the country could have dropped.¹⁵²

The fact that Kenya is a developing country means it falls in the group of countries that is focused more on development rather than a balance between development and environmental management.¹⁵³

The law provided in the Constitution¹⁵⁴ and EMCA¹⁵⁵ is proving to be hard to implement and unless something is done, it will soon be impossible to implement.

4.5. Conclusion

As explained above, most of the previous challenges affecting environmental management have been solved by the enactment and implementation of EMCA and the Constitution of Kenya, 2010.

The research found it necessary to focus on the implementation of the laws in order to assess whether the implementation or lack of it has contributed to not achieving environmental management. As discussed above, the courts have done a good job in its implementation. However, there are no cases to prove the awarding of the available sanctions or their implementation.

It is also evident that there are still challenges in this sector; the major one being the disregard of the environment by many people. Many people are focused more on development rather than the environment. A lot needs to be done to sensitize people about the importance of environmental management.

¹⁵² D Otieno, 'Towards developing an education for sustainable development strategy for Kenya: Experiences and perspectives' Kenya Organization for environment education 2.

¹⁵³ Rajamani L, 'From Stockholm to Johannesburg: the anatomy of dissonance in the international environmental dialogue' 24.

¹⁵⁴ Article 42 (a); Article 10 (2) (d), Constitution of Kenya (2010).

¹⁵⁵ Section 5, EMCA (Act No. 8 of 1999).

CHAPTER FIVE

The Sufficiency of the Environmental Sanctions

5.1. The Sufficiency of the Sanctions

There have been sufficient laws enacted to ensure environmental management. The laws contain sanctions that should encourage environmental management. Most of the available sanctions ensure the achievement of environmental management. Others, however, have failed to do this. These failures are discussed below.

Companies, which are legal persons, are given similar sanctions as a natural person. This should not be the case as companies have more assets and makes more profits than a natural person.

For example: a person, this refer to both a natural person and a company, found guilty of air pollution is liable a fine not exceeding Kshs. 500,000.¹⁵⁶ In addition, that person is expected to pay for the cost of cleaning up the environment and compensating affected third parties.¹⁵⁷ The fine imposed may be sufficient to deter a natural person but it may not be successful for the same effect to a company. Companies which are notorious polluters are mostly those that make a lot of profit. Therefore, it will be economical for them to keep polluting the environment and paying the fine, which may not be such a huge amount to them.

This negatively affects the environment because despite the good laws in place, pollution of the environment has not been curbed.

There is a discrepancy between the sanctions and the cost of obtaining environmental licences. In some cases, the fine is less than the cost of obtaining the licence. In the **Orbit Chemical case**, the court fined the company Kshs 20,000 for failing to obtain a Kshs 100,000 license.¹⁵⁸ In such a case, it is economical and logical to pay the fine rather than obtaining the licence.

¹⁵⁶ Section 78 (2), EMCA (Act No. 8 of 1999)

¹⁵⁷ Section 78 (3), EMCA (Act No. 8 of 1999)

¹⁵⁸ D Kamweti; D Osiro; D A Mwiturubani, 'Nature and extent of environmental crime in Kenya' (2009) Institute of Security Studies (ISS) 69.

Some sanctions provided do not match the seriousness of the crime or the pollution. For example: a person who is found guilty of any offences relating to radioactive materials is liable to imprisonment for a period not exceeding 2 years or a fine not exceeding Kshs. 550,000 or both the fine and imprisonment.¹⁵⁹ This sanction does not match the seriousness of this offence that has serious and long term effects like those still experienced in Japan after the releasing of two radioactive bombs during the World War II.

5.2. Conclusion

As discussed above some sanctions available are not sufficient for environmental management. Change of these particular sanctions is needed in order to achieve this (environmental management).

Some of the dire changes required are the differentiation between legal persons (Companies) and natural persons in terms of the sanctions given to each of them. Companies ought to be given heftier fines in order to deter them from environmental pollution.

Sanctions should also be changed to ensure that the fine for not having a license is greater than the cost of obtaining the licences. This is to encourage people to acquire licences rather than pay the fines. These sanctions should also be geared towards sustainable development in order to achieve environmental management.

There should also be a revision of the sanctions for them to match the crime or offence. That is, serious crimes with long term effects should be given heftier sanctions.

¹⁵⁹ Section 106 (1), EMCA (Act No. 8 of 1999)

CHAPTER SIX

Conclusion and Recommendations

6.1. Conclusion

As discussed above, environmental management has not been achieved. This is despite the laws and sanctions available. The reasons for this include:

6.1.1. Insufficiency of the Environmental laws

As explained in the above chapters, the environmental laws are insufficiency. This is evident from the irregular sanctions provided which encourage the pollution of the environment instead of deterring it.

The implementation of these laws has also not been sufficient. This is because irrespective of the laws granting *locus standi*, this issue is still a big issue in the ELC. That is; the courts are concentrating more on issues of *locus standi* and the appeals of the NEMA's decisions rather than issues regarding the protection of the environment.

6.1.2. Disregard of the Environment

Kenya, being a developing country, is more concerned about development rather than the environment. The same notion is shared with its citizens; this is evident from the pile of garbage lying at the side of the road and the dumping of rivers including Nairobi River which runs across the city.

6.1.3. Implementation of Sustainable Development

There has been a problem in the implementation of SD. This maybe because of the reasons given by critics that the two terms in SD: sustainability and development are two contradictory ideas that cannot go hand in hand.¹⁶⁰

¹⁶⁰ Rakhyun E k and Bosselmann, 'Operationalizing sustainable development: Ecological integrity as the grundnorm of international law' (2015) 4.

SD has also been impossible because Kenya's SD does not include environmental conservation. That is; Kenya is trying to find another way to achieve SD without environmental management.

6.2. Recommendations

After conducting the research, it is clear that the following things ought to be done:

- **Education and public awareness**

This is to inform the general public of the importance of environmental management. This could be emphasized by having environmental education in the both the primary secondary schools syllabus.

- **Monitoring and evaluation of environmental management**

An independent body, separate from NEMA needs to monitor and evaluate the implementation of environmental laws and sanctions in order to achieve environmental management.

- **Availability of information**

During the research, it was hard to access environmental information which includes SoE reports and the NEMA reports.

The law requires the publishing of the SoE reports annually, however, this has either not been done or the reports have not been made available to the public. This has contributed to the degradation of the environment as very little is known about it. Therefore, this information has to be availed.

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