



**Law Society of Kenya v Attorney General & 3 others (Environment & Land
Petition E001 of 2023) [2023] KEELC 16615 (KLR) (28 March 2023) (Directions)**

Neutral citation: [2023] KEELC 16615 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND PETITION E001 OF 2023**

**YM ANGIMA, J
MARCH 28, 2023**

BETWEEN

LAW SOCIETY OF KENYA PETITIONER

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

NATIONAL BIOSAFETY AUTHORITY 2ND RESPONDENT

**THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

**KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION
(KALRO) 4TH RESPONDENT**

DIRECTIONS

1. By a petition dated and filed on January 16, 2023 the petitioner sought various reliefs against the respondents on account of alleged violation or threatened violation of various provisions of the [Constitution of Kenya, 2010](#) by the respondents. The petitioner challenged the constitutionality of the decision of the Cabinet made on October 3, 2022 to lift the ban on open cultivation and importation of GM maize (or Bt maize).
2. The Petitioner contended that the ban was lifted without proper public participation and adequate risk assessment on the adverse effects of open cultivation and importation of Bt maize on consumers and the environment. It was further contended that no Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) or Regulatory Impact Assessment (RIA) was undertaken prior to the said cabinet decision.
3. The Petitioner impugned the said cabinet decision for violating the right to a clean and healthy environment, the right to public participation, the right to information, the consumers' right of choice



- among other violations of the law. It was also faulted for want of parliamentary approval. It was contended that the Government had consequently violated the provisions of articles 1, 2(2), 3, 19(1), 20(1), 20(3), 20(4), 21(1), 21(2), 33, 35, 42, 43, 69 of the [Constitution of Kenya, 2010](#) and various international conventions, protocols, and instruments.
4. Simultaneously with the filing of the petition, the Petitioner filed a notice of motion dated January 16, 2023 seeking a conservatory order staying the implementation of the said cabinet decision pending the hearing and determination of the petition. The application was based on essentially the same grounds as those set out in the petition. It was contended that unless the conservatory order was granted then the petition stood the risk of being rendered nugatory to the detriment of the general public.
 5. The Attorney General entered appearance for the 1st, 2nd and 4th Respondents and filed a replying affidavit sworn by Roy B Mugiira on February 6, 2023 in response to the petition and the application for interim orders. It was contended that there existed 2 materially similar matters pending before the High Court at Nairobi, that is, Petition Nos E519 of 2022 and E475 of 2022 challenging the lifting of the ban vide a cabinet dispatch dated October 3, 2022.
 6. It was contended that those two petitions had been consolidated for hearing and that the Petitioner had applied to be joined as amicus curiae in those petitions. It was, therefore, contended that the instant petition was sub-judice, frivolous and an abuse of the court process.
 7. It was further stated that the 2nd Respondent had a robust regulatory framework which included the National [Biosafety Act, 2009](#), the [National Biosafety Policy 2006](#), the [Cartagena Protocol on Biosafety 2000](#), and various Regulations and Guidelines. It was stated that the lifting of the ban was preceded by a comprehensive risk assessment in accordance with the best international practices and that there was no scientific evidence of any adverse effects of Bt maize on humans or the environment.
 8. The Attorney General also filed grounds of opposition dated February 6, 2023 raising objections on sub-judice, non-disclosure of material facts, and abuse of the court process. It was contended that the Petitioner had not met the threshold for granting a conservatory order as required by law. The court was consequently urged to dismiss the application for interim orders.
 9. The 3rd Respondent filed grounds of opposition dated March 10, 2023 in which it adopted the grounds of opposition filed by the Attorney General. It also contended that the instant petition was sub-judice on account of the pendency of two similar petitions before the High Court at Nairobi. The 3rd Respondent objected to the place of filing the petition on the ground that all the parties herein had their principal or registered offices at Nairobi.
 10. The Petitioner filed a supplementary affidavit sworn by Florence Wairimu Muturi on February 27, 2023 in which it was stated that the instant petition was distinct from the two petitions pending before the High Court because it was essentially concerned with violation of the right to a clean and healthy environment under article 42 of the [Constitution of Kenya](#) hence the right forum for adjudication of the matter was the ELC under article 162(2)(b) of the [Constitution](#). It was further contended that the High Court had no jurisdiction to entertain the instant petition by virtue of article 165(5)(b) of the [Constitution](#).
 11. The petitioner further contended that it was not party to the 2 petitions pending before the High Court since the advocate who had appeared on its behalf had no instructions to do so and it had since withdrawn its application to be joined as amicus before the High Court.
 12. When the application for conservatory orders first came up for inter partes hearing the court called upon the parties to make representations on whether or not the petition ought to be transferred to Nairobi for hearing and whether it should be consolidated with the petitions pending before the High



Court. The Petitioner filed written submissions dated March 8, 2023 objecting to consolidation of the instant petition with the two pending before the High Court. The Attorney General filed submissions dated March 13, 2023 supporting transfer of the petition to Nairobi for the purpose of consolidation with the 2 petitions pending before the High Court.

13. The court is of the opinion that there are two issues for determination at this interlocutory stage. The first is whether the petition should be transferred to the ELC at Nairobi for trial and disposal. The second is whether this petition should be referred to the High Court for the purpose of consolidation with the other 2 petitions before it.
14. The court has considered the material on record on the place of suing. Although the issue was taken up by the court and the 3rd respondent, none of the parties specifically addressed it in their written submissions. There is no doubt that the petitioner's registered office is at Nairobi. There is also no doubt the principal offices and place of business of all the Respondents are based in Nairobi within Nairobi City County.
15. The Petitioner did not render any explanation as to why it did not file the instant petition at the ELC at Nairobi or any of the adjoining counties. No explanation was given as to why the Petitioner skipped several counties with ELC courts only to end up filing the petition at Nyahururu. All the deponents who have sworn affidavits in this petition are based in Nairobi. In the premises, the court is satisfied that the petition ought to be transferred to the ELC at Nairobi for trial notwithstanding the fact that the ELC has jurisdiction throughout the Republic of Kenya.
16. In view of the position the court has taken on the place of filing, it is not necessary to determine at this juncture whether or not the instant petition should be transferred to the High Court for consolidation with the two petitions pending there. That issue shall be determined by the ELC Judge at Nairobi who will be allocated the file. The court shall, therefore, not express any opinion on the propriety or otherwise of consolidation of the instant petition with the ones before the High Court.
17. In the result, the court makes the following orders or directions:
 - a. The instant petition be and is hereby transferred to the ELC at Nairobi for trial and disposal.
 - b. The petition shall be mentioned before the Presiding Judge of the ELC at Nairobi on April 25, 2023 for re-allocation.

**DIRECTIONS DATED AND SIGNED AT NYAHURURU THIS 28TH DAY OF MARCH, 2023
AND COMMUNICATED VIA MICROSOFT TEAMS PLATFORM**

In the Presence of:

Mr Muchangi for the petitioner.

Mr Motari for the Attorney General for the 1st, 2nd and 4th respondents.

N/A for the 3rd Respondent.

YM ANGIMA

JUDGE

