



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 100 OF 2016**  
**IN THE MATER OF ALLEGED CONTRAVENTION OF**  
**ARITCLES 42, 69 AND 70 OF THE CONSTITUTION OF KENYA, 2010**  
**AND**  
**IN THE MATTER OF ALLEGED CONTRAVENTION**  
**OF FUNDAMENTAL RIGHTS UNDER ARTICLES**  
**20(2) AND 22(1) 7 23 OF THE CONSTITUTION OF KENYA, 2010**  
**BETWEEEN**  
**KAREN NGONG VIEW ESTATE**  
**ASSOCIATION (KNVEA).....PETITIONER**  
**VERSUS**  
**1. NATIONAL ENVIRONMENT**  
**MANAGEMENT AUTHORITY (NEMA)**  
**2. KAREN VILLAGE LIMITED.....RESPONDENTS**

**RULING**

**PETITION**

1. The Petition herein was brought by the Petitioner under the provisions of Articles 22 and 42 of the Constitution of Kenya, 2010 seeking for enforcement of its fundamental human and environmental right to a clean and safe environment in and around the suit property namely LR No. 12882/3, Karen, Nairobi.

**APPLICATION**

2. The 2<sup>nd</sup> Respondent/Applicant through a Notice of Motion dated 17<sup>th</sup> November 2020 seek the following orders:

*a) The Petition herein be struck out.*

*b) Costs of this Application and the Petition be awarded to the Applicant*

3. The application is premised on the following grounds on the face of the application:-

*a) The Petition herein substantially and materially seeks to challenge the grant of Environment Impact Assessment Licence (EIA*

*Licence) No. NEMA/EIA/PSL/1096 by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent authorising the construction of an art, culture and heritage centre comprising art exhibition halls, artist studios, art lecture rooms and recreational facilities and associated amenities located at Plot Land Reference No. 12882/3 in Karen, Nairobi.*

*b) Section 129(1) of the Environmental Management and Co-ordination Act, 1999 sets out the statutory procedure for lodging challenges against issuance of Environment Impact Assessment Licences by the 1<sup>st</sup> Respondent to any person.*

*c) By dint of Section 16A of the Environment and Land Act, appeals against decisions of the challenges filed pursuant to Section 129(1) of the Environmental Management and Co-ordination Act, 1999 lie exclusively to the Environment and Land Court.*

*d) It is trite law that where a statute has provided a remedy to a party, this Court must exercise restraint and first give an opportunity to the relevant bodies or State organs to deal with the dispute as provided in the relevant statute.*

*e) This Court lacks jurisdiction to hear and determine this matter.*

*f) The Petition herein is thus misconceived, misplaced and a gross abuse of the process of court.*

*g) It is in the interests of the expeditious administration of justice that this application be granted.*

4. The application is further supported by supporting affidavit of Anousika Athaide sworn on 17<sup>th</sup> November 2020.

#### **PETITIONER'S CASE**

5. The Petitioner contend it is common ground that,

*i) The area in and around the suit property is a quiet residential neighbourhood made up of private homes numbering about 60;*

*ii) The suit property is situate right adjacent to the KCB Training School in Karen,*

*iii) The 2<sup>nd</sup> Respondent did indeed apply for a EIA licence which was challenged by the Petitioner;*

*iv) Thereafter, the 1<sup>st</sup> Respondent lifted the stop order, it had granted to the Petitioner, without notice to or herein the latter;*

*v) By the time the Petitioner caught up with the matter, the 2<sup>nd</sup> Respondent had already broken ground for the construction of the purported "Art and Crafts Centre"*

*vi) The purported "Arts and Crafts Centre" has today mutated to include the development of a 400 bed hotel and conference centre, bars, restaurants, office block and shopping Centre.*

#### **ANALYSIS AND DETERMINATION**

6. The 2<sup>nd</sup> Respondents Notice of Motion is brief. It is on the question of jurisdiction of the subject matter and this Courts' jurisdiction. Upon consideration of the application, parties respective submissions, the issue for consideration can briefly be summed up as follows:-

*a) Whether this Court has jurisdiction to hear and determine the dispute herein?*

*b) Whether the 2<sup>nd</sup> Respondent has met the threshold for striking out the Petition?*

#### **A. WHETHER THIS COURT HAS JURISDICTION TO HEAR AND DETERMINE THE DISPUTE HEREIN?**

7. The 2<sup>nd</sup> Respondent/Applicant contention is that the cause of action on which the instant Petition is premised can easily be deduced from the facts in support of the petition and violations of the petitioner's rights as set out in paragraph 6 hereinabove, as well as the Supporting Affidavit of Josephat Ngile sworn in support of the Petitioner's Petition.

8. It is 2<sup>nd</sup> Respondent's is assertion that in paragraph 3 of the supporting Affidavit of Josephat Ngile, the Deponent avers that on or about September 2014, the Applicant herein commenced the construction of the Art, Culture and Heritage Centre on its parcel of land without notice or consultation with the immediate estate members. ***He further depones that on 22<sup>nd</sup> December 2014, the Petitioner herein wrote to the 1<sup>st</sup> Respondent herein complaining of the aforesaid illegal construction is going on without NEMA Licence and he proposed measures to prevent noise, health and safety hazards and to ensure uncompromised security for the residents of the Petitioner's estate have not been shared or agreed upon.***

9. It is further stated by the 2<sup>nd</sup> Respondent that the deponent further proceeds to aver that on 22<sup>nd</sup> January 2015, the 1<sup>st</sup> Respondent issued an improvement order requiring the Applicant herein to *inter alia*:- hold substantive consultation with the Petitioner and stop all construction until evidence of the above consultation with the Petitioner and stop all construction until evidence of the above consultation is submitted to the satisfaction of the 1<sup>st</sup> Respondent herein. The Deponent proceeds to aver that as at 9<sup>th</sup> February 2015, no consultation had

been held. In addition it is urged that in paragraph 9 of his Affidavit, the Deponent avers that on 20<sup>th</sup> March 2015, the 1<sup>st</sup> Respondent surprisingly lifted the improvement order issued on 22<sup>nd</sup> January 2015 allowing the Applicant herein to proceed with the Project construction. It is further stated that the deponent avers that all the Petitioner's representations and protests to the Respondents in this matter appear to have fallen on deaf ears. In paragraph 12, the Deponent avers that the impunity exhibited by the Respondents herein will only be checked if and when the construction herein being undertaken pursuant to the EIA Licence granted to the Applicant herein by the 1<sup>st</sup> Respondent is stopped to allow for the due and full compliance with the law.

10. The 2<sup>nd</sup> Respondent/Applicant in addition thereto state that the deponent avers that on or about July 2015, the Petitioner engaged an environmental expert who prepared a report which evidently condemns the project and its location. In conclusion in paragraph 17 of the Petition, the Petitioner avers that it complained to the 1<sup>st</sup> Respondent of the 1<sup>st</sup> Respondent's decision to sanction the Applicant's project.

11. The 2<sup>nd</sup> Respondent state further that in totality of the foregoing, it is manifestly clear that the Petitioner's Petition herein is premised on a challenge on the grant of Environment Impact Assessment Licence (EIA Licence) No. NEMA/EIA/PDL/1096 by the 1<sup>st</sup> Respondent to the Applicant herein authorising the Applicant herein to construct an art, culture and heritage centre comprising art exhibition halls, artist studios, art lecture rooms and recreational facilities and associated amenities located at Plot Land Reference No 12882/3 in Karen, Nairobi.

12. The 2<sup>nd</sup> Respondent further argue that the allegation of violation of the Petitioners members constitutional rights emanate from and are solely based on the decision by the 1<sup>st</sup> Respondent to licence the Applicant herein to develop the project on the Applicant's parcel of land. The foregoing conclusion is manifest and needs no further professional input. It is 2<sup>nd</sup> Respondents averments the Petitioner's main relief sought in the petition is a declaration that the environmental impact assessment licence issued to the Applicant herein on 23<sup>rd</sup> December 2014 is null and void.

13. The 2<sup>nd</sup> Respondent urge that **Section 129(1)(a) of the Environmental Management and Co-ordination Act** provides clearly as follows:-

**“any person who is aggrieved by-**

**a) The grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;**

**b) ...  
may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the tribunal.”**

14. To buttress the above proposition the 2<sup>nd</sup> Respondent sought reliance from the case of **Shiloah Investments Limited v. National Environment Tribunal & 7 Others [2018] eKLR** where the Environment and Land Court held as follows:-

**“My interpretation of Section 129 of EMCA is that it provides a framework within which any person aggrieved by decisions made by NEMA may ventilate the grievance. The words used by parliament in Section 129\*1) are “any person aggrieved by”. In my view, parliament took cognizance of the fact that injury to the environment affects the general public and provided a forum of redress for any person who may be aggrieved by a decision of NEMA.”**

15. The Petitioner on his part contend that the issue of jurisdiction has been substantially been dealt with in court of Appeal in the **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR** where it was stated as follows on the question of jurisdiction of a Court of law.

**“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it hold the opinion that it is without jurisdiction.”**

16. Further the Petitioner seeks refuge from **Article 22(1) of the Constitution of Kenya, 2010** where it is provided that:-

**“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”**

17. **Article 23 of the Constitution** further provides that the High Court has jurisdiction in accordance with **Article 165 of the Constitution** to hear and determine applications for redress, of a denial, violation or infringement of, or threat to a right or fundamental freedoms in the Bill of Rights.

18. The Petitioner contend the matter in question before this Court is not the illegal issuance of the Environmental Impact Assessment License NEMA/EIA/PSL/1096 as alluded to by the Applicant but rather the enforcement and protection of the Petitioner's constitutionally guaranteed rights under **Article 22 of the Constitution of Kenya**. On that basis it is contended that this court has jurisdiction to proceed with the matter as the Petitioner is said to be seeking an order to protect the Petitioner's right to a clean and safe environment.

19. On perusal of the court record, the record reveal that on 7<sup>th</sup> March 2018 both the Petitioner and Respondents counsel appeared before Hon. Justice Mativo and confirmed that the issue of jurisdiction has been resolved before Hon. Justice Lenaola, as he then was, and also

before ELC when the parties recorded a consent as submitted by Petitioner's counsel that the file be retransferred back to the Constitutional and Human Rights Division. This Court directed the Petition would be heard and determined expeditiously herein, however the 2<sup>nd</sup> Respondent filed additional affidavits without leave of the Court, which were subsequently struck out. The 1<sup>st</sup> Respondent expressed intention to appeal to which leave was granted and the 2<sup>nd</sup> Respondent stated later that it intended to apply for proceedings to be transferred back to ELC division. This has similarly not been done.

20. The Petitioner's Petition of 18<sup>th</sup> March 2016 seeks the following reliefs:-

**a) (i) A declaration that the environmental impact assessment licence issued to the 2<sup>nd</sup> Respondent on 23<sup>rd</sup> December 2014 is null and void.**

**(ii) A declaration that the ongoing development at L. R. No. 12882/3 is in blatant violation of Articles 42(1) and 69 of the Constitution of Kenya.**

**(iii) A declaration that the ongoing development at L.R. No. 12882/3 is in breach of sections 63 and 66(2) of the Environmental Management and Co-ordination Act (Cap 387 Laws of Kenya);**

**b) A permanent injunction order do issue to stop any further construction work on L. R. No. 12882/3 without compliance with the law;**

**c) Demolition of the developments L. R. No. 12882/3 carried out illegally and without compliance with the law and the constitution of Kenya, 2010;**

**d) General and exemplary damages**

**e) Costs of this Petition**

**f) Any other order the Honourable Court may deem fit to grant.**

21. The Petitioner contend that the essence of its Petition is an alleged violation of its constitutionally guaranteed rights under **Article 42 of the Constitution of Kenya** which provides as follows:-

**“Every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69;”**

22. The Applicant sought reliance at paragraph 6 of its submission laying down the grounds that were relied on in the Petition forming foundation for **Article 42 of the Constitution** as regards violations of the Petitioners constitutionally guaranteed rights wherefore the basis of the current petition hereof. I find the contention of failure of the 1<sup>st</sup> Respondent to involve and / or consult the Petitioner in the Environmental Impact Assessment of the suit property is what the Petitioner avers to amount to breach and violations of the Petitioner's constitutional rights as provided for under **Article 42 of the Constitution**. In view whereof and contrary to the 2<sup>nd</sup> Respondents contention the issue before this Court is not principally arising out of **Section 129(1) (a) of the Environment Management and Co-ordination Act** as alluded to by the 2<sup>nd</sup> Respondent but rather on **Article 42 of the Constitution**.

23. The Petitioner in support of its contention that the issues before this court are not principally arising out of **Section 129(1)(a) of the Environment Management and Co-ordination Act** but rather on **Article 42 of the Constitution** sought reliance in the case of **Benson Ambuti Atega & 2 others v Kibos Sugar and Allied Industries Limited & 4 Others; Kenya Union of sugar Planation and Allied Workers (Interested Party) [2019] eKLR**, where the Environment and Land Court in Considering a Preliminary Objection raised on the ground of jurisdiction stated as follows:-

**“That had all the issues and prayers in the Petition been matters that the Tribunal had jurisdiction to hear and determine, the court would have upheld the preliminary objections raised by the 3<sup>rd</sup> Respondent and Interested Party and dropped its tools without proceeding any further as has been held by the various Superior Courts including the decisions cited by the learned Counsel some of them being Samwel Kamau Macharia & Another vs. Kenya commercial Bank Ltd & 3 Others [2012] eKLR, and Motor Vessel M. V. “Lillian S” vs Caltex Oil (Kenya) ltd 1989 KLR 653. That however, this Petition has prayers that the Tribunal and other agencies under the National Environmental Management and Co-ordiantion Act have no jurisdiction to handle.”**

24. Upon careful consideration of the Petition before this Court and parties submissions, I find that the gravamen of the Petition herein is the Petitioner's fundamental human rights under the Constitution of Kenya 2010, the National Environment Tribunal advocated by the 2<sup>nd</sup> Respondent in its submission as the proper forum, in my view has no jurisdiction to enforce the fundamental rights and freedoms under the constitution of Kenya 2010. It is clear that it is only High Court and Courts of equal status which are clothed with the power to enforce the Bill of Rights; as to hold otherwise will not only be watering down the Constitutional rights of parties but acting contrary to the constitution.

25. The 2<sup>nd</sup> Respondent sought reliance in the case of **Speaker of the National Assembly vs. James Njenga Karuma (1992) eKLR** and others which cases were decided under the repealed constitution. The same can be distinguished as they were decided before the promulgation of Constitution of Kenya 2010, which has since recognized the right to safe and sound environment to be a fundamental human right, which

fundamental human right must not only be respected but enforced through the intervention of this Honourable Court. In view of the provision of **Article 22, 23 and 42 of the Constitution of Kenya 2010** and considering the Petitioner's prayers in the Petition, I am satisfied that this Honourable Court has jurisdiction to hear and determine this Petition to its logical conclusion. I find that no other Court or Tribunal is vested with the jurisdiction to enforce the fundamental rights and freedoms of Kenyan people other than this Honourable Court. I find this Court has jurisdiction to hear and determine this matter.

#### **B. WHETHER THE 2<sup>ND</sup> RESPONDENT HAS MET THE THRESHOLD FOR STRIKING OUT THE PETITION?**

26. The 2<sup>nd</sup> Respondent aver that the Petition herein is substantially and materially premised on a challenge against the grant of an Environmental Impact Assessment Licence to the Applicant herein authorising the Applicant to construct the Project, by dint of **Section 129(1) of the Environmental Management and Co-ordination Act**, the Petitioner was obligated to pursue the redress mechanism provided under **Section 129(1) of the Environmental Management and Co-ordination Act** prior to filing the present petition.

27. The Courts have for a long time emphasised on the need for aggrieved parties to strictly follow any procedures that are specially prescribed for resolution of particular disputes. In particular, the Court of Appeal in its decision in **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** held that:-

***“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of Parliament, that procedure should be strictly followed.”***

28. It is emphasised by the 2<sup>nd</sup> Respondent that particular emphasis was also laid on the requirement to follow an alternative dispute settlement mechanism provided under a statute in the case of **Mutanga Tea & Coffee Company Ltd vs. Shikara Limited & Another [2015] eKLR** where the Court of Appeal held that:-

***“...This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for resolution of particular disputes. SPEAKER OF THE NATIONAL ASSEMBLY V. KARUME (supra), is an application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by the Constitution. In granting the order, the Court made the often-quoted statement that:-***

***“Where there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”***

***It is readily apparent that in those cases the Court was speaking to issues of the correct procedure rather than of the correct forum for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.***

***The basis for that view is first that Article 159 (2) (c) of the Constitution has expressly recognized alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The use of the word “including” leaves no doubt that Article (159)(2)(c) is not a closed catalogue. To the extent that the Constitution requires these forms of dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the High Court would not be promoting, but rather, undermining a clear constitutional objective. A holistic and purposive reading of the Constitution would therefore entail construing the unlimited original jurisdiction conferred on the High Court by Article 165(3)(a) of the Constitution in a way that will accommodate the alternative dispute resolution mechanisms.***

***Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost effective manner....”***

29. The 2<sup>nd</sup> Respondent further urge that the Petitioner having failed to explore the alternate dispute settlement mechanisms set out under the **Environmental Management and Coordination Act**, that this Court is devoid of jurisdiction to adjudicate on the Petition filed by the Petitioner. This was the finding of the Court of Appeal in **Mutanga Tea & Coffee Company Ltd (Supra)** which cited with approval the High Court case of **Rich Productions Ltd vs. Kenya Pipeline Company & Another Petition No. 173 of 2014** where it was held that:-

***“The reason why the Constitution and the law establish different institutions and mechanism for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2<sup>nd</sup> respondent, such supervision is limited in various respects which I need not go into here. Suffice to say that it cannot exercise such jurisdiction in circumstances where the parties before it seek to avoid the mechanisms and processes provided by law, and convert the issue in dispute into a constitutional issue when it is not.”***

30. It is further contended that at any rate, this Court's apparent lack of jurisdiction to adjudicate this matter is exemplified by the provisions of **Sections 130(1) of the Environmental Management and Coordination Act** as well as **Section 13A of the Environment and Land Court Act**. The aforesaid provisions vest all appeals against decisions of the National Environment Tribunal in respect of challenges brought under **Section 129 of the Environmental Management and Coordination Act** exclusively within the Environment and Land court. By dint of **Article 162(2) and 165(5) of the Constitution of Kenya 2010**. It is submitted that this Court is prohibited from assuming jurisdiction on matters exclusively reserved for the specialised courts established under **Section 162(2) and 165(5) of the Constitution of Kenya 2010**,

including the Environment and Land Court. In that regard, the Applicant relies on the decision of the Court of Appeal in *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others (2017) eKLR* where it was held that:-

**“70. contrast the expression “reserved for the exclusive jurisdiction” with the expression “falling within the jurisdiction”. It is a pointer, in our view, that it was never intended that disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land would be “reserved for the exclusive jurisdiction” of the specialized courts under Article 162(2). It is also noteworthy that *In Re The Matter of the Interim Independent Electoral Commission [2011] eKLR*, the Supreme Court of Kenya in construing Article 165(3) of the Constitution that confers jurisdiction on the High Court to hear any question respecting the interpretation of the Constitution noted that although the High Court was entrusted, under that Article, with the mandate to interpret the Constitution, that empowerment by itself, however, does not confer upon the High Court an exclusive jurisdiction.”**

31. The 2<sup>nd</sup> Respondent further referred to the case of *Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu [2009] eKLR* cited with approval in *Kenya Commercial Bank v Suntra Investment Bank Ltd [2015] eKLR*, where it was held that:-

**“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”**

**We may add that like *Madan J.A.*, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”**

32. The 2<sup>nd</sup> Respondent urge that the Court’s power to strike out a pleading is only reserved for rare occasions such as where it is shown that the pleading is clearly untenable. In this matter, it is contended that in filing the present petition, the Petitioner has attempted to circumvent a clearly laid out statutory mechanisms to address its grievances. It is further stated that there is manifestly a procedure where the Petitioner may have his grievances sufficiently and expeditiously addressed. In view whereof the Respondent argue in the premises, the Petition herein is clearly untenable before this Court. The 2<sup>nd</sup> Respondent further submit that there is also no amendment that may be made to the present petition to make it fit for determination by this Court. In view whereof the 2<sup>nd</sup> Respondent contend that the only remedy available in the circumstances is to strike out the petition with costs.

33. It is Petitioner’s contention on the other hand that the right to a clean and safe environment cannot be taken lightly as it is a prerequisite for life. The Petitioner further avers that the same is equally linked to economic and social rights. In *Communication No. 155/96: the social and Economic Rights Action Center and the Center for Economic and Social Rights vs. Nigeria* the African Commission on Human and People’s Rights stated as follows:-

**“These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, “an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.”**

**The right to a general satisfactory environment, as guaranteed under Article 24 of the Africa Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources...”**

34. It is clear the applicants application to strike out the Petition is one that would adversely put the Petitioners quality of life and safety at risk. It will leave the Petitioner practically choking in noise, dust and pollution of all kinds. In short, it shall leave the Petitioner and its members gasping for air. That is what the 2<sup>nd</sup> Respondent wishes to achieve by way of its application by exposing the Petitioner’s to imminute life threatening dangers of all kinds. It can be noted if that occurs the Petitioners fundamental rights to clean and safe environment will totally be violated and / or infringed or threatened.

35. I am alive to the fact that numerous Courts have held that the striking out of pleadings is a discretionary and draconian remedy to be employed only as a last resort and even then, in the clearest of cases. See the case of *D. T. Dobie Vs. Muchina (1982) eKLR*.

36. In the instant Petition it is alluded by the 2<sup>nd</sup> Respondent to be a plain and obvious case for striking, I find the Applicant’s contention not only interesting but contrary to the provisions of law and decided cases. I have to point out that this is a constitutional Petition which under **Article 22 of the Constitution** provides every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. **Article 23 of the Constitution** clearly provides the High Court has jurisdiction to hear and demine application for redress of a denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights. The instant petition seeks to vindicate the Petitioner’s fundamental and human rights to a clean and safe environment. I find that this is one of the fundamental rights which a party is entitled to seek form the High Court.

37. The upshot is that I find no other Court other than this Court is granted such jurisdiction to handle issues regarding Bill of Rights and Fundamental Freedoms. I find no merit in the 2<sup>nd</sup> Respondent’s application dated 17<sup>th</sup> November 2020.

**38. Accordingly the 2<sup>nd</sup> Respondent’s Application dated 17<sup>th</sup> November 2020 is hereby dismissed with costs.**

**Dated and Signed at Nairobi on this 18<sup>th</sup> day of February, 2021.**

**Delivered electronically at Nairobi on this 25<sup>th</sup> day of February, 2021.**

.....

**J. A. MAKAU**

**JUDGE**