REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E011 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC...APPLICANT

VERSUS

NAIROBI CITY WATER AND SEWERAGE COMPANY

LIMITED..RESPONDENT

EX PARTE APPLICANT: OSMAN BATUR DEDEOGLU

RULING NO 2

The Application

1. Osman Batur Dedeoglu, the *ex parte* Applicant herein, is aggrieved by the decision by the Nairobi City Water and Sewerage Company (the Respondent herein), to demand from him the sum of Kshs. 2,392,263.25/ in a letter dated 17th June 2019, alleged to be owed as water bills for meter number 1998875. The *ex parte* Applicant consequently moved this Court in an application made by way of a Chamber Summons dated 22nd July 2020, seeking the following orders:

> **1. That that the Applicants Chamber Summons dated 22nd day of July 2020 be certified urgent and be admitted for hearing ex parte in the first instance.**
>
> **2. Leave be granted to the applicant to apply for judicial review by way of an order of prohibition restraining the Respondent whether by themselves, agents, servants or employees from disconnecting and interfering with the Applicant's enjoyment of water supply through meter number 1998875.**
>
> **3. Leave be granted to the applicant to apply for judicial review by way of an order of certiorari quashing the decision of the respondent demanding the payment of the disputed sum of Kshs. 2,392,263.25/=.**
>
> **4. That pending the hearing and determination of this suit, temporary injunction be granted restraining the Respondent whether by themselves, agents, servants or employees from disconnecting and interfering with the Applicant's enjoyment of water through meter number 1998875.**
>
> **5. The costs of this application be in the cause.**

2. This Court in a ruling delivered on 23rd July 2020 directed that it needed to be addressed as to whether the application was amenable to judicial review, and accordingly directed that the application for leave be canvassed *inter partes*. The parties' respective cases on the issue of leave are set out in the following sections of this ruling.

The *ex parte* Applicant's Case

3. The application is supported by a statutory statement dated 22nd July 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that the *ex parte* Applicant has requested the Respondent to issue a statement of account which it relied upon to arrive at the demanded sum of Kshs 2,392,263.25/=, but the Respondent has failed to respond. Further, that there is no alternative remedy available to the applicant as the membership of the Water Appeals Board is currently not constituted.

4. The *ex parte* Applicant averred that he had incorporated a company known as 'Yerean Development Company Limited' which is a registered proprietor of parcel of land L.R No 209/21801 on which he has erected 26 residential apartments and 2 penthouses together with their servants' quarters, car parking bays, drive ways and other amenities, commonly known as "Life City Residence." Further, that he was connected by the Respondent for the supply of water and for other related services, and that at all material times, he maintained water meter No.1998875 on behalf of "Life City Residence' with the Respondent through which he has been paying all the monthly bills promptly when issued.

5. The *ex parte* Applicant contended that the in the period between 2013 and 2016, he was in the process of erecting 26 residential apartments and during this period, the developer outsourced service from a private entity to supply water at the construction site. He averred that once the construction was complete in the year 2017, the developer applied for reconnection of water from the Respondent's company. He stated that he paid a sum of Kshs 1,000/= as reconnection fee to the Respondent and thereafter, the water meter was reconnected by the Respondent on February 2017 and since then he has been paying all the bills without any failure.

6. It is the *ex parte* Applicant's contention that on 17th June, 2019, he received a demand letter from the Respondent indicating that he owed Kshs. 2,392,263.25/= for the period between October 2013 and July 2018 an amount which he refutes and contends is outrageous and cannot be substantiated. The *ex parte* Applicant asserted that the action by the Respondent is not only made in bad faith but also an abuse of the power which is meant to frustrate and swindle him as he was not using their services between the years 2013 and 2017. He further deponed that on 28th June, 2019, though his appointed advocates, he requested the Respondent to issue a statement of account which it relied upon to arrive at the sum of Kshs 2,392,263.25/=. However, that the letter had not elicited any response from the Respondent. He also averred that pursuant to the Respondent's letter dated 17th June, 2019, the Respondent admitted that the meter installed in his premises was faulty and this admission clearly illustrates that the Respondent was negligent and failed to perform its duties diligently leading to the enormous water bill presented.

7. In conclusion, the *ex parte* Applicant stated that more than 20 families residing in the premises will suffer if the Respondent proceeds to disconnect the meter in the premises.The *ex parte* Applicant annexed a copy of the Respondent's demand letter dated 17th June 2019, as well as the payment receipts for water bills for meter number 1998875, the statement by Nairobi City water and sewerage Company Ltd , and the letter by his advocates to the Respondent dated 28th June, 2019.

The Respondent's case

8. The Respondent filed a Notice of Preliminary Objection dated 1st September, 2020 in opposition to the *ex parte* Applicant's application on the grounds that:

> a. "The suit herein seeks to delve into the Respondent's decision of arriving at the amount of Kshs. 2,392,263.25, which is the ex parte Applicant's unbilled service between the period of October, 2013 and July, 2018 and not as to the procedure used to arrive at that amount.
>
> b. The Court of Appeal sitting in Malindi in the case of **Kenya Revenue Authority & 2 others v Darasa Investments Limited [2018] eKLR** stated that, "The next issue for consideration is whether the appellants decision was amenable to judicial review" As we have set out above, judicial review is concerned with the decision making process and not the merits of the decision in respect of which the application for judicial review is made. This was aptly stated by this Court in **Commissioner of Lands vs Kunste Hotel Ltd [1997] eKLR**".
>
> c. With regard to the foregoing and paragraph 6 of this Honourable Court Ruling dated 23rd July, 2020, this Honourable Court does not have the jurisdiction to issue any orders thereof let alone hear and determine the application and entire suit thereof and should thus down its tools forthwith.
>
> d. The Application and by extrapolation the entire suit, is thus frivolous, vexatious, unmerited, fatally defective, bad in law, an abuse of the Court process and ought to be struck out with costs. "

The Applicant's Reply

9. The *ex parte* Applicant filed its Replying Affidavit he swore on 23rd October, 2020 in response to the Respondent's Preliminary Objection, wherein he deponed that the Preliminary Objection raised by the Respondent challenges the jurisdiction of this Court which is founded on sections 7 and 9(2) of the Fair Administrative Action Act and Article 47 of the Constitution. He averred that section 121(1) of the Water Act sets out the powers of the tribunal whose mandate is to hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Authority, and that being aggrieved by the decision of the Respondent, he first filed an application and a suit in the Chief Magistrate's Court at Milimani in Civil Case Number 7519 of 2019. However, that that the said Court in its ruling dated 30th April, 2020 held that it lacked jurisdiction to hear and determine the dispute, and the Applicant subsequently appealed the decision of the Respondent to the Water Appeal Board as provided for by Section 121(1) of the Water Act.

10. However, that upon lodging the appeal, the Applicant herein was notified that the Water Appeal Board is currently not properly constituted and was therefore unable to hear and determine the matter thus necessitating the application herein. The Applicant asserted that this Court has unlimited and original civil and criminal jurisdiction by virtue of Article 165(3) (a) of the Constitution of Kenya, and that the Court of Appeal in the case of **Suchan Investment Limited vs Ministry of National Heritage & Culture & 3 others** **[2016]** held inter alia that the Courts can include aspects of merit review of administrative action in its consideration unlike traditionally where judicial review was only concerned with the decision-making process.

11. Further, that section 7 (2) (i) of the Fair Administrative Action Act widens the grounds for judicial review by providing proportionality as a ground for statutory judicial review. The Applicant contended that in the event that this Court finds that it lacks Jurisdiction to hear and determine this matter, this court should transfer this matter to the relevant court in furtherance of justice as in the case of **Daniel Mugendi vs Kenyatta University & 3 Others (2013) e KLR.**

The Determination

12. On 12th October 2020, this Court directed that the *ex parte* Applicant's Chamber Summons dated 22nd July 2020 and Respondent's Preliminary Objection dated 1st September 2020 be heard and determined together by way of written submissions. Wetangula Adan & Co. Advocates who are on record for the *ex parte* Applicant filed submissions dated 31st August, 2020, and 23rd October 2020, while Gazemba Wekesa & Co Advocates, the Respondent's Advocates, filed submissions dated 8th October 2020.

13. A preliminary point of law that needs to be determined is whether this Court has jurisdiction to hear and determine the instant application, and if so, the substantive issue as to whether the *ex parte* Applicant merits leave to commence judicial review proceedings and other orders sought will then proceed to determination.

On the Jurisdiction of this Court

14. The issue of the competence of the application was raised by the Respondent on two fronts. Firstly, that the application is not amenable to judicial review, and secondly that this Court had no jurisdiction to hear the application. The Respondent submitted that subject to and in addition to the provisions of the Constitution, specifically Article 47, the Fair Administrative Action Act in section 9 (1) grants this Court the powers to handle judicial review matters.

15. However that the *ex parte* Applicant has not challenged the procedure and/or the means which the Respondent used to arrive at the disputed amount, which should be the core of a judicial review suit, and only seeks to delve into the merits of arriving at the disputed amount of Kshs 2,392,263/= and not as to how the Respondent arrived at the said figure, which is in total contravention of Section 9 (1) of the Fair Administrative Action Act. Reliance was placed on the decision by the Court of Appeal in the case of **Kenya Revenue Authority & 2 others vs Darasa Investments Limited** **[2018] eKLR**. for this position.

16. The Respondent further submitted that section 92 of the Water Act, 2016 provides for a legal framework for resolution of disputes within the water sector and states that: "every water services provider shall establish a mechanism for handling consumer complaints which meets the standards set by the Regulatory Board." It was also submitted that the Water Act further established the Water Tribunal under Section 119(1) which is given jurisdiction under section 121 to deal with the water disputes including any dispute concerning water resources or water services where there is a business contract The Respondent cited the case of ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd*** **[1989] eKLR** and **Augustin Michael Murandi & 2 others v Nolturesh Loitoktok Water and Sanitation Co. Ltd (Successor in title of National Water Conservation and Pipeline Conservation)** **[2017] eKLR** for the submission that this Court has no jurisdiction, and that it is the said Tribunal that has the jurisdiction to hear and determine disputes relating to the Respondent's impugned decision.

17. On the averment by the *ex parte* Applicant that there is no alternative remedy available as the membership of the Water Tribunal is currently not constituted, the Respondent submitted that the *ex parte* Applicant's choice of coming before this Judicial Review Court instead of the Environment and Land Court amounts to forum shopping, as section 124 of the Water Act states that "a person aggrieved by a decision of the Tribunal may, within twenty-one days from the date of that decision, appeal to the Land and Environmental Court, established under Article 162(2) of the Constitution on an issue of law." Therefore, that even if the Water Tribunal is not constituted, the *ex parte* Applicant should have gone to the High Court and or the Environment and Land Court (ELC) hence this Court has no jurisdiction.

18. The *ex parte* Applicant on its part submitted that section 4 (1) of Fair Administrative Action Act provides that every person has the right to administrative action which is expeditious efficient, lawful, reasonable and procedurally fair. He stated that further, where an administrative action is likely to affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision: a prior and adequate notice of nature and reason for proposed administrative action; a statement of reason and information, materials and evidence to be relied upon in making the decision or taking the administrative action. He contended that by failing to respond to the letter from the Applicant's advocates requesting for a statement of account, the Respondent was in contravention of the requirements of the Fair Administrative Action Act which necessitates every public entity to give information, materials and evidence relied upon in making the decision or taking the administrative action.

19. The *ex parte* Applicant asserted that this Court derives its jurisdiction from the Constitution, particularly Article 165(3)(a) which gives the Court unlimited original jurisdiction in civil and criminal matters. He added that Section 7(1) of the Fair Administrative Action Act grants this Court the Jurisdiction to entertain this matter. Further, that the Court of Appeal has held that the jurisdiction of this Court includes aspects of merit review of administrative action, unlike traditionally where judicial review was only concerned with the decision-making process, and cited the case of **Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 others** **[2016] KLR** in this regard. The *ex parte* Applicant further submitted that section 7(2)(i) of the Fair Administrative Action Act widens the grounds for judicial review by providing proportionality as a ground for statutory judicial review. It was their submission that proportionality invites the court to evaluate the merits of the decision.

20. It was also the *ex parte* Applicant's submission that there is no alternative remedy available to the Applicant as the membership of the Water Tribunal whose jurisdiction to hear and determine disputes arising under the section 121 of the Water Act is currently not constituted. He contended that in the absence of a constituted Water Appeals Board, this Court has powers to issue judicial review orders which orders are within the precincts of its powers. Further, that in the event this Court finds that indeed it lacks jurisdiction to entertain the current application, in the interest of justice and the overriding objectives, the application should be transferred to the Environment and Land Court for hearing and determination. Reliance was in this regard placed on a decision to this effect in the case of **Daniel Mugendi vs Kenyatta University & 3 others (2013) eKLR**

21. I have considered the arguments made on this Court's jurisdiction, and it is not contested in this respect that the Respondent made a decision that is being contested by the *ex parte* Applicant, who wants this Court in exercise its supervisory jurisdiction to review the lawfulness of the Respondent's decision. The Respondent is a water services provider licenced under the Water Act, and provides water services to members of the public. Therefore, to the extent that it is regulated under a statutory regime and undertakes a public function, its actions and decisions are amenable to judicial review.

22. It is necessary to restate the parameters of judicial review jurisdiction in this regard, as stated in the Ugandan case of **Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300** thus:

> **"In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).**
>
> **Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality…..**
>
> **Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".**
>
> **Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."**

23. Judicial review is also now entrenched as a constitutional principle pursuant to the provisions of Article 47 of the Constitution, which provides for the right to fair administrative action, and section 7 of the Fair Administrative Action Act in this regard provides that any person who is aggrieved by an administrative action or decision may apply for review of the said action or decision. In addition, it was noted by the Court of Appeal in **Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 others, (2016) eKLR** that Article 47 of the Constitution as read with the grounds for review provided by section 7 of the Fair Administrative Action Act reveals an implicit shift of judicial review to include aspects of merit review of administrative action, even though the reviewing court has no mandate to substitute its own decision for that of the administrator.

24. It needs to be emphasised at this point that section 2 of the Fair Administrative Action Act defines an administrative action as follows:

> **"administrative action" includes—**
>
> **i. the powers, functions and duties exercised by authorities or quasi[1]judicial tribunals; or**
>
> **j. (ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;**

25. The Respondent's decision is therefore amenable to judicial review for reasons that the Respondent's functions and activities are of a public nature and are subject to statutory regulation, and its decision affects the rights of the *ex parte* Applicant and is thus also subject to the provisions of the Fair Administrative Action Act.

26. Coming to the issue of the availability of an adequate alternative remedy, it is necessary to point out that an alternative dispute resolution method does not divest a Court of jurisdiction to entertain a claim for judicial review. However, an available adequate alternative remedy is a material consideration in the exercise of the Court's discretion to grant the relief sought, for the reasons that judicial review is a remedy of last resort, and Courts require other avenues of redress to be first utilised in relation to the actions or decisions of a public body.

27. In addition, the exhaustion of alternative remedies is now both a constitutional and legal imperative under Article 159 (2)(c) of the Constitution and section 9(2) and (3) of the Fair Administrative Action Act, and as exemplified by emerging jurisprudence on the subject. Article 159(2)(c) of the Constitution in this regard obliges this Court to observe the principle of alternative dispute resolution. Specifically, with respect to the exercise of the judicial review jurisdiction of this Court, sections 9(2) (3) and (4) of the Fair Administrative Action Act state as follows:

“(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”

28. The Court of Appeal first embodied the doctrine of exhaustion in **Speaker of National Assembly vs Karume (1992) KLR 21**, and further clarified the doctrine under the current constitutional dispensation in **Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (2015) eKLR** as follows:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews….. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.”

29. Under section 9 (4) of the Act, the Court may, in exceptional circumstances, find that the exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. While the exceptions to the exhaustion requirement are not clearly delineated, the Court of Appeal gave guidelines when they would apply in **Republic vs. National Environment Management Authority, Civil Appeal No. 84 of 2010**, as follows:

“...where there was an alternative remedy and especially where Parliament had provided a statutory appeal process it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the real issue is to be determined and whether the statutory appeal procedure was suitable to determine it...The learned judge, in our respectful view, considered these strictures and come to the conclusion that the Appellant had failed to demonstrate to her what exceptional circumstances existed in its case which would remove it from the appeal process set out in the statute. With respect we agree with the judge.”

30. Likewise, it was held by the High Court In the **Matter of the Mui Coal Basin Local Community (2013) e KLR, R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Ex Parte The National Super Alliance (NASA) Kenya (2017) e KLR,** and **Mohamed Ali Baadi and others vs The Attorney General & 11 others [2018] eKLR** that in reaching a decision as to whether an exception applies, courts will undertake an analysis of the facts, regulatory scheme involved, the nature of the interests involved including the level of public interest involved, and the polycentricity of the issues and the ability of a statutory forum to determine them.

31. In the present case, it is not controverted that a decision was made by the Respondent by a letter dated 12th April 2020 repossessing the ex parte Applicant’s radio broadcasting frequency spectrum license, in exercise of its statutory mandate and powers under the Kenya Information and Communications Act. It is also not in dispute that section 121 of the Water Act establishes the Communications and Multimedia Appeals Tribunal, and section 102F in this regard provides as follows as regards the said Tribunal’s jurisdiction and powers:

“(1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.

(2) In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.”

32. The Respondent does not contest the averment that the Water Tribunal is not presently properly constituted, and is not therefore available to determine the *ex parte* Applicant’s grievance. It was in this respect held by the African Commission of People and Human Rights in the case of **Dawda K. Jawara vs Gambia ACmHPR 147/95-149/96** as follows:

"A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality]...the Governments assertion of non-exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case."

33. It is thus my finding that the alternative remedy of an appeal to the Water Tribunal is not only not available, but also ineffective as it is not in contest that the said Tribunal is not properly constituted. In considering whether an alternative remedy is effective, the Court considers the adequacy of the alternative remedy as a matter of substance. In this respect the alternative remedy should be convenient, expeditious and effective in practical terms, and the procedure employed should provide the claimant with the outcome sought as a matter of substance,

which is not the case currently with the Water Tribunal.

34. The second argument put forward by the Respondent is that even if the Water Tribunal is not properly constituted, the proper forum in the circumstances to hear the application herein is the Environment and Land Court, and not this Court. The application involves the legality of the Respondent's decision, and is one which this Court would ordinarily have jurisdiction to hear and determine pursuant to Article 165(6) of the Constitution and section 7 of the Fair Administrative Action Act. However, to the extent that the end result will touch on the access to water services by the ex parte Applicant, it also therefore falls within the jurisdiction of the Environment and Land Court, as a dispute that relates to the environment and pursuant to Articles 162(2) (b) and 165(5) of the Constitution, and section 13 of the Environment and Land Court Act.

35. This is therefore one of those hybrid cases where both the High Court and the Environment and Land Court have concurrent jurisdiction as the issues herein cut across the exclusive jurisdiction reserved for the two courts. The Courts have resolved the issue of concurrent jurisdiction by inquiring what the most substantial question or issue presented in the controversy is. In **Suzanne Butler & 4 Others v Redhill Investments & Another** **(2017) e KLR** the Court stated the test in the following words:

> **"When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.**
>
> **The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.**
>
> **Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue."**

36. I find that the issues that arise herein are predominantly and substantially water services related issues, since the question of the legality of the actions of the Respondent will have to be examined in light of the Water Act. It also my view that the Environment and Land Court, being a superior court of the status of the High Court, has similar supervisory jurisdiction granted to the High Court by Article 165(6) of the Constitution over subordinate courts and tribunals that make decisions as regards the environment, as is also evidenced by the appellate jurisdiction granted to the said Court by section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.

37. The *ex parte* Applicants' Chamber Summons application dated 22nd July 2020 will be more competently heard by the Environment and Land Court, which has both the exclusive and supervisory jurisdiction to hear the matter, despite the fact that this Court also has supervisory and statutory jurisdiction to review the Respondent's decision.

38. As regards the submission by the *ex parte* Applicant to transfer this matter to the Environment and Land Court in the event of such a finding, Article 159 of the Constitution also mandates this Court to dispense justice expeditiously and without undue regard to procedural technicalities. Section 11 of the Fair Administrative Act also provides that a court may grant any order that is just and equitable in such circumstances. It was in this respect also held by the Court of Appeal in **Mackenzie Mogere & Another vs The Trustees of Teleposta Pension Scheme & 4 Others**, **Civil Appeal N0. 221 of 2015,** that to order such a transfer would not be in error on the part of this Court.

39. Therefore, to avoid further delay and in the interests of justice, it is prudent that this matter be transferred to the Environment and Land Court for further hearing and determination of the substantive issues in the ex *parte* Applicant's Chamber Summons application dated 22nd July 2020.

Disposition

40. In light of the foregoing findings, the Respondent's Preliminary Objection dated 1st September 2020 partially succeeds to the extent of the following orders:

> **I. This suit is hereby transferred to the Environment and Land Court at Nairobi for further hearing and determination of the *ex parte* Applicant's Chamber Summons dated 22nd July 2020.**
>
> **II. The *ex parte* Applicant's Chamber Summons application dated 22nd July 2020 shall accordingly be placed before the Duty Judge at the Environment and Land Court at Nairobi on 24th June 2021 for directions**.
>
> **III. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the *ex parte* Applicant, the Respondent and to the Deputy Registrar of the Environment and Land Court at Nairobi, by close of business on 12th April 2021.**
>
> **IV. The orders granted herein on 23rd July 2020 restraining the Respondent from disconnecting and/or interfering with the *ex parte* Applicant's enjoyment of water through meter number 1998875 on account of the demand made in its letter dated 17th June 2019 are hereby extended until the mention on 24th June 2021.**
>
> V. **In light of the findings made herein and as the substantive issues for determination are still outstanding, there shall be no**

order as to costs of the Preliminary Objection dated 1st September 2020.

41. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF MARCH 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

Pursuant to the Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, Other Court Users and the General Public from Risks Associated with the Global Corona Virus Pandemic dated 17th March 2020 and published 17th April 2020 in Kenya Gazette Notice No. 3137 by the Honourable Chief Justice, this Ruling was delivered electronically by transmission to the email addresses of the *ex parte* Applicant's and Respondent's Advocates on record.

P. NYAMWEYA

JUDGE