



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC PETITION NO E010 OF 2021

GICIRI THUO.....1ST PETITIONER
WANJIKU MUNGAL..... 2ND PETITIONER
JOHN KARIUKI KIMANI.....3RD PETITIONER
PETER NG'ANG'A NJONJO..... 4TH PETITIONER
ANNAH WANJIKU NGUGI..... 5TH PETITIONER
MERCY WAMBUI NJURU.....6TH PETITIONER

-VERSUS -

NATIONAL LAND COMMISSION.....1ST RESPONDENT
MAMA NGINA UNIVERSITY COLLEGE.....2ND RESPONDENT
KENYATTA UNIVERSITY.....3RD RESPONDENT
MINISTRY OF EDUCATION.....4TH RESPONDENT
COMMISSION FOR UNIVERSITY EDUCATION.....5TH RESPONDENT
KENYA HUMAN RIGHTS COMMISSION.....INTERESTED PARTY
DORCAS WAIRIMU KAMAU & 154 OTHERS.....INTENDED INTERESTED PARTIES

RULING

1. The court is seized of three interlocutory items: (i) the petitioners' application for conservatory orders dated 25/11/2021; (ii) the intended interested parties' application dated 23/1/2022; and (iii) the preliminary objection by the 2nd and 3rd respondents, dated 26/1/2022. Parties are not able to agree on how the items should be disposed. Counsel for the 2nd and 3rd respondents has urged that the preliminary objection be disposed first because it raises the question as to whether this court has jurisdiction to entertain this dispute or not. All the other respondents in the petition concur with them on that view. The petitioners hold a different position, and contend that the preliminary objection should be considered alongside their application for conservatory relief. The intended interested party is of the view that their application for joinder should be considered first.

2. I have considered the oral submissions of counsel on the issue. Nyarangi JA in *Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd (1989) 1 KLR* articulated the procedure to be followed whenever a question of jurisdiction is raised. Because jurisdiction is everything, a question of jurisdiction takes precedence over all other questions in a suit.

3. I therefore agree with counsel for the 2nd and 3rd respondents that the preliminary objection should be disposed first. Secondly, were this court to consider the question of jurisdiction simultaneously with other questions and it turns out that the court does not have jurisdiction, the time, the energy and the resource spent by the court and by the parties in disposing the other items will all stand wasted.

4. Consequently, I direct that the preliminary objection be disposed first. It will be disposed through brief highlights of oral submissions in

the virtual court on 9/2/2022 at 11.00 a.m. Parties shall file and exchange brief written submissions before then.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF
JANUARY, 2022**

B M EBOSO

JUDGE

In the Presence of: -

Mr Malenya for the Petitioners

Mr Njoroge Regeru and Mr Thuo for the 2nd and 3rd Respondent

Ms Masinde for the 1st Respondent

Mr Fatma for the 4th and 5th Respondents

Ms Kubai for the intended interested parties

Court Assistant: Phyllis Mwangi