



**Nyauke v The Homa-Bay Sub-County Administrator. & 5 others (Environment & Land Petition E001 of 2022) [2022] KEELC 3367 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3367 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND PETITION E001 OF 2022  
GMA ONGONDO, J  
MAY 31, 2022**

**BETWEEN**

**SAMUEL NYAUKE ..... PETITIONER**

**AND**

**THE HOMA-BAY SUB-COUNTY ADMINISTRATOR. .... 1<sup>ST</sup> RESPONDENT**

**OFFICER COMMANDING POLICE DIVISION HOMA-BAY .... 2<sup>ND</sup>  
RESPONDENT**

**HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**EARNEST BIN AMITO ..... 4<sup>TH</sup> RESPONDENT**

**JOINT BASE NAVA ENTERPRISES LTD ..... 5<sup>TH</sup> RESPONDENT**

**ENVIRONMENT MANAGEMENT AUTHORITY ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This matter is coming up for ruling in respect of the petitioner’s notice of motion application dated March 21, 2022 and filed in court on March 25, 2022, further to the orders of the court of April 28, 2022.
2. Besides, the court’s attention has been drawn to the notice of preliminary objection to the petition dated March 1, 2022 and filed herein on even date by learned counsel for the 6<sup>th</sup> respondent.
3. The gravamen of the preliminary objection is that this court lacks jurisdiction to hear and determine the petition since the petitioner has not approached the requisite avenues for resolution of this dispute as provided for under the relevant statutes, being the Homa Bay County *Alcoholic Drinks Control Act, 2015* and the *Environmental Management and Co-ordination Act, 2012* (1999).



4. In response to the preliminary objection, the 5<sup>th</sup> respondent filed grounds of opposition dated April 19, 2022 which reads in part:

“That the court is yet to determine the preliminary objection raised and to visit the site would be tantamount holding that it has jurisdiction”.

5. By the submissions dated May 20, 2022 and filed in court on May 24, 2022, learned counsel for the 6<sup>th</sup> respondent stated, *inter alia*:-

“...the preliminary objection dated March 1, 2022 be heard and determined first as it determines the validity of the petitioner’s petition and subsequent applications as it puts in question the issue of jurisdiction... the 6<sup>th</sup> respondent’s preliminary objection takes priority over any other application that may be filed subsequently to the petition as it grounds this honourable court on its proper position in regard to jurisdiction.”

6. The petitioner in his submissions dated May 4, 2022 and filed on even date, contends that the law relied on in support of the preliminary objection does not place mandatory requirement on the petition. That he is not challenging the actions of the respondents but is petitioning the court for protection of his fundamental rights.

7. The Court of Appeal sitting at Nairobi in *Kakuta Maimai Hamisi-vs-Peris Pesi Tobiko & 2 others* [2013] eKLR stated the following in regard to jurisdiction:

“So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain.” (Emphasis laid)

8. The honourable court proceeded to quote Nyarangi J.A in the case of *The Owners of the Motor Vessel Lillian ‘S’-vs-Caltex Kenya Ltd* [1989] KLR 1 thus;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...” (Emphasis added)

9. This court cannot therefore, make a determination on the application dated March 21, 2022 before dispensing with the preliminary objection dated March 1, 2022 herein.

10. To that end, I hereby order and direct thus:

- a. The preliminary objection dated March 1, 2022 herein takes priority over any other matter in this petition and be heard by way of written submissions.



- b. The petitioner's submissions and the 6<sup>th</sup> respondent's submissions duly filed on May 4, 2022 and May 24, 2022 respectively be served on the other parties herein within the next seven (7) days from this date.
- c. The other respondents to file and serve submissions, if any, within seven (7) days from the date of service of the petitioner's and 6<sup>th</sup> respondent's submissions.
- d. The preliminary objection is fixed for July 25, 2022 to confirm compliance and for further directions.
- e. It is so ordered.

**DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 31<sup>ST</sup> DAY OF MAY 2022.**

**G.M.A ONG'ONDO**

**JUDGE**

Present

The petitioner- present in person

Mr. A. Oluoch, learned counsel for the 5<sup>th</sup> respondent

Mr. R. Ochieng, learned counsel for the 4<sup>th</sup> respondent

Mr. Ngararu Maina, learned counsel for the 6<sup>th</sup> respondent

Okello- Court Assistant

G.M.A ONG'ONDO

JUDGE

