



**Coast Legal and Resource Foundation v Medics Strategic Development
Limited & 3 others (Environment & Land Petition E022 of 2022)
[2022] KEELC 15569 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15569 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E022 OF 2022
EK WABWOTO, J
DECEMBER 20, 2022**

BETWEEN

COAST LEGAL AND RESOURCE FOUNDATION PETITIONER

AND

MEDICS STRATEGIC DEVELOPMENT LIMITED 1ST RESPONDENT

THE COUNTY GOVERNMENT OF KISUMU 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

**THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 4TH
RESPONDENT**

RULING

1. This ruling is in respect to the 1st respondent's application and notice of preliminary objection both dated August 2, 2022. The notice of motion sought the following orders: -
 - i. That the petition herein be transferred to Kisumu Environment and Land Court for hearing and determination.
 - ii. That costs of the application be borne by the petitioner.
2. The application was accompanied by a supporting affidavit sworn by Dr Jackton Omoto and was made on the following grounds:
 - i) That petitioner herein filed a suit against the respondents in relation to land parcel LR No 10419/5 situated within Kisumu which forms the subject of the petition.
 - ii) That Kisumu has an Environment and Land Court that dealt with all environment and land within Kisumu County and its environs.



- iii) That all the respondents sued therein reside and or carry out their business within Kisumu County within the jurisdiction of the Environment and Land Court in Kisumu.
 - iv) That the respondents in the petition are likely to be subjected in unnecessary costs of handling the matter in Nairobi.
 - v) That the Kisumu Environment and Land Court has the jurisdiction to handle the issues raised by the petitioner in its petition.
 - vi) That a suit and or petition should be instituted in a court within the local limits of whose jurisdiction the property is situate.
 - vii) That the application has been brought in good faith and without unreasonable delay.
3. The notice of preliminary objection sought for the petition to be struck out with costs on the following grounds:
- i. This honorable court cannot hear and determine the suit and the application by dint of the mandatory provisions of section 129(1) (a) & (2) of the *Environment Management & Coordination Act* 1999 as read together with regulation 46 (1) (f) of the *Environment Impact Assessment and Audit Regulations*, 2003.
 - ii. This honorable court jurisdiction to hear and determine the suit and the application is further ousted by dint of the mandatory provision of section 78(b) of the Physical & Land Use Planning Act, 2019
4. The 1st respondent filed submissions dated October 11, 2022, in which it was averred that by filing the case in Nairobi, the petitioner was seeking to punish and inconvenience the 1st respondent occasioned by travelling expenses and legal costs to defend the petition in Nairobi.
5. It was further submitted that the court is bound by the *Civil Procedure Act* and the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practise and Procedure Rules* 2013, for this reason the court has jurisdiction to transfer the case to the court within the local limits where the cause of action arose.
6. In a replying affidavit dated September 30, 2022, sworn by Joseph Juma Mukewa, the petitioner argued that there is no statutory provision that petition must be filed in a particular place where the subject matter is situated. It was further submitted that most matters proceed virtually and therefore the respondents could not claim to be financially prejudiced.
7. Having perused the written submissions and supporting documents, it is evident that the issues for determination before this court are;
- i) Whether the court has jurisdiction to hear and determine the petition?
 - ii) Whether the preliminary objection is merited.
8. It is a well- established principle that jurisdiction is the life force of any suit. This is echoed in the landmark case of *Owners of Motor Vessel "Lillians" vs Caltex Oil Kenya Ltd* (1989) KLR I where it was held;
- “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 its tools in respect of the matter before it, the moment it held the opinion that it is without jurisdiction.”



9. This court is guided by the provisions of article 162 (2) (b), as read with articles 165 (5) (b) of the Constitution, 2010, and section 13 of Environment and Land Court Act No 19 of 2011 which confers unlimited original and appellate jurisdiction in disputes relating to “the environment and the use and occupation of, and title to land.”
10. Being a petition, the court is further guided to apply the provisions under the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practise and Procedure Rules 2013. Rule 8 provides that:
- “(1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.
- (2) Despite sub rule (1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party.”
11. In my interpretation of the Rules, the onus to ensure proper filing squarely lies upon a petitioner’s shoulders and if the said action is deemed to be erroneous, the court is at liberty to step in or grant leave for either party to correct its error. In this instance, the respondent seeks to correct *vide* their application to transfer the suit to Kisumu Environment and Land Court.
12. I share in the sentiments of my learned brother in the case of Chrispinus Munyane Papa & another v National Environment Management Authority & another [2018] eKLR, where in nearly similar circumstances, opined that:
- “...The Practice and Procedure Rules 2013 are subordinate to the Constitution, they do not limit the court’s jurisdiction to deal with the issues raised in the petition but provide guidance on where matters should be filed for the court’s good governance and operations...”
13. With regard to territorial jurisdiction, the Practise and Procedure Rules 2013 cannot oust the court’s constitutional mandate. Furthermore, this court seeks to ensure resources are utilized prudently and that justice is dispensed in an expeditious and timely manner. For this reason, I find that court must exercise its inherent jurisdiction and equally proceed to determine issues placed before it under the preliminary objection.
14. It is trite law that a preliminary objection must be raised on a point of law as reiterated in the case of Mukbisa Biscuits Manufacturing Co Ltd v West-End Distributors Limited (1969) EA 696 and the case of Nitin Properties Ltd v Singh Kalsi & another [1995] eKLR where the Court of Appeal held that:
- “A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
15. Paragraph 7 of the petition enumerates the crux of the matter as follows:
- “... that the 1st respondent has in violation of the land use guidelines subdivided the said land and offered it for sale for residential purposes while the same was not available for the said purpose owing to the fact that the subject land cannot be:



- a) Subdivided
 - b) No NEMA applications and approvals were acquired to establish the scheme
 - c) No change of use was done
 - d) No sewage lines in the area
 - e) No water supply in the area
 - f) No development plan was approved...”
16. Section 75 of the *Physical and Land Use Planning Act* (No 13 of 2019) establishes a county liaison committees whose functions under section 78 includes: -
- (a) Hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;
 - (b) Hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county;
 - (c) Advise the county executive committee member on broad physical and land use planning policies, strategies and standards; and
 - (d) Hear appeals with respect to enforcement notices.
17. Section 129 (1) of the *Environmental Management and Co-ordination Act* provides that: -
- (1) Any person who is aggrieved by—
 - (a) a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
 - (b) the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder
 - (c) the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
 - (d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
 - (e) the imposition against him of an environmental restoration order or environmental improvement order by the authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the tribunal in such manner as may be prescribed by the tribunal.
18. The aforementioned provisions set out the jurisdiction of both the County Physical Liaison Committee and the National Environment Tribunal. It is apparent that the two bodies exercise a limited jurisdiction as set out in their respective statutes.
19. In this instance the 1st respondent alludes to fact that the petitioner has failed to exhaust the dispute resolution mechanism under the *Physical Planning Act* and the *Environmental Management and Co-ordination Act* which is mirrored as the main point of contention in the petition.
20. The 1st respondent in their list of documents dated September 26, 2022 included a copy of the EIA licence issued by NEMA, change of user approvals, EIA report, physical planning report and master



plan which therefore confirm that issues with regard to county planning and approvals raised herein ought to have been heard at the first instance by the relevant statutory bodies established under the law. The proper dispute resolution mechanism ought to have been exhausted vide the available channels at the County Physical Liaison Committee and the National Environment Tribunal respectively.

21. Consequently, this court makes the following disposal orders: -

- a) The preliminary objection dated August 2, 2022 is merited.
- b) The petition dated June 8, 2022 is hereby dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF DECEMBER 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mkan for the Petitioner

Mr. Onyango for the 1st Respondent

N/A for the 2nd Respondent

N/A for the 3rd Respondent

N/A for the 4th Respondent

Court Assistant; Caroline Nafuna.

