



Shariff alias Matildah Wakio Mwanyasi & 4 others v County Government of Taita Taveta & 15 others (Environment & Land Petition E010 of 2024) [2025] KEELC 4174 (KLR) (Environment and Land) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4174 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E010 OF 2024**

EK WABWOTO, J

MAY 29, 2025

IN THE MATTER OF: ARTICLES 2, 3, 10(2) (A), (B) & (C), 19, 20, 21, 22, 23, 25, 27, 28, 40, 43(1)(B), 45(1), 47, 50, 57, 64, 201(D), 232 AND ALL THE PROVISIONS OF CHAPTER 6 OF THE CONSTITUTION OF KENYA, 2010

-AND-

IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT, 2012

-AND-

IN THE MATTER OF: THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

-AND-

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION, 2015

-AND-

IN THE MATTER OF: THE COUNTY GOVERNMENT ACT, NO. 17 OF 2012

-AND-

IN THE MATTER OF: COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT, CAP.265C LAWS OF KENYA

-AND-

IN THE MATTER OF: THE TAITA TAVETA COUNTY ASSEMBLY STANDING ORDERS

-AND-

IN THE MATTER OF: THE NATIONAL POLICE SERVICE ACT, CAP.84 LAWS OF KENYA, CAP.84 LAWS OF KENYA

-AND-

IN THE MATTER OF: THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012



-AND-

IN THE MATTER OF: THE PUBLIC OFFICERS ETHICS ACT, NO. 4 OF 2003

-AND-

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

-AND-

IN THE MATTER OF: UNIVERSAL DECLARATION OF HUMAN RIGHTS, INTERNATIONAL CONVENTION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESR)

-AND-

IN THE MATTER OF: INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS (ICCPR), MAASTRICHT GUIDELINES ON VIOLATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS

-AND-

IN THE MATTER OF: AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

-AND-

IN THE MATTER OF: THE VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS IN RESPECT OF IN THE MATTER OF PARCEL NO. 980 MODAMBOGHO ADJUDICATION SECTION (THE SUIT PROPERTY)

BETWEEN

MATILDA WAKIO SHARIFF ALIAS MATILDAH WAKIO

MWANYASI 1ST PETITIONER

HUNDESON MBELA 2ND PETITIONER

THOMAS MWAKIWO 3RD PETITIONER

MWANAISHA SAIDA SHARIFF 4TH PETITIONER

DONALD HASSAN SHARIFF 5TH PETITIONER

AND

COUNTY GOVERNMENT OF TAITA TAVETA 1ST RESPONDENT

COUNTY ASEMBLY OF TAITA TAVETA 2ND RESPONDENT

THE SPEAKER COUNTY ASSEMBLY OF TAITA TAVETA ... 3RD RESPONDENT

LANDS & HUMAN WILDLIFE CONFLICT RESOLUTION COMMITTEE-
TAITA TAVETA COUNTY ASSEMBLY 4TH RESPONDENT

COMMITTEE ON AGRICULTURE AND LIVESTOCK TAITA TAVETA
COUNTY ASSEMBLY 5TH RESPONDENT

INSPECTOR GENERAL OF POLICE 6TH RESPONDENT



THE OFFICER COMMANDING STATION MWATATE POLICE STATION	7 TH RESPONDENT
THE HON ATTORNEY GENERAL	8 TH RESPONDENT
HON JOSEPH KENNEDY MWALEGHA	9 TH RESPONDENT
HON ANISA HOPE SANGULI	10 TH RESPONDENT
HON PETER SHAMBI	11 TH RESPONDENT
FREDRICK MWAMBILI	12 TH RESPONDENT
ABIGAEI NJORE	13 TH RESPONDENT
KENYA AGRICULTURAL & LIVESTOCK RESEARCH ORGANIZATION ..	14 TH RESPONDENT
PETER KITIVI, THOMAS MBOYA JUMWA, GLADYS MBULA HOLINESS ADIJA, KIUTE MWAMBILA (SUED AS THE MERRYLAND VILLAGE COMMITTEE OF ELDERS ON THEIR OWN BEHALF AND ON BEHALF OF 190 OTHERS)	15 TH RESPONDENT
CABINE SECRETARY, LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT	16 TH RESPONDENT

RULING

1. This Ruling is in respect to the 1st Respondent’s Preliminary Objection dated 11th March 2025 which objection was premised on the following grounds:-
 - i. That this Honourable Court lacks jurisdiction to hear this Amended Petition for lack of the mandatory statutory consent to file this case by dint of Section 8 of the [Land Consolidation Act](#), Cap 283 and Section 30 of the [Land Adjudication Act](#), Cap 284 Laws of Kenya.
 - ii. That the Petitioners have not exhausted the remedies set out in Section 29 of the [Land Adjudication Act](#), Cap 284 Laws of Kenya.
 - iii. That this Honourable Court lacks jurisdiction to hear and determine this petition in as far as it is claimed that defamatory statements against the 4th Petitioner and the alleged injuries. This Honourable Court does not have jurisdiction to adjudicate on claims of defamation and injuries as the jurisdiction of the Environment and Land Court is circumscribed under Article 162(2)(b) of [the Constitution](#) and under the [Environment and Land Court Act](#).
 - iv. That this Honorable Court lacks jurisdiction to adjudicate over claims of violation of human rights against Petitioners who do not own the subject land and do not have any proprietary rights over the land in question. The same offends the doctrine ripeness in so far as the alleged violation of the constitutional rights by the Petitioners are speculative and have not yet materialized into a concrete legal issue requiring judicial any intervention.
2. The objection was supported by the other Respondents but contested by the Petitioners. Pursuant to the directions issued by the court, parties were directed to file written submissions which were also highlighted by the respective counsel for the parties.



3. The court has considered the Preliminary Objection and the written submissions and oral submissions made by Counsel for the parties and is of the view that the main issue for consideration is whether this 1st Respondents preliminary objection is merited.
4. It was contended by the 1st Respondent that the Petitioner approached this Court through an application under a certificate of urgency, together with a supporting affidavit, and an amended petition dated 11th November 2025. The Petitioners did not obtain (and consequently, they did not file in court) the requisite consent to file a suit regarding land ownership in an adjudication section, as required under Section 8 of the [Land Consolidation Act](#) and under Section 30 of the [Land Adjudication Act](#).
5. It was submitted that Section 8 of the [Land Consolidation Act](#) provides:-
 - “(1) Subject to the provisions of this section, no person shall institute and no court whatever shall take cognizance of, or proceed with or continue to hear and determine, any proceedings in which the ownership or the existence under native law and custom of any right or interest whatsoever in, to or over any land in an adjudication area is called in question or is alleged to be in dispute unless the prior consent in writing of the Adjudication Officer to the institution or continuation of such proceedings has been given.
6. It was also submitted that Section 30(1) of the [Land Adjudication Act](#) provides that:
 - “Except with the consent in writing of the Adjudication Officer, no person shall institute, and no Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29(3) of this Act.”
7. Citing the cases of Kaluma M’mikwa Katheru =Versus= Franklin Mugambi Rugoji (2017) KEELC 482 (KLR) an Mberia =Versus= M’Ambau (2024) KECA 1555 (KLR) it was argued that the Environment and Land Court emphasized that it is mandatory to obtain consent from the Land Adjudication Officer before filing a suit in respect of land within an adjudication section, as required by Section 8 of the [Land Consolidation Act](#) and Section 30 of the [Land Adjudication Act](#).
8. In respect to the exhaustion of available remedies, it was submitted that the Petitioners have not exhausted all available remedies before approaching this Honourable Court. By their own admission in the amended petition, an appeal they lodged against the decision of the adjudication officer is still pending determination by the Ministry of Interior and National Government Coordination.
9. The available remedy which the Petitioner must exhaust before approaching court is the conclusion of the appeal they have filed under Section 29 of the [Land Adjudication Act](#), which provides that:
 - “(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may within sixty days after the date of the determination, appeal against the determination to the Minister by: (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”



10. It was also submitted that Section 9(2) of the *Fair Administrative Action act* 2015 stipulates that:

“The High Court or Subordinate Court shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal on review and all remedies available under any other written law are first exhausted.”
11. Citing the cases of David Mtawali Kazungu =Versus= National Land Commission & Others (2017) KEHC 430 (KLR) and Republic =Versus= Land Adjudication Officers & Others (2020) KEHC 2908 it was argued that the Petitioners have not exhausted all the available remedies in law and specifically the pending appeal against the decision.
12. The 1st Respondent also submitted that the Petition offends the doctrine of ripeness in so far as the alleged violation of constitutional rights by the Petitioners. The court was urged to dismiss the Petition with costs.
13. The 2nd, 3rd, 4th, 5th, 9th, 10th, 11th, 12th, 13th and 15th Respondents filed written submissions dated 23rd April 2025 in support of the Preliminary Objection.
14. It was submitted that there is a pending appeal currently awaiting determination by the Cabinet Secretary through the Deputy County Commissioner Mwatate regarding the said land thus the Petitioners have not exhausted the available remedies.
15. It was further submitted that the provisions of the law are couched in mandatory terms and there is no room for a finding that it is either only permissive or discretionary.
16. It was also argued that the Petition not only bears very diverse causes of action including criminal and defamation allegations which cannot be determined vide a Petition but also the nature of the injuries alleged to pertain the loss of use of land, trespass and detention thus ought not be canvassed as constitutional questions rather by some other fashion vide a plaint.
17. The Petitioners in opposing the preliminary objection filed written submissions dated 29th April 2025 and also made oral submissions in opposition to the said Objection.
18. It was submitted that the Preliminary Objection before this court is not a pure point of law since the court would be forced to consider evidence or make findings of fact. It was also submitted that it is a factual dispute as to whether the Land Adjudication Officer issued a consent as per Section 30 of the *Land Act* Adjudication.
19. It was further argued that the Petition seeks some reliefs that cannot be secured in any other forum other than this court. It was also argued that dismissing the Preliminary Objection would leave the Petitioners with no recourse. The court was urged to dismiss Preliminary Objection.
20. Undoubtedly, the issues of the doctrine of exhaustion, avoidance and ripeness are all capable of disposing of the Petition in limine and therefore are proper subjects to raise as preliminary points.
21. The doctrine of avoidance was well-discussed by the Supreme Court in *Petition 14, 14A, 14B & 14C of 2014 (Consolidated) Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR (29th September 2014) (Judgment) thus:

“(256) The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*,



1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

(257) Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)).

(258) From the foundation of principle well developed in the comparative practice, we hold that the 1st, 2nd and 3rd respondents’ claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright-infringement claim, and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court...”

22. In the case of *K K B v S C M & 5 others* (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR) (22 April 2022) (Ruling), Hon. Mativo, J. (as he then was) also expressed himself on the doctrine as hereunder:

“In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause...”

23. Further in the case of *Faraj & 3 others v Police & 2 others (Constitutional Petition 165 of 2020)* [2022] KEHC 287 (KLR) (27 April 2022) (Judgment) Hon. Mativo, J. (as he then was) indicated:

“27. The doctrine of avoidance is primarily viewed by courts from the position that although a court could take up a matter and hear it, it would still decline to do so if there is another mechanism through which the dispute could be resolved. In that regard, the Supreme Court stated in *Communication Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 others* (at para 256) that the principle of avoidance means that a Court will not determine a constitutional issue when a matter may properly be decided on another basis.

...

29. The doctrine of ripeness and constitutional avoidance gives credence to the concept that *the Constitution* does not operate in a vacuum or isolation. It has to be interpreted and applied in conjunction with applicable legislation together with other available legal remedies. Where there are alternative remedies the preferred route is to apply such remedies before resorting to *the Constitution*. The possibility of the elevation of any dispute to a constitutional issue is what is sought to be averted by the doctrines of ripeness and



constitutional avoidance. It is borne out of a realisation that all legislative or common-law remedies are part of the legal system...”

24. In the supporting affidavit filed by the Petitioners in support of the Petition. It is averred at paragraph 13 that:

“...I subsequently lodged my Appeal through my Statement of Appeal in the same year 2014. The Appeal is pending determination before the Cabinet Secretary Land and Physical Planning who has delegated the function to the Deputy County Commissioner Mwatate who is in conduct of the Appeal.”

25. The court has also considered the letter dated 7th August 2024 which confirmed that the suit parcel is subject to a pending appeal to the Cabinet Secretary and as such the adjudication dispute resolution proceedings have not been fully exhausted.

26. The provision on the law are clear that a party can only move this court after exhausting the procedures provided for under the law.

27. The question then that the court has to address itself is whether the Petition is ripe for determination by this court. In other words, should the Petitioner have awaited the conclusion of the process stipulated under the applicable provisions of Section 29 of the Land Adjudication Act before moving to this court.

28. In the instant case, it is indeed evident that the said process under the Act has not been concluded. Needless to mention that the doctrine of constitutional avoidance does not divest this Court of the jurisdiction to hear and determine Constitutional Petitions. The doctrine only restrains the court from hearing and determining a matter where there exists another appropriate forum that can hear and determine the matter effectively.

29. It therefore follows that looking at the instant petition, the ELC Court may not be the first point of call on the determination of the said dispute. The doctrine of exhaustion, spells otherwise. In view of the foregoing the 1st Respondent’s objection succeeds only to the extent that the Petition is deemed to have been filed prematurely.

30. From the foregoing analysis and findings, the following orders are hereby issued: -

- a. The Amended Petition dated 11th November 2024 is hereby struck out.
- b. Each party to bear own costs.

It so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT VOI THIS 29TH DAY OF MAY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Olendi for the Petitioners.

Ms. Marisoi hlb for Mr. Rotich for the 1st Respondent.

Ms. Indesia for the 2nd to 5th, 9th to 13th and 15th Respondents.

N/A for the 6th to 8th and 14th Respondents.

Court Assistant: Mary Ngoira.

