



REPUBLIC OF KENYA



**Yano v Lotugei & 2 others (Land Case E008 of 2024)  
[2025] KEELC 1151 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
LAND CASE E008 OF 2024**

**L WAITHAKA, J  
MARCH 12, 2025**

**BETWEEN**

**PIUS KIPTUM YANO ..... APPELLANT**

**AND**

**MICAH KIPROP LOTUGEI ..... 1<sup>ST</sup> DEFENDANT**

**ROBERT KIPRUTO KOSGEI ..... 2<sup>ND</sup> DEFENDANT**

**BARNABA KIBET ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the plaintiff/applicant's notice of motion application dated 16th December, 2024. Through the application, the plaintiff/applicant seeks an order of injunction to compel the respondents to forthwith reconnect water supply to his premises on L.R No. Cherangany/Kapcherop/1300. The plaintiff/applicant also seeks an order of temporary injunction to restrain the defendants/respondents by themselves, their agents, servants and/or any person acting under the authority from interfering with the plaintiff/applicant's water supply on L.R No. Cherangany/Kapcherop/1300 pending the hearing of the application and the suit.
2. As can be discerned from the grounds on the face of the application and the affidavit sworn in support thereof, the application is premised on the grounds that the plaintiff/applicant is a member and beneficiary of Kapchepsir and Chepkarengoi Water Project; that the plaintiff/applicant had peacefully enjoyed water connection to his premises on L.R No. Cherangany/Kapcherop/1300 for over 30 years; that the respondents who are members of Kapchepsir and Chepkarengoi Water Project Committee through their agents, began interfering with connection of water to his premises on L.R No. Cherangany /Kapcherop/1300 after he filed a suit against the County government of Elgeyo Marakwet; that after the respondents interfered with his water supply by disconnecting water to his premises, he reported the incident to the Police and the Area Chief and water connection was restored.



3. The plaintiff/applicant laments that on 4th December 2024, the respondents through their notorious agent, Simon Kibet, disconnected his power supply by ripping off and carrying away his Y pipe thereby making it impossible for the plaintiff/applicant to reconnect water supply to his premises herein.
4. Terming the actions of the respondents complained of drastic, punitive and malicious, the plaintiff/applicant depones that upon inquiring from the respondent why they took such drastic and punitive measures against him, the respondents informed him the action was prompted by his decision to sue the County government of Elgeyo Marakwet vide Iten Petition No. E001 of 2023.
5. It is the applicant's case that the actions of the respondent's complained off are meant to coerce him to withdraw his case against the County government of Elgeyo Marakwet hence a violation of his constitutional and legal rights.
6. When the application came up for hearing on 27th January, 2025 the applicant's counsel informed the court that despite having been served with the application, the respondents had not filed any response to the application. She urged the court to allow the application in terms of prayers 2, 3, 4 and 5.

### **Analysis and determination**

7. I have carefully read and considered the application. The affidavit evidence adduced in support of the application indicates that the applicant's rights to access water as a beneficiary of Kapchepsir and Chepkarengoi Water Project have been violated by the respondents or persons acting under the instructions/authority of the respondents.
8. From the pleadings filed in this case, there is no doubt that the dispute relates to the plaintiff/applicant's right to access to water. The right to access to water is provided for under Article 43 of *the Constitution* of Kenya 2010 and the *Water Act*, 2016.
9. Section 92 of the *Water Act* puts an obligation on every water services provider to establish a mechanism for handling consumer complaints. The mechanisms established under that section are supposed to meet the standards set by the Regulatory Board. The section provides as follows: -
 

“Every water services provider shall establish a mechanism for handling consumer complaints which meets standards set by the Registration Board”.
10. Section 119 of the Act, on the other hand establishes a Water Tribunal which under Section 121(2) is given mandate 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 have an alternative dispute resolution mechanism. In that regard, see the above cited provisions of the law which provide as follows: -
 

“ 119. There is established a Tribunal.

120. ..

121

(1) ...

(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's a



business contract, unless the parties have otherwise agreed to have an alternative dispute resolution mechanism.”

11. By dint of the provisions of Section 124 of the Act, appeals against the decision of the Tribunal lie to the Environment and Land Court. See the said section of the law, which provides as follows: -

“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 Environment Court, established under Article 162(2) of *the Constitution* on an issue of law.”

12. It is clear from the above cited provisions of the law, that disputes concerning water resources or water services should be resolved in accordance with the procedure or processes set out under the Act. The procedures/ process require that disputes like the dispute brought before this court are filed with the Water Tribunal before they can be escalated to this court by way of appeal.

13. In *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others* (Civil Appeal E330 of 2020) [2024]KECA 1102 (KLR)(19 August 2024)(Judgment) the Court of Appeal stated/held:-

“It is patently clear that the Act (read the *Water Act*) has provided an elaborate dispute resolution mechanism, which requires an aggrieved party to first approach the Tribunal, and only resort to the ELC by way of Appeal. Under the Act, the ELC has no original jurisdiction to hear disputes under the Act. Its jurisdiction is only Appellate...”

14. In the instant case, the plaintiff brought the dispute directly to this court. No explanation has been offered as to why the plaintiff/applicant never filed the dispute with the Water Tribunal as contemplated under Section 121(2) of the *Water Act*.

15. On the strength of the decision *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others* supra, I find and hold that this court has no jurisdiction to hear and determine the dispute between the plaintiff and the respondents as a court of first instance. Consequently, I dismiss the suit and the application with no orders as to costs as both are undefended.

16. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ITEN THIS 12TH DAY OF MARCH, 2025**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered virtually in the presence of:-

Ms. Kiptum for the Plaintiff/Applicant

N/A for the Respondents

Court Assistant: Brian

