Estate of Amir Suleiman (Suing through its Executor Roshan BA Suleiman) v County Government of Narok (Land Case E027 of 2024) [2025] KEELC 4296 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4296 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

LAND CASE E027 OF 2024

LN GACHERU, J

JUNE 5, 2025

BETWEEN

ESTATE OF AMIR SULEIMAN (SUING THROUGH ITS EXECUTOR ROSHAN BA SULEIMAN) ..... PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NAROK ..... DEFENDANT

RULING

1. The Plaintiff/Applicant herein filed a Plaint dated 9th October 2024, against the Defendant/ Respondent and sought for various orders. Among the orders sought is an order of temporary injunction to restrain the Defendant whether by itself, its employees, servants and/or agents whatsoever from interfering with the Plaintiff's and its tenants' quiet possession, use, occupation and enjoyment of its various properties.

2. Simultaneously, the Plaintiff/Applicant filed a Notice of Motion Application even dated and sought for these prayers;

    a. That an order of temporary injunction do issue restraining the Defendant/Respondent whether by itself, its employees, servants, its agents, and or any other person whosoever, whatsoever working under the Defendant's/Respondent's instructions and authority from interfering with Plaintiff's and its tenants' quiet possession, use, occupation, and enjoyment, and restraining the Defendant/Respondent form any acts of entering, trespassing, occupying, locking or in any other way obstructing, the Plaintiff's/Applicant's access, use, occupation and enjoyment of the properties namely; Plot No.64(now 172) Block 4; Plot No. 132(now 146) Block 5; Plot No.79(now 136) Block 5; Plot No.793 Block 11; Plot No.24 Block 5; Plot No.17 Block 11 – all located within Narok town, pending hearing and determination of this suit.

b. That a mandatory order do issue to the Defendants/Respondents to remove the blockages and obstructions placed on the parcels forthwith, within the date of the issuance of the order, pending any other or further orders the court may deem fit to issue as to the said blockages and obstruction by the Defendant/Respondent.

c. That in default of the Defendant as to prayer '4' above as to removing the obstruction, a mandatory order do issue for the Plaintiff/Applicant to thereafter remove any blockages and obstructions mounted on the parcels, pending any other or further orders the court may deem fit to issue on the said matters of blockages and obstruction.

d. That an order do issue to restrain the Defendant/Respondent from any or any other or further acts of threats or actual acts to dispose off, auction, sell, and or any other way alienate the Plaintiff/Applicant's proprietary rights of ownership and possession of parcels Plot No.64(now 172) Block 4; Plot No. 132(now 146) Block 5; Plot No.79(now 136) Block 5; Plot No.793 Block 11; Plot No.24 Block 5; Plot No.17 Block 11 – all located within Narok town, pending hearing and determination of this suit.

e. That an order does issue, that without prejudice to any other prayers, parties do appear before the Valuation Rating Tribunal and present to the court a report and or judgment from the Valuation Rating Tribunal, to be taken into account in the final orders this court may make.

f. That any other or further orders and or directions do issue in the best interest of justice.

g. That costs be in the cause.

3. The Application is supported by the grounds set out on the face of the application and the Supporting Affidavit of Anne Nyaruai Karanja.

4. Among the grounds in support of the Application are; -

1. The Defendant/Respondent has without any color of right;

    a. Issued notices purporting that the Plaintiff /Applicant is in default of its rates payments.

    b. Attempted to block and obstruct the Plaintiff/Applicant and tenants in the access use, and occupation of the said parcels, namely Plot No.64(now 172) Block 4; Plot No. 132(now 146) Block 5; Plot No.79(now 136) Block 5; Plot No.793 Block 11; Plot No.24 Block 5; Plot No.17 Block 11 – all located within Narok town.

2. That Plaintiff/Applicant has already paid full rates, as per court order, which to date has not been discharged, and whereof no re-evaluation of rates has been done so far.

3. The orders already obtained and in force so far on the said parcels provided that:

    i. The estate of Amir Suleiman can continue paying rates at the then-existing amount.

    ii. For any increment to be effected, then both the Plaintiff/Applicant and the then Town Council, the predecessor of the now County Government should engage and agree.

    iii. The documents showing full payments and on time have always been availed to the Defendant/Respondent

4. The Plaintiff/Applicant prays for the injunctive orders pending decision by the court and or by the Valuation Rating Tribunal.

5. The Applicant has approached this court because it cannot get injunctive and presrvatory orders from the Valuation Rating Tribunal

6. This application raises matters of injunctive prayers and related pertinent issues.

7. The Plaintiff is apprehensive that if this court does not intervene, the Defendant and its agents are likely to continue victimizing the Plaintiff/ Applicant and its tenants in a misguided belief that they can get the Plaintiff's properties.

8. The Plaintiff/ Applicant's freedoms and rights including proprietary rights have been, are, and will continue being violated unless the court intervenes.

5. In her Supporting Affidavit Anne Nyaruai Karanja, the estate manager of the late Amir Suleiman averred that: -

a. The late Mr. Amir Suleiman was at all material times allotted and was the owner of the following properties, namely; Plot No.64(now 172) Block 4; Plot No. 132(now 146) Block 5; Plot No.79(now 136) Block 5; Plot No.793 Block 11; Plot No.24 Block 5; Plot No.17 Block 11 – all located within Narok town.

b. At all material times relevant to this suit, Amir Suleiman and now his estate beneficiaries and tenants have been in possession and use of the suit properties lawfully for a considerable period of time for commercial and residential use, developed at a considerable expense, cost and investments.

c. The properties are now occupied by different tenants who include sensitive businesses and social amenities including inter alia, schools, chemists, clinics, professional service providers' offices such as advocate surveyors, valuers, accountants, auctioneers, and restaurants.

d. The Defendant/Respondent has without any color of right;Issued notices purporting that the Plaintiff/Applicant is in default of its rates payments.Attempted to block and obstruct the Plaintiff/Applicant and tenants in the access use, and occupation of the said parcels, 164(now 172) Block 4; Plot No. 132(now 146) Block 5; Plot No.79(now 136) Block 5; Plot No.793 Block 11; Plot No.24 Block 5; Plot No.17 Block 11 – all located within Narok town.Issuing increased rates contrary to court orders in the suit Nakuru JR No.46 of 2011 Amir Suleiman v the Clerk, Town Council of NarokHarassing and intimidating the Plaintiff/Applicant.

e. That sometime on 21st April, 2011, the registered owner filed a motion in Nakuru High Court Judicial Review Application No.46 of 2011, Amir Suleimanv The Clerk, Town Council of Narok whereby the court granted orders on 15th March, 2012 in the Applicant's favour against the Respondent(then known as Town Council of Narok), stating inter alia " that an order for certiorari be and is hereby issued for purpose of being quashed the decision of the Respondent increasing the rates payable by ratable owners of properties until the requirements of *Valuation for Rating Act* are fulfilled"

f. She averred that Amir Suleiman promptly complied with the court orders and he has been diligently paying the annual plot rent and rates without fail and issued with the requisite payment receipts since the year 2012.

g. The Plaintiff/Applicant prays that out of Kshs. 7,200,000/= sought by the Defendant/ Respondent, as due rates, and which the Plaintiff/Applicant contests;It is prepared to remit Kshs. 4,000,000/= on account, pending decision on the proper amount payable in this litigation. The Plaintiff/Applicant is ready to make a deposit in court, or into a joint

interest earning account, for both advocates, on account, the amount of Kshs. 4,000,000/ =.Undertakes to pay an amount found by court and or the Valuation Rating Tribunal to be due, within reasonable time of the court and or the Valuation rating Tribunal decision.

e. The Plaintiff is extremely and justifiably apprehensive that threatening the Applicant's business and its tenants' quiet possession and enjoyment of the aforesaid properties is devoid of the due process of the law thereby suffering monumental loss from income earned by the tenants who may vacate due to persistent harassment by the Defendant. That the Defendant has consistently purported to increase the rates payable by ratable owners of properties within Narok town albeit without complying with the statutory provisions of the *Valuation for Rating Act* accordingly.

f. That the deponent was advised by the estate's advocate, that this court has jurisdiction and power to grant the orders sought herein and avert an injustice; Powers to and jurisdiction as to, (a) land use, planning, rates, rent and valuation, (b) to issue injunctive orders, (c) to secure constitutional rights of parties against breaches of their freedoms and right.

6. The application is opposed by the Defendant/Respondent through its grounds of opposition dated 12th November 2024, and the Replying Affidavit of Meingati Allan Liaram, the County Attorney for the Respondent who averred that this court lacks jurisdiction to hear and determine the dispute herein as it offends the doctrine of exhaustion of Judicial remedies; the suit is premature and is barred by the provisions of Section 10 of the *Valuation for Rating Act*, Cap 266 Laws of Kenya.

7. He further averred that it is trite that where superior courts have jurisdiction to determine profound questions of law, the first opportunity should be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute, and as such the first point of call should be the Valuation Court.

8. It was his contention that he has been advised by his Advocate on record that this court further lacks jurisdiction to hear and determine the instant application as well as the main suit as it offends the clear provisions of Article 169 (1) and (2) of *the Constitution* of Kenya and Sections 7 and 9(a) of the Magistrates' Court Act.

9. Further, that without prejudice to the foregoing on jurisdiction, although the Applicant avers that Respondent should invite the representative of the estate to discuss and determine the value of rates payable, this position is unlawful and meant to mislead the court.

10. He contended that that at the time of filing the instant suit, the payment of rates in Kenya was governed and regulated by the *Rating Act*, Cap 267 Laws of Kenya (now repealed) together with the *Valuation for Rating Act*, Cap 266 Laws of Kenya (now repealed). Further, that the *Rating Act* empowered a rating authority, which includes the County Government, the Respondent herein, to come up with different forms of rating for purposes of levying rates within its locality.

11. It was his further contention that the *Valuation for Rating Act* empowered local government authorities to value land for the purposes of rates and for matters incidental thereto. The Act also provides for the procedure to be followed in challenging the value or amount of rates levied by a rating authority. Therefore, the allegations made by the Applicant that they were to hold a meeting with the Respondent to determine the rates payable for its properties, is incorrect, misinformed and only meant to hoodwink the court in granting the orders sought.

12. The deponent deposed that despite the court noting that there was no proof of proper service of the hearing date of the motion by the Applicant in the Judicial Review filed in Nakuru High Court, the matter still proceeded ex-parte, where the Applicant herein was heard, and in its final orders, the court

quashed the decision of the Clerk, Town Council or Narok to increase rates until the requirements enshrined in the *Valuation for Rating Act* are fulfilled.

13. He claimed that from the said ruling, it is quite evident that the court did not determine the rates payable ,but instead halted the increment of rates. Therefore, the contention that the court determined the amount of rates payable by the Applicant is only a fallacy, only meant to delude this court in granting the orders sought by the Applicant.

14. Additionally, the deponent averred that the Applicant herein has failed to disclose relevant facts and information that would assist the court to arrive at a fair decision in granting the orders sought for the following reason;

    i. Though the Applicant avers that the estate has always paid rates from the year 2012; however, the Applicant has not annexed any copies of payment invoices or receipts for the said period as alleged.

    ii. Further, though the Applicant alludes that the estate is ready and willing to remit the sum of Kshs.4,000,000/=, pending determination of rates payable by a Valuation Court/Tribunal, the Applicant has not approached any Tribunal in this regard, and as such this is a claim in futility. In any event, if at all the Applicant has faithfully paid rates, why would it seek an order for valuation of rates from the Valuation Tribunal?

    iii. That the Applicant acknowledges to be indebted to the Respondent, and therefore, it is only equitable for the Applicant to settle the arrears due as a gesture of good will, as the Applicant has approached this Court with unclean hands, having failed to pay rates as required. Therefore, the Applicant cannot come to court with unclean hands and seek to be protected, as he who seeks equity must do equity.

15. He denied that the Respondent has threatened to close down the Applicant's buildings and dispose of the said properties, since the process for recovery of unpaid rates was guided by the provisions of Section 17 of the *Rating Act*. The Act provides that if property rates fall due, and the rateable owner is yet to make payment of rates, the rating authority may issue written demand to pay the rates due within fourteen days. Undeniably, the Respondent has followed this procedure and served upon the Applicant the Notice as envisaged in the Act.

16. Further, the Act provides that if the rates remain unpaid, the rating authority may take proceedings in a subordinate court to secure the payment of such rates and interest. Therefore, the allegations made by the Applicant are incorrect and only meant to lure the court in granting the orders sought.

17. He argued that the Applicant has failed to demonstrate a prima facie case with a high probability of success or any irreparable harm to be suffered in case the orders sought are not granted. He alleged that the Applicant is the author of its own misery and misfortune having failed to remit rates as required for more than a decade. Further, that any damage likely to be suffered by the Applicant if any, can adequately be compensated by an award of quantifiable damages.

18. It was his further argument that the balance of convenience tilts in favour of not granting an injunction because the rates continue to accrue as the Applicant is not making any efforts to settle the outstanding arrears. Further, granting of the injunctions sought will impact on the County's ability to finance its operations since the adjustment had already been factored in the budget policy document and as such, the consequences will be far-reaching and detrimental as it will lead to disruption or cessation of essential public services.

19. It was also argued that the Applicant cannot at an interlocutory stage, seek orders that are final , which order is in the nature of a mandatory injunction. He argued that interlocutory mandatory injunctions should be granted with reluctance and in very special circumstances as they have the effect of resolving all the matters in dispute and are not easily granted at interlocutory state.

20. Ultimately, the deponent averred that the Applicant has failed to establish the conditions necessary for the grant of the orders set out in the instant application, and is without merit and he urged the court to dismiss the instant Application with costs.

21. The parties had intimated that they were attempting to settle the matter out of court, and consequently, they were granted an opportunity to do so. However, no settlement was forthcoming, and the court directed that the said application be canvassed by way of written submissions.

22. The Plaintiff/Applicant filed their submissions through Katwa & Kemboy & Co Advocates and submitted on four grounds as follows;

23. On whether the court has jurisdiction to determine the matter, it was submitted that the court is clothed with jurisdiction, as the Applicant has sought for injunctive orders, which orders can only be issued by the court, and not by the Valuation Rating Tribunal. Further that the Plaintiff/ Applicant's claim before the court is premised on the lawful disconnection of the water supply to several parcels of land, which disconnection is in breach of multiple valid water supply agreements dated 22nd March 2021, and therefore such claim falls under the jurisdiction of the court, and not the Valuation Rating Tribunal.

24. For this issue, the Plaintiff/Applicant relied on section 13(2) of the Environment &Land Court Act, Article 162(2)(b) of *the Constitution* and several decided cases among them; Satrose Ayuma & Othersv Registered Trustees of Kenya Railways Staff Retirement Benefit Scheme & Other [2011]eKLR, where the court held that; -

> " On a claim that touches in occupation and use of land, housing right, clean water, Sanitation and other component of dignified life, the ELC is the proper forum;" AND
>
> R.v National Env't Management Authority & Another Ex-parte Sound Equipment Ltd [2011]eklr; where the court re-affirmed that;
>
> " ELC has jurisdiction to determine any matter involving enjoyment or interference with rights tied to land and environment access including water."

25. Reliance too was placed on the case of Taib Investments Ltd v Fahim Salim Said & 5 Others [2016] eklr, where the court held; -

> " ... where we have environmental and developmental issues in a suit that are supposed to be dealt with by numerous Tribunals or bodies, and where those issues cannot be dealt with separately, it is only this court, pursuant to the provisions of Article 162(2)(b) of *the Constitution*, that can deal with all those issues..."

26. The Applicant also relied on the case of Dominic G. Nganga & anotherv Director General NEMA & 4 others [2020]eklr, where the court held; -

> " The court finds that the claim herein is a claim relating to violation of right to clean environment and even though numerous tribunals dealt with the issuance of licences

and approvals, those issues cannot be dealt separately and thus this court is clothed with jurisdiction to deal with the claim herein as provided in Article 162(2)(b) of *the constitution*."

27. On whether the Plaintiff/ Applicant has established the threshold for grant of injunctive relief, it was submitted that the Plaintiff/Applicant entered into multiple written water supply agreements with the Defendant/ Respondent on or about 22nd March 2021. The said agreements were duly executed by the parties and remain binding, and the Plaintiff has never defaulted on any payment obligation under the said water agreements. Therefore, the disconnection was not only unilateral and arbitrary, but amounted to a repudiation of contracts and violation of legitimate expectations.

28. Further, the Plaintiff/ Applicant's tenants, residents, and lawful land users have suffered inhumane living conditions as a result of the water disconnection, as there has been;

    i. interference with access to water and sanitation (Article 43),

    ii. Risk to public health and environmental integrity (Article 42),

    iii. Violation of the Plaintiff's right to property and income (Article 40),

    iv. Discrimination in service delivery (Article 27), since other estates are still enjoying water supply, and

    v. Dignity-related violations contrary to Article 28.

29. The Plaintiff/ Applicant also submitted that these violations are directly tied to the land and its occupation, thus falling squarely within the jurisdiction of this court and entitling the Plaintiff to both interim and final relief.

30. Therefore, the unlawful disconnection of water has caused ongoing hardship to the Plaintiff/ Applicant's tenants, led to loss of rental income, damage to the Plaintiff's reputation as a landlord, and exposed the estates to sanitation-related environmental hazards.

    If the orders sought are not granted, the Plaintiff/ Applicant and hundreds of residents will continue to suffer irreparable harm, including possible structural damage to buildings due to lack of water, deterioration of living conditions, and collapse of the Plaintiff's real estate business.

31. Reliance was placed in the case of Giella v Cessman Brown & Co. Ltd [1973] E.A 358, where the court held; -

> "first, an applicant must show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. Thirdly, if the court is in doubt, it will decide the application on the balance of convenience."

32. It was also submitted that water is a basic commodity and not luxury, and its continued denial poses a risk of diseases to the tenants, and creates unsanitary condition and causes untold hardship. Therefore, no amount of monetary compensation can undo the deprivation of dignity, health risk, emotional distress and inconvenience caused by such unlawful denial of this essential basic and public utility. Thus the Applicant will suffer irreparable harm which cannot be compensated by damages.

33. Reliance too was sought in the case of Nguruman Ltd v San Bonde Nielsen & 2 others [2014]eklr, where the court held:

> " irreparable injury means injury that is substantial and cannot be adequately remedied or compensated in damages.....The equitable remedy of injunction is only available where there is no adequate remedy in damages..."

34. On the balance of convenience, the Plaintiff/Applicant relied on the case of Kenleb Cons. Ltd v New Gatitu Service Station & another [1990] eklr ,where the court held; -

> " To preserve the status quo is the essence of the equitable remedy of interlocutory injunction so that if at the trial the Plaintiff obtains a judgement in his favour the defendant will not have altered the status quo to the Plaintiff's prejudice."

35. Ultimately, the Plaintiff/ Applicant submitted that in the interest of justice, equity and fairness, the court should grant the orders of temporary and mandatory injunctions as sought.

36. The Defendant/Respondent filed its written submissions through Mckay & Co. Advocates and submitted on several issues. It was its submissions that the Plaintiff/ Applicant has failed to meet the basic test for grant of interlocutory injunction, as set out in the case of Giella v Cassman Brown & Co. Ltd (Supra).

37. Further, it was submitted that since temporary injunction is an equitable remedy, it can be denied if it is shown that the applicant is guilty of conduct which disentitles him from such equitable relief.

38. On whether the applicant has established a prima-facie case, it was submitted that the Plaintiff/ Applicant has not established such prima-facie case as there is no proof of payment of the full rates as per the court order in the Judicial Review. The arrears claimed are for land rent and rates since 2012, and therefore the Applicant who is in arrears has come to court with unclean hands, and the said estate should not be protected by this court, as he who comes to equity must come with clean hands.

39. On whether the court has jurisdiction to hear and determine the instant suit, reliance was sought in Section 10 of the *Valuation for Rating Act* which provides; -

    1. "Any person (including the local authority or any person generally or specially or specially authorized in that behalf by the local authority) who is aggrieved –

        a. By the inclusion of any rateable property in, or by the omission of any rateable property from, any draft valuation roll or draft supplementary valuation roll; or

        b. By any value ascribed in any draft valuation roll or draft supplementary valuation roll to any rateable property, or by any other statement made or omitted to be made in the same with respect to any rateable property, may, on the payment of a non-refundable fee of five hundred shillings and on the prescribed form, lodge an objection with the town clerk at any time before the expiration of twenty-eight days from the date of publication of the notice referred to in Section 9(3).

    2. No person shall be entitled to argue an objection before a valuation court unless he has first lodged the notice of objection; but it shall be competent for a Valuation court to agree to consider an objection although notice thereof has not been given in accordance with this section.

3. The town clerk shall, within twenty-one days after the date on which a notice of objection is lodged with him, send a copy thereof to the rateable owner of the rateable property to which the objection relates, if that person is not the maker of the objection."

40. Further, the Defendant/ Respondent submitted that where a statutory mechanism exists for resolution of a dispute, such procedure ought to be followed and exhausted before the aggrieved party can consider moving to court.

41. For this submission, reliance was sought in the case of William Odhiambo Ramogi & 3 Othersv A.G & 4 others. Muslims for Human Rights & 2 others (IP)[2020] eklr, where the court held; -

> " The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts..."

42. Further, reliance was sought in the case of Geofrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eklr, where the court held; -

> " It is imperative that where a dispute resolution mechanism exists outside courts, the same must be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of this own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands courts to encourage alternative means of dispute resolution."

43. Therefore, it was the Defendant/ Respondent submissions that in the instant suit, the applicant ought to lodge an objection with the rating authority if the estate is dissatisfied with the value of rates already in place and this objection is heard by the Valuation Tribunal formed according to Section 12 & 13 of the *Valuation for Rating Act*.

44. On whether the court has mandate to determine the rates payable by the applicant; it was submitted that the payment of rates as governed by the *Rating Act* and the Valuation of *Rating Act*. Section 3 of the said *Rating Act* provides that the duty of levy rates lie with the rating authority which means the County Government which is the Defendant herein.

45. On whether the judgment of Nakuru High Court JR Appl. No.46 of 2011, determined the rates payable, it was submitted that the said Ruling did not determine the rates payable but only halted the increment of rates until the requirement of Section 9 and 10 of the *Rating Act* are fulfilled, and the court acknowledged the role of the County in determining the rates payable.

46. Further, it was submitted that since the Applicant did not establish the prima-facie case, then the other principles applicable to an application for injunction should not apply. The Respondent relied on the case of Delphin Kanuu Kamau v Fina Bank Ltd where the court held; -

> " Once an applicant flounders on the first hurdle of prima facie case, the court need not consider the second hurdle whether damages are an adequate remedy, less still the third limb of balance of convenience."

47. On whether the applicant will suffer irreparable harm, the Respondent submitted that though the Applicant averred that it risks suffering irreparable harm since the Respondent has threatened to close down its buildings and dispose off the Applicant's property, the said contention is false as the process for recovery of unpaid rates is guided by the provisions of Section 17 of the *Rating Act*.

48. Reliance was sought in the case of Nairobi Kiru Line Services Ltd v County Government of Nyeri & 2 others [2016]eklr, where the court held;

> " In order to show irreparable harm, the moving party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured."

49. On the balance of convenience, it was submitted that the court should compare the injury which would be sustained by the Applicant if the injunction is not granted, and the Respondent if the injunction is granted. The Respondent quoted the holding in the case of Nairobi Kiru Line Services Ltd (Supra), where the court held; -

> " The court decides as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance is favour of granting an injunction."

50. Therefore, it was the Defendant/ Respondent's submissions that the balance of convenience tilts in favour of not granting an injunction, because the rates continue to accrue as the applicant is not making any effort to settle the outstanding arrears.

51. On mandatory injunction, it was submitted that the same cannot be granted as no special circumstances have been demonstrated. Reliance was sought in the case of Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma [2020] eKLR, where the court held;

> " A mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application."

52. Further that on the prayer for matters to be referred to the Valuation Court/tribunal, it was submitted that the Plaintiff/Applicant did not require an order from this court to move to the Valuation court as it can move to the tribunal suo moto. The Respondent urged the court to dismiss the instant application with costs.

53. The court has considered the Instant Application, the Affidavits in support, and against the said Application, the rival written submissions, the cited authorities and the relevant provisions of law and finds as follows; -

54. The issues for determination are: -

i. Whether the court has jurisdiction to hear and determines this Application/suit.

ii. Whether the Applicant is deserving of the orders sought.

iii. Who should pay costs of this Application.

i) Whether the court has jurisdiction to hear and determines this Application/Suit

55. It is not in doubt that jurisdiction is everything and without it, the court has no option, but to down its tools. see the case of Owners of the Motor Vessel 'Lillian S'v Caltex Oil (K) Ltd [1989] KLR 1where the court stated as follows; -

> "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 the continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

56. It is also trite that when the court's jurisdiction is challenged, the court has to determine that issue first before embarking on an any other issue. This is because a court without jurisdiction is devoid of powers to make any other move in the matter. See the case ofNgugi v Commissioner of lands Owindo & 63 others (interested parties) (Petition 9 of 2019)(2023)KESC 20(KLR)(Civ)(March 2023) (Judgement) where the court held that;-

> "A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judice and amounts to a nullity .....
>
> It is, therefore a basic rule of procedure that jurisdiction must exist when the proceedings are initiated. Because the question of jurisdiction is so fundamental, a limitation on the authority of the court, it can be raised at any stage of the proceedings by any party or even by the court suo motu. As a matter of practice, this court has a duty of jurisdictional inquiry to satisfy itself that it is properly seized of any matter before it."

57. In its Grounds of Opposition, the Replying Affidavit and Written submissions, the Defendant/ Respondent averred and submitted that this court lacks jurisdiction to hear and determines the instant application and suit because the first port of call herein should have been the Valuation of Rating Tribunal. The Respondent relied on section 10 of the Valuation of *Rating Act*, specifically section 10(2) which provides that No person shall argue an objection before the valuation court, unless he has lodged a notice of objection.

58. The doctrine of exhaustion is defined in Black's Law Dictionary 10th Edition as follows: -

> "exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that court will not be burdened by cases in which juridical relief is necessary."

59. The Defendant argued that the Plaintiff/ Applicant has not exhausted the alternative means of disputes resolution as provided in the parent Act. The doctrine of exhaustion has been well elaborated by

our courts. In the case ofRepublic v National Environment Management Authority, Exparte sound Equipment Ltd(supra), the Court of Appeal observed:-

> " ... where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that and order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted it is necessary for the court to look carefully at the suitability powers, was the real time to be determined and whether the statutory appeal procedure was suitable to determine it...."

60. The Plaintiff/ Applicant has argued that its claim is based on the Defendant/ Respondent's action of disconnecting water to various properties owned by it, and consequently, its tenants have been affected as the said actions of the Defendant has breached the rights to clean environment, right to basic necessities like water, and right to earn an income.

61. Indeed this court has perused the Plaint herein and the prayers sought thereon which prayers are basically for temporary and mandatory injunctions to restrain the Defendant from interfering with the Plaintiff/ Applicant and its tenants, use and enjoyment of various properties due to a dispute over rates payment.

62. The main prayers are injunctive orders which can only be granted by courts, and not about the calculation of what amount of rate is payable. This court finds that the Plaintiff is in the right forum, and cannot be accused of failing to exhaust the alternative disputes resolution mechanism as envisaged by the Valuation of *Rating Act*. therefore, the court finds and holds that it has jurisdiction to hear and determines this matter.

ii) whether the Plaintiff/ Applicant is deserving of the orders sought in the instant Application.

63. The Plaintiff/ Applicant has sought for orders of temporary injunction to restrain the Defendant/ Respondent from interfering with the Plaintiff's tenants quiet enjoyment, use, occupation and access to various properties within Narok Township on allegations that the applicant has not settled pending rates arrears since 2012.

64. The Defendant / Respondent has denied such interference, but accused the Plaintiff/ Applicant of failure to settle the accumulated arrears of land rates and rent. It is trite that injunctive remedies are equitable in nature, which are only granted at the discretion of the court. However, such discretion must be exercised judiciously. See the case of *David Kamau Gakuru v National Industrial Credit Bank Ltd, Civil Appeal No. 84 of 2001*, where the Court of Appeal held;

> " it is trite law that the granting of an interim injunction is an exercise of judicial discretion and an appellate Court will not interfere unless it is shown that the discretion has not been exercised judicially"

65. The principles to be considered in an application for injunction are well settled in the case of Giella v Cassman Brown(supra) and which have been rehearsed in so many other decisions, as follows; -

> " that first the applicant must show a prima facie case with a probability of success; secondly, an interlocutory injunction will not normally be granted unless it is shown that the applicant would otherwise suffer an irreparable injury which could not adequately be compensated in damages; and thirdly, that if the Court is in doubt as to the existence or otherwise of a prima facie case, it should decide the application on a balance of convenience."

66. First, the Plaintiff/ Applicant needs to establish that it has a prima facie case with probabilities of success. The Plaintiff has alleged that the Defendant has obstructed its use and access of the various properties by disconnection water from the said building and this action has caused suffering to its tenants.

67. The Defendant denied these allegations, but the Plaintiff annexed various photographs showing buildings with padlocks thereon. The Defendant did not categorical deny to have disconnected water to the Plaintiff's premises, which premises are occupied by various tenants, but did accuse the Plaintiff of failure to pay the accumulated rates arrears.

68. The *Rating Act*, and Valuation *Rating Act*, are very clear on how the Rates defaulters are to be treated. If the Defendant has disconnected water to its properties, that action amounts to breach of right to access to clean waster, which goes against the basic rights as provided in *the Constitution*.

69. The Plaintiff/ Applicant is the owner of the suit properties, and there is a dispute over land rates and rent arrears. However, the fact the Plaintiff is in arrears is not a free warrant for the Defendant to disconnect water to the properties of the Plaintiff, which action affects rights of other parties, such as the tenants.

70. For the above reasons, the court finds that the Plaintiff/ Applicant has established a prima facie case with probabilities of success at the trial.

71. On Mandatory injunction, the Plaintiff/ Applicant has sought for an order that the Defendant be ordered to remove blockages and obstructions placed on the plaintiff's parcels of land forthwith. It is trite that mandatory injunction can be issued at the interlocutory stage where there are special circumstances. See the case of Kenya Breweries Ltd & another v Washington Okeyo the court held as follows: -

> "A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction."

72. The Plaintiff/ Applicant has averred that the Defendant has placed blockages on its suit properties, which blockages have prevented its tenants from accessing properties, where they are tenants, thus causing such inconvenience to them. The Defendants did not deny having caused such obstructions and blockages. Existence of blockages is a special circumstance which requires the intervention of the court, the Defendant has been trying to steal a match against the Plaintiff herein. Thus the Plaintiff is deserving of mandatory injunction as prayed in prayer no 4 and 5.

73. On the prayer for injunction to restrain the Defendant from selling, auctioning and alienating the Plaintiff's properties there is no evidence of such threat to auction, sell or dispose of the said properties. In an event, the procedure for recovery of rates that are in arrears is provide for in the *Rating Act*/ and or *Valuation for Rating Act*.

74. Once the Defendant kicks off that mechanism, then the Plaintiff can defend its position. For now, this court finds no reasons to grant such prayers.

75. On the prayer to appear before the Valuation of Rating Tribunal, the parties can appear on their own volition without being prompted by this court. Consequently, the court finds no good reasons to allow prayer No. 8.

iii) who should bear costs of this Application?

76. Ordinarily, costs are granted at the discretion of the court, and they do follow the event. Given the relationship between the Plaintiff/ Applicant and the Defendant/ Respondent, the court finds and holds that even if the Applicant has succeeded in some of the prayers, costs should to abide the outcome of the main suit.

77. Further, this is a matter wherein the court urges the parties to attempt an out of court settlement as earlier intimated by them. Consequently, the court refers the matter to Court Annexed Mediation(CAM) for the parties herein to have a round table negotiation, and then come up with a final settlement.

78. In the final analysis, the court finds and holds that the Plaintiff / Applicant is deserving the orders of temporary injunction, and consequently, the Plaintiff/ Applicant's Notice of Motion Application dated 9th October 2024, is allowed in terms of prayers Nos.3,4, 5 with costs being in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 5TH DAY OF JUNE 2025.

L. GACHERU

JUDGE

In the presence of:

Elijah Meyoki – Court Assistant

M/s Waweru for the Plaintiff/Applicant

Mr. Mwangi holding brief for Mr. Kivuva for the Defendant/Respondent

L. GACHERU

JUDGE