



**Warui (Suing as the Chairperson of Chuna One Residents Welfare Association) & 8 others v Onderi & 3 others (Petition E001 of 2024) [2025] KEELC 4538 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4538 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
PETITION E001 OF 2024  
LC KOMINGOI, J  
JUNE 12, 2025**

**BETWEEN**

**GERALD WARUI (SUING AS THE CHAIRPERSON OF CHUNA ONE RESIDENTS WELFARE ASSOCIATION) ..... 1<sup>ST</sup> PETITIONER  
JEFF MOCHACHE ..... 2<sup>ND</sup> PETITIONER  
GEORGE OKIOMA ..... 3<sup>RD</sup> PETITIONER  
GEOFFREY MWOVE ..... 4<sup>TH</sup> PETITIONER  
SHABRAM ATHMAN ..... 5<sup>TH</sup> PETITIONER  
JUSTINE ARUMBA ..... 6<sup>TH</sup> PETITIONER  
JANE KOIMA ..... 7<sup>TH</sup> PETITIONER  
MARY KINYUA ..... 8<sup>TH</sup> PETITIONER  
PETER NJENGA ..... 9<sup>TH</sup> PETITIONER**

**AND**

**VICKY NYABOKE ONDERI ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL CONSTRUCTION AUTHORITY ..... 2<sup>ND</sup> RESPONDENT  
COUNTY GOVERNMENT OF KAJIADO ..... 3<sup>RD</sup> RESPONDENT  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) .... 4<sup>TH</sup> RESPONDENT**



## RULING

1. The Petitioners who are members of Chuna One Residents Welfare Association, filed the Petition dated 26<sup>th</sup> January 2025 seeking among other reliefs; a declaration that the 1<sup>st</sup> Respondent is in material breach of the Petitioners' and Chuna Housing Cooperative Society Limited by laws permitting only the construction of one family unit per plot in the Kitengela Housing Development Scheme
2. Together with the Petition they filed the Notice of Motion dated 26<sup>th</sup> January 2025 brought under; (Order 40 Rule 1, Order 51 Rule 1 & 3 of the Civil Procedure Rules, Section 1A, 1B and Section 3A of the *Civil Procedure Act* and all other enabling provisions of Law).
3. It seeks Orders;
  1. Spent.
  2. Spent.
  3. THAT the Respondent by themselves, their Agents/Servants and/or employees be restrained by way of temporary injunction of this Honourable Court the continued illegal construction of a multiple dwelling development/ commercial development on land Ref Number KAJIADO KAPUTIEI NORTH/9XX3 CHUNA ONE ESTATE BLOCK E X7 KITENGELA TOWNSHIP pending in the Hearing and determination of the suit herein.
  4. THAT the costs of this Application be in the cause.
4. The grounds are on the face of the Application and are set out in paragraphs i to xiv.
5. The Notice of Motion is supported by the Affidavit of Gerald Warui, the Chairperson of the 1<sup>st</sup> Petitioner, sworn on the 26<sup>th</sup> January 2025.
6. In response the 1<sup>st</sup> Respondent, filed a notice of Preliminary Objection dated 19<sup>th</sup> April 2024. The grounds are that;
  1. This Court lacks jurisdiction to hear and determine the application dated 26<sup>th</sup> January 2024 and the suit is contrary to Section 13 of the *Environment and Land Court Act*.
  2. The Court cannot entertain the suit because the issues raised relate to those covered by the Cooperative Tribunal.
  3. The application is an abuse of the court process and should be struck out with costs.
7. On the 23<sup>rd</sup> April 2024, the court directed that the Preliminary Objection be canvassed by way of written submissions.

### **The Petitioners Submissions.**

8. Counsel submitted that this court had Jurisdiction under Section 13 of the *Environment and Land Court Act* to hear and determine this petition citing *Maina v Director, Physical and Land Use Planning, Kiambu County Government & another* [2023] KEELC 15781 (KLR). It was also submitted that there were exceptions to the doctrine of exhaustion, if the doctrine would not serve the values enshrined in *the Constitution* as held in *R. Vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)*.



### **The 1<sup>st</sup> Respondent's submissions.**

9. At the time of preparing this Ruling, the 1<sup>st</sup> Respondent, who is the originator of the Preliminary Objection had not filed her submissions.
10. It appears the 2<sup>nd</sup> & 4<sup>th</sup> Respondents did not file any submissions in respect of the Preliminary Objection.
11. Ms. Kemunto for Mr. Nyakwana for the 3<sup>rd</sup> Respondent intimated to the Court that they would not be filing any submissions.

### **Analysis and determination.**

12. I have considered the Preliminary Objection, the written submissions, and the authorities cited and find that the issue for determination are:
  - i. Whether the preliminary objection by the 1<sup>st</sup> Respondent is merited;
  - ii. What reliefs should issue;
  - iii. Who should bear the costs?
13. It is now well settled that a Preliminary Objection must be grounded solely on a pure point of law, which is capable of disposing of the matter preliminarily without the need for further factual inquiry. The objection must arise from undisputed facts as pleaded and should not call for the court to examine evidence or engage in fact-finding. This principle was stated in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 and echoed by the Supreme Court in Kenya in Odinga v Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR) thus;

“The nature and scope of a “preliminary issue” is cogently defined in the statement of Law, JA, in the case of Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696 at 700;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit...”
14. The 1<sup>st</sup> Respondent has objected to this Petition on grounds that this Court is not the proper forum to determine the issues and that it is an abuse of the Court process.
15. The Petition was brought on the grounds that the 1<sup>st</sup> Respondent was in the process of constructing high density commercial units on her plot Kajiado/Kaputiei North/9XX3 Chuna One Estate Block E X7 Kitengela without authorization and approvals. The Petitioners claim that Chuna one Estate is a controlled estate in terms of developments which the 1<sup>st</sup> Respondent has breached by constructing a commercial/ multiple dwelling development. The Petitioners also state that the 1<sup>st</sup> Respondent's construction is without a compliance certificate; does not have a National Construction Authority registered contractor with a valid license, or accredited skilled workers or site supervisors; does not have a sign board showing approvals and professionals engaged; does not have safety signs; there was no change of user approval and there was no public participation from the community members. The Petitioners contend that the 1<sup>st</sup> Respondent's actions were a violation of their Constitutional rights.



16. They thus sought a declaration that the construction be found to be against the Society's by-laws, a declaration that any purported approvals were null and void, a declaration that the construction was illegal for want of compliance; an injunction restraining the 1<sup>st</sup> Respondent from continuing with the construction and an order directed to the 2<sup>nd</sup> Respondent to demolish the building.
17. The gist of this Petition is the 1<sup>st</sup> Respondent's construction which the Petitioners claim to have been done without due approvals and against the Association's by laws.
18. Article 162(2)(b) of *the Constitution* clothes this Court with Jurisdiction to determine disputes relating to the environment and the use and occupation of, and title to, land. Section 13 of the *Environment and Land Court Act* goes further to provide that this Court has powers to hear and determine matters relating to environmental planning and protection.
19. It is the 1<sup>st</sup> Respondent's contention that the issues herein ought to be determined by the Cooperatives Tribunal. I disagree.  
The said tribunal does not deal with issues relating to Environment and Planning.
20. While I agree that the Physical Planning and Land use Act, 2019 provides for a dispute resolution mechanism, the 1<sup>st</sup> Respondent did not seek to rely on the Provisions thereto.
21. For these reason I find no merit in the Preliminary Objection and the same is dismissed with costs to the Petitioners.
22. In order to expedite the hearing of this Petition, I find that it is necessary that I grant the order sought in terms of Prayer No. 3 of the Notice of Motion in the meantime. This is in order to prevent waste of Judicial time and resources.
23. Parties are hereby implored to set down the Petition for hearing so that the issues can be solved once and for all.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12<sup>TH</sup> JUNE 2025.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Mukonyi for the Petitioners.

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> Respondents.

Ms. Kemunto for Mr. Nyakwana for the 3<sup>rd</sup> Respondent.

N/A for the 4<sup>th</sup> Respondents.

Court Assistant – Mutisya.

