Kuria & another v Attorney General & 7 others (Petition E001 of 2023) [2025] KEELC 5361 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5361 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

PETITION E001 OF 2023

JA MOGENI, J

JULY 14, 2025

BETWEEN

DAVID CHEGE KURIA ..... 1ST PETITIONER

JOSEPH NGANGA KIARIE ..... 2ND PETITIONER

AND

THE HON ATTORNEY GENERAL ..... 1ST RESPONDENT

THE CABINET SECRETARY MINISTRY OF INVESTMENT, TRADE & INDUSTRY ..... 2ND RESPONDENT

THE CABIENT SECRETARY MINISTRY OF ENVIRONMENTCLIMATE CHANGE AND FORESTRY ..... 3RD RESPONDENT

THE CABINET SECRETARY MINISTRY OF LAND PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ..... 4TH RESPONDENT

THE CABINET SECRETARY MINISTRY OF WATER SANITATION AND IRRIGATION ..... 5TH RESPONDENT

THE NATIONAL ASSEMBLY OF KENYA ..... 6TH RESPONDENT

COUNTY ASSEMBLY OF KIAMBU ..... 7TH RESPONDENT

COUNTY GOVERNMENT OF KIAMBU ..... 8TH RESPONDENT

RULING

1. This Ruling is in respect of two Notice of Motion Applications. The first is dated 18/12/2023 filed alongside a Petition by the Petitioner on the even date. The second Application is dated 12/01/2024 filed by the 7th and 8th Respondents to the Petition.

2. The Application dated 18/12/2023 seeks the following prayers:-

   a. Spent.

   b. Spent.

   c. That pending the inter parties hearing of this Petition, this Honorable Court be pleased to issue a conservatory order restraining the Respondents through themselves, their servants, employees, agents and/or from commencing construction of the Export Processing Zone as declared in Legal Notice No. 201.

   d. That all necessary and consequential orders be made that meet the needs of justice in the circumstances of this case.

   e. That costs of this Application be borne by the Respondents.

3. The Application is supported by the Affidavit of the 2nd Petitioner; the Secretary of Gatuanyaga Residents Association who has deponed that he has the full authority to swear this Affidavit on behalf of Gatuanyaga Residents Association and that brings the Petition on his behalf and on behalf of the vulnerable residents of Gatuanyaga Settlement within Kiambu County.

4. He depones that the residents will continue to be injured by the Respondents' conduct and the consequent harms to water resources that they depend on and other public amenities such as schools and hospitals.

5. It was deponed that Gatuanyaga Residents Association is a duly registered association with a mission to carry out policy and advocacy reforms on matters concerning the residents of Gatuanyaga Settlement Scheme within Kiambu County.

6. The Petitioner deponed that the 2nd Respondent has declared an Export Processing Zone on the said piece of land via Legal Notice No. 201 as per annexure JNK-2. Further that the 8th Respondent has irregularly initiated plans for the construction of an Export Processing Zone within the Kiambu County share of land within three parcels LR No. 12203/1, 12203/2, and LR NOL 12158 excised from the larger Delmonte Farm as per annexure JNK-3.

7. He deponed that the Petitioners and members of Gatuanyaga Residents Association residing on the Kiambu County side next to the proposed site of the Export Processing Zone have never been consulted nor engaged by either the National Assembly or the Kiambu County Assembly. Which have denied the residents their constitutional rights to participate in the deliberations and decision-making processes likely to affect their rights and well-being.

8. According to the Petitioners, the proposed Export-Processing Zone would be located on the part of the Delmonte Farm whose ground and surface water flow into four water sources namely; Kilimambogo Township; Gichuki; Wagithago and Kwandamali. That the Kilimambogo wellspring serves St. Mary's Primary School, Kilimambogo Township, Mukunite Village and Wendano village as per the annexed photograph marked as JNK-4(a) showing the four water sources next to the land where Export Processing Zone is to be set up.

9. On the other hand, the Gichuki wellspring caters to Kilimambogo Teachers College, St John Immaculate Hospital, Kianjahe and the entire Gichiki village as per annexure JNK 4(b).

10. The Wagithago wellspring is utilized by the residents of Rurii, Makongo and Miumbu as per annexure JNK 4(c) and the Kwandamali wellspring provides water to Mukawa village and parts of Thika Reiver A and B as per annexture 4(d) and that the Export processing zone is to be set up next to the land

were these well springs are situated. Further that construction of the proposed Export Processing Zone would entail excavation of the land interfering with the ground and surface water system support the four water points the residents of Gatuanyaga utilize for human and other consumption.

11. That this construction is likely to lead to industrial waste being deposited on an antiquated waste management system designed in the 1970s for a small population of about 584 households. Thus the waste would overwhelm the local waste disposal and management infrastructure, spill over into land and in turn contaminate the water sources utilized by the Petitioner and other residents of Gatuanyaga posing a great danger to their health. That it would also interfere with the combined school population of 2,625 students.

12. That the residents have suffered from previous government projects which did not address their grievances and did not include their views and input and are apprehensive of similar or aggravated issues should there be no public participation and conclusion.

13. Original Gatuanyaga Settlement Plan made in 1970s included around 558 plots of land without any public utilities save for Gathanje Forest and Mbagathi Forest and that the people within the settlement carved out a Hospital and St Paul Secondary School from Gathanje Forest and Mbagathi Secondary School.

14. It is the Petitioner's case that they have forwarded their concerns to the National Land Commission, County Assembly of Kiambu and even the Principal Secretary Ministry of Land, Housing and Urban Planning but that the 2nd Respondent has failed to subject the proposal for an Export Processing Zone within Kiambu County to public participation before issuing the declaration under Section 15 (1) of the *Export Processing Zones Act* under Legal Notice No. 201.

15. Further, that neither has the 8th Respondent published notice of the intended County Physical and Land Use Development Plan underpinning the development of the Proposed Export Processing Zone, in all the wards within the County as required by law nor held adequate stakeholder meetings in each ward before the completion of the preparation of the said plan.

16. That there is no public participation undertaken by the 8th Respondent on the draft plan and the 7th Respondent has failed to oversight the 8th Respondent on the irregular development and construction as is required under Article 185(3) of *the Constitution*. At the same time that the 7th Respondent failed to facilitate public participation before approval of the said plan as required under Articles 185(4) and 196(1) (b) of *the Constitution*.

17. That the development without consulting the public represented by the Petitioners would rob them of the opportunity to draw attention to their previous grievances, current concerns and necessary mitigation measures.

The 6th Respondents' response:

18. The 6th Respondent filed a response in the form of Grounds of Opposition dated 17/02/2025 and stated as follows:

19. That the Petitioners lack the legal standing to institute and sustain the current proceedings as they have not sufficiently demonstrated any personal or direct interest in the matter, nor have they shown that they have been authorized by the Gatuanyaga Residents Association to represent its interests or to act on its behalf in this matter. Without such authorization or a demonstrated personal stake, the Petitioners are not in a position to proceed with this matter.

20. It is the contestation of the 6th Respondent that the Petition and Application fail to present a clear cause of action against the National Assembly. The allegations are vague, speculative and lack sufficient specificity, making it difficult to identify any direct constitutional or legal violation. Specifically, the claim regarding the National Assembly's failure to conduct public participation is unsupported by evidence, falling short of the threshold necessary to warrant judicial intervention.

21. They also state the Petition also lacks clarity and sufficient details regarding the alleged constitutional violations, failing to meet the standard set in Anarita Karimi Njeru v. Republic (1979)eKLR. Meaning that the Petitioners have not established a direct link between the actions of the National Assembly and any legal breach, undermining the legitimacy of their claims. As such, the Petition and Application do not meet the necessary legal requirements and should be dismissed.

22. Regarding the alleged violation of constitutional duties, the 6th Respondents contend that the Petitioners have failed to provide any evidence supporting their claim that the National Assembly has neglected its constitutional oversight role. In fact, the National Assembly has consistently carried out its oversight functions in accordance with *the Constitution*.

23. They further assert that the issue of public participation raised by the Petitioners falls within the exclusive mandate of the National Environment Management Authority ("NEMA") and the County Government of Kiambu, rather than the National Assembly. Under the Environmental Management and Coordination Act ("EMCA"), NEMA is entrusted with the responsibility of co-ordinating environmental management activities, which includes facilitating public participation in environmental matters. Specifically, Section 9(2)(m) of the EMCA outlines NEMA's duty to promote environmental education, awareness and public engagement in decision-making processes related to environmental issues. Likewise, the County Government of Kiambu, in accordance with the *County Governments Act* and applicable local regulations, is obligated to ensure public participation in county development plans.

24. Further, that at the County level, Article 174 (c) provides that the objects of the devolution of government are to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. It is, therefore, the Constitutional expectation that counties, not the National Assembly, in the context of this matter would be possible forums where public participation would be undertaken.

25. It is their position therefore that the Petitioners have failed to demonstrate any constitutional failure by the National Assembly in this regard, as its role does not extend to overseeing or facilitating public participation in matters under NEMA's or the County Government's jurisdiction.

26. According to the 6th Respondent, NEMA is mandated to hold a supervisory role pursuant to Section 9 of EMCA, which outlines its responsibility for general supervision and coordination of environmental matters, acting as the principal government body for implementing environmental policies. This supervisory role in the context of this matter falls within NEMA's mandate, not that of the National Assembly.

27. That in light of the foregoing, the National Assembly prays that the Court strikes out the present Petition and Application in their entirety as the Petitioners have failed to establish a prima facie case against the National Assembly and the issues raised are fall outside the jurisdiction/ mandate of the National Assembly.

28. It is the position of the 6th Respondent that the Petitioners' Application and Petition are thus unmerited, misconceived, misplaced and an abuse of the Court process and that the case against the National Assembly be dismissed.

The 7th Respondents' response:

29. The 7th Respondent, through its County Attorney filed a Replying Affidavit sworn on 12/01/2024 and averred that the Petitioners did not attach any document to support their claim that they have authority from the residents and or association granting them permission to institute the Petition on their behalf and therefore the Application and Petition should be dismissed in limine.

30. It is the averment of the County Attorney that the Application and Petition does not disclose a cause of action against the 7th and 8th Respondents under Section 15 (1) of the Export Processing Zones which is a preserve of the Export Processing Authority and the Cabinet Secretary in charge of Investments, Trade and Industry and therefore the joinder of the 7th and 8th Respondents is superfluous and misconceived as they played no role in publication of the impugned Gazette Notice.

31. That since the 8th Respondent has not commenced the construction of the Export Processing Zone on the suit properties referred to in the Petition then this Application and Petition are premature. That the law provides an elaborate and well-structured procedure of establishing the Export Processing Zones and the gazettement is just but the very first step towards establishment of the Export Processing Zone.

32. In her response the County Attorney elaborated on the procedure as provided for under Section 15(1), 19, 21 and 22. These Sections provide the steps to be taken and licences to be acquired for one to initiate Export Processing Zone including Section 58 (1) of the Environment Coordination and Management Act. Thus it is her averment that the Gazette Notice No. 201 of 2023 was just but the first stage towards a lengthy and well-regulated procedure of establishing and constructing an Export Processing Zone.

33. It is her testimony that the Application and Petition have not been supported by evidence especially on the claim that the Export Processing has commenced and that they are based on unfounded apprehension. That the allegation of the ground and water surface flow can only be established by carrying out a comprehensive water studies indicating with precisions the various wells and water sources supply to the various localities mentioned in the Petition. That the Petitioners have neither proved under the National Classification system nor supplied the inventory that these alleged sources are surface water and ground water resources as provided for under the Water Resources Management Strategy and the *Water Act*.

34. Additionally she avers that the Petitioners have not provided an analysis of existing surface water and ground water data in terms of quantities and the existing water allocations and projected water demand so as to demonstrate that what is in the said sources is reserve water and cannot be utilized for any other additional purpose.

35. Further that the Petitioners have not undertaken any study to support their claim and neither have they presented any evidence that any complaints were lodged with the 7th Respondent or any Respondent at all and the allegations are just hearsay.

36. Given the foregoing the County Attorney avers that the Application and the Petition have not set out with a reasonable degree of precession that of which the Petitioners complain, the provisions to be infringed and the manner in which they allege to be infringed. Further that the Petitioners have not exhausted the internal dispute resolutions mechanisms as provided under the *Export Processing Zones Act*. Thus she prays that the Application and Petition dated 18/12/2023 be dismissed with costs to the 7th and 8th Respondents.

37. The Petitioners filed a Further Affidavit which I have considered.

38. At the same time the 7th and 8th Respondents filed a Notice of Motion dated 12/01/2024 under Articles 22 and 258 of *the Constitution*, Sections 58 of the Environment Co-ordination and Management Act, Sections 15, 17.19.20.21 and 22 of the *Export processing Zones Act* and Regulation 4(1) of the Environmental (Impact Assessment and Audit Regulations, 2003)seeking the following orders:

    1. That the Honorable Court be pleased to strike out the Application and the Petition dated 18th December 2023.

    2. That the costs of the Application and the Petition be granted to the 7th and 8th Respondents.

39. The Application is supported by the grounds on the face of it and the Supporting Affidavit sworn on 12/01/2024 by the County Attorney Waithira Waiyaki. In the Affidavit she has by and large reiterated the averments in the Replying Affidavit sworn on 12/01/2024 and I see no need of reproducing the same here.

40. The gist of the Supporting Affidavit is that the Application and Petition are premature since the law provides an elaborate and well-structured procedure of establishing, gazetting and constructing Export Processing Zones and she has referred to the same Sections which are Section 15(1), 19, 22(2), and Section 21 plus Section 58(1) of the EMCA and Regulation 4(1) of the Environmental (Impact Assessment Audit) Regulations, 2003.

41. The 2nd Petitioner describing himself as co-Petitioner in response to the Application swore a Replying Affidavit dated 5/11/2024 and annexed the Affidavit the consent and authority of members of the Gatuanyaga Residents Association and the resolution of its Executive Committee as annexure DCK bearing the minutes and members list and signatures.

42. It is the 2nd Petitioner's (hereinafter Petitioner) averment is the enforcement of constitutional rights and freedoms has expanded the concept of locus standi to sue beyond ordinary rules in Civil Procedure Rules. That the Establishment and Gazettement of Export Processing Zones is the preserve of the 2nd Respondent in consultation with the Export Processing Zone Authority.

43. The Petitioner avers that this suit challenges the 8th Respondent's decision to utilize the portion of land from the Delmonte Farm vested on it by the National Land Commission vide determination of case numbers NLC/HLI/004/2017 and NLC/HLI/064/2017.

44. Further that the Gazettement of an Export Processing Zone on the portion of land from the Delmonte Farm was done either by initiation of the 8th Respondent or approval of the project developer as its agent and the 7th Respondent has a constitutional duty to oversee the 8th Respondent on the use of County resources which in this case involves the portion of land from the Delmonte Farm vested on it by the National Land Commission. To lend credence to this averment the Petitioner through annexure DCK attached pages 1, 2 and 3 of a copy of the Kenya Gazette Notice dated 1/03/2019.

45. It is the Petitioner's evidence that the 7th Respondent upon receiving the plan for setting up the Proposed Export Processing Zone has failed to facilitate public participation concerning the same but before approving the said plan as required under Articles 185(4) and 196(1)(b) of *the Constitution*. Therefore, the Petitioners decry the 7th and 8th Respondents' actions of converting previous agricultural land to industrial land without adhering to the law of Physical and Land Use Planning and Public Participation.

46. It is his position that the Petition was timely and not premature as the developer of the Export Processing Zone is the 8th Respondent or its agencies which has demarcated the land by placing beacons, cleared vegetation, developed Murram Road referred to as Gichiki and has even excavated

or extracted rocks or other materials leaving an open pit or quarry. To lend credence to this claim the Petitioner vide annexure DCK has attached pages 14 to 23 of photographs he avers of works done on the land. He further avers that the works on the land if not restrained by this Honourable Court interfere with the ground and surface water system supporting the Court water points the residents of Gatuanyaga utilize for human and other consumption.

47. The Petitioner avers that it is surprising for the 7th and 8th Respondents to admit that there is no Environmental Impact Assessment done whilst fully aware that it is for a developer (their agent) to apply for the same before commencing works. It is his contention that the 8th Respondent by undertaking the work which threaten to damage the environment goes against the precautionary and sustainable development principles set out in our environmental protection laws.

48. The Petition has observed that the manner and speed of development of the Proposed Export Processing Zone without consulting or involving a section of the public represented by the Petitioners would rob them of the opportunity to draw attention to their previous grievances, current concerns and necessary mitigation measures.

49. It is the Petitioner's position that the instant suit has been brought to safeguard their interests which has been ignored by the 8th Respondent as holding public participation once the process has commenced which will be purely academic leaving the Petitioners at the mercy of the 8th Respondent.

50. The Petitioners aver that residents of Gatuanyaga have suffered from previous government projects which did not satisfactorily address their grievances and did not include their views and inputs and therefore the residents are apprehensive of similar or aggravated issues should there be no public participation and consultation.

51. Additionally, the Petitioner avers that the original Gatuanyaga Settlement Plan made in the 1970s included around 558 plots of land without any public utilities save for Gathanje Forest and Mbagathi Forest. That therefore by the Respondents side-stepping public participation with the Petitioners and the residents they represent this has grossly contravened the constitutional imperative participation of the people enumerated as the national value and principle of governance. Thus the Petitioner urges the Court to intervene and arrest the cascading monumental threats to *the Constitution* and the rights of the residents of Gatuanyaga.

52. The Applicant the 8th Respondent filed a Supplementary Affidavit which I have considered.

Submissions:

53. The Counsel for the Petitioners, filed their submissions dated 28/02/2025 in support of their Notice of Motion dated 18/12/2023 and in opposition of the 7th and 8th Respondent's Notice of Motion dated 12/01/2024.

54. The Petitioners' Counsel submitted that under Article 22 and 258 of *the Constitution*, a party does not need any authority to file a Petition on behalf of others and that while dealing with environmental matters, Section 3(1) of the *Environmental Management and Co-ordination Act* allows anyone to file a Petition in the Environment and Land Court in respect of environmental matters.

55. Counsel submitted that Article, 42 and 43 entitles one to a clean and health environment and when it is threatened then anyone can move to Court. He also referred to Article 69(1) d, Article 174, Section 3(5) (a) of EMCA.

56. It was submitted by the Petitioners' Counsel that an Environmental Impact Assessment was not done yet this is critical for a project of this magnitude. He further submitted that if the Application is not

allowed, the Petitioners and residents of Gatuanyaga will be subjected to untold suffering if the Export Processing Project is implemented without the necessary safeguards being considered. The Petitioners' Counsel relied on numerous authorities which I have taken into consideration in writing this Ruling.

57. The 6th Respondent filed submissions dated 17/03/2025 and submitted that the Petitioners have no locus standi to bring a Petition of this nature to Court. That since they lack the locus standi especially the 2nd Petitioner then the suit is fatally defective. At same time they submitted that the allegations against the 6th Respondent are vague and they have not established any specific violation on the 6th Respondent's part.

58. That if the Petitioners had a problem with the law of Export Processing Zones they should have raised the concern and filed a Petition with the National Assembly but as it were the issue has not been raised in the matter before Court.

59. They further submit that the National Assembly has not failed in its oversight role nor in its duty of public participation since the mandate of public participation in a case such as this one fall under the responsibility of NEMA and County Government of Kiambu.

60. Thus the 6th Respondent has prayed that the Petitioner's Application and case against the 6th Respondent be dismissed.

61. Counsel for the 7th and 8th Respondents filed submissions dated 28/02/2025 and raised issues of locus standi which they submit the Petitioners lack because they have no authority from the residents nor from members of the Association they purport to be officials in. They further submit that the Petition is premature and speculative and does not disclose a reasonable cause of action against the 7th and 8th Respondents. That Section 15(1) vests the Export Processing Zones in the Export Processing Authority and the Cabinet Secretary Trade and Investment solely and that the 7th and 8th Respondents played no role in the Gazette Notice 201.

62. It is the submission of the 7th and 8th Respondents that Petitioners have not demonstrated that the process of change of user from Agriculture to Industrial for the suit property was circumvented in any way. They also submit that the Petitioners did not lay their complaints with County Physical Planning and Land Use Planning Liaison Committee which has jurisdiction over the matter such as this. That this being the case this Court lacks jurisdiction to entertain the Petition.

63. The 7th and 8th Respondents therefore urged the Court to strike out the Petition and the Application.

Analysis and findings:

64. Having read and considered the Petition, the Application, the Respondents' responses and the submissions, the issues for determination are as follows:

    a. Whether this Court has jurisdiction to hear and determine the Petition and the Application;

    b. Whether the Petitioners have the locus standi to file the Petition;

    c. Whether, prima facie, the Petitioners' right to a clean and healthy environment has been or is likely to be infringed; and

    d. Whether conservatory orders should issue.

Jurisdiction of this Court

65. The requirement that a Court or Tribunal can only deal with a dispute in respect of which it has the requisite jurisdiction cannot be overemphasized. In the case of Lillian "S" vs. Caltex Kenya Limited [1989] eKLR, the Court of Appeal held as follows:

> " By jurisdiction is meant the authority which a Court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the Court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics. If the jurisdiction of an inferior Court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the Court or tribunal has been given power to determine conclusively whether the facts exist. Where the Court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given...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 holds the opinion that it is without jurisdiction."

66. In Republic vs. Karisa Chengo & 2 Others [2017] eKLR, the Supreme Court held as follows:

> " By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

67. In Kibos Distillers Limited & 4 Others vs. Benson Ambuti Adega & 3 Others [2020] eKLR, the Court of Appeal held as follows:

> " A party or litigant cannot be allowed to confer jurisdiction on a Court or oust jurisdiction of a competent organ through the art and craft of drafting pleadings. Even if a Court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legislatively been mandated to hear and determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a Court or body to hear and determine all and sundry disputes. Original jurisdiction only means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the dicta in Speaker of the National Assembly v. James Njenga Karume [1992] eKLR where it was

stated that where there is a clear procedure for the redress of a particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed."

68. This Court's jurisdiction emanates from the provisions of Article 162(2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* (the ELC Act). Article 162(2)(b) of *the Constitution* provides as follows:

> " Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to–
>
> b. the environment and the use and occupation of, and title to, land."

69. Parliament enacted the *Environment and Land Court Act* in compliance with the provisions of Article 162(3). Section 13 of the *Environment and Land Court Act* provides as follows:

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
    a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
    b. relating to compulsory acquisition of land;
    c. relating to land administration and management;
    d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
    e. any other dispute relating to environment and land.
3. Nothing in this Act shall preclude the Court from hearing and determining Applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*."

70. Article 165(5) of *the Constitution* divests the High Court the jurisdiction in respect of matters falling within the jurisdiction of the Courts contemplated under Article 162(2) of *the Constitution*. The Supreme Court delved into the issue of the jurisdiction of this Court vis-a-vis the jurisdiction of High Court in great detail in the case of Republic vs. Karisa Chengo & 2 Others [Supra] in which it held as follows:-

> "(52) In addition to the above, we note that pursuant to Article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act*... From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of Courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa ..."

71. The reading of *the Constitution* and the *Environment and Land Court Act* shows that it is this Court that has the unlimited jurisdiction to resolve disputes relating to land and the environment.

However, this Court's jurisdiction is subject to the jurisdiction donated to the subordinate Court and Tribunals and Liaison Committees by statutes, whose decisions are appealable to this Court. One such Committee is the County Physical and Land Use Planning Liaison Committee.

72. The jurisdiction of the Liaison Committee, which is a creature of the *Physical and Land Use Planning Act* 2019 Section 76 and Appeals from the Committee lie with the Environment and Land Court.

73. However, the Petitioners herein are not appealing against the decision of NEMA. Indeed, in the Petition, the Petitioners have accused the Respondents of failing to undertake public participation with regard to the proposed Export Processing Zone project on a property that houses four water towers and which risks being contaminated due to industrial waste disposal. That this actions infringe the right to a clean and healthy environment as stipulated under Article 42 of *the Constitution*. The ultimate prayers that the Petitioners are seeking in the Petition are:

    a. A declaration that this is a public interest case.

    b. A declaration that the Petitioner has all rights and guarantees as provided for under *the Constitution*, and as specifically referenced herein.

    c. That the Honourable Court be pleased to issue a declaration that the Respondents' acts threaten the right to a clean and healthy environment as enshrined in Article 42 of *the Constitution* of Kenya 2010.

    d. That the Honorable Court be pleased to issue a declaration that the Respondents have violated the precautionary principle under the domestic and international environmental laws.

    e. That the Honourable Court be pleased to issue a declaration that in breach of (a), (b), (c) and (d) above the Petitioner has a right to redress pursuant to Articles 23(3) (b) and 70(1)(c) of *the Constitution* of Kenya, 2010, Section 13(7)(a) and (d) of the *Environment and Land Court Act*, No. 19 of 2011 and Section 3 of the Environment Coordination and Management Act (EMCA), 1999.

    f. A Declaration that the Respondents' act of abdicating their responsibility of facilitating public participation before formulation and implementation of the Proposed Export Processing Zone contravenes Articles 10, 118(1) (b) and 196 (1) (b) of *the Constitution* of Kenya.

    g. A declaration that the 8th Respondent's failure to notify the public and conduct stakeholder engagements and public participation over the intended county physical and land use development plan for the Proposed Export Processing Zone intended county physical and land use development plan before the construction of the Export Processing Zone.

    h. A declaration that the 7th Respondent's failure to oversight the 8th Respondent in the formulation and implementation of the Proposed Export Processing Zone devoid of public and stakeholder input contravenes Article 185(3) of *the Constitution*.

    i. A declaration that the 6thRespondent's failure to oversight the declaration as an Export Processing Zone by the 2nd Respondent devoid of public and stakeholder input contravenes Article 95(5) of *the Constitution*.

    j. That the Honorable Court be pleased to issue an order compelling the 8th Respondent to publish in the Gazette, in at least two newspapers of national circulation and through electronic media, a notice of the draft county physical and land use development plan for the Proposed Export Processing Zone in all the wards within the county.

k. That the Honorable Court be pleased to issue an order compelling the 8th Respondent to facilitate public participation and adequate stakeholder meetings in each ward for the draft county physical and land use development plan for the Export Processing Zone in all the wards within the county.

l. That the Honorable Court be pleased to issue an order compelling the 8th Respondent to submit a report on the findings of the stakeholder meeting and public participation session, their consideration and incorporation of comments into the final county physical and land use development plan for the Export Processing Zone.

m. A permanent injunction restraining the Respondents from further implementation of the Export Processing Zone project pending compliance with public participation requirements under Articles 10, 118(1) (b) and 196 (1) (b) of *the Constitution* and all other enabling laws.

n. A permanent injunction restraining the Respondents through themselves, their servants, employees, agents and/or from commencing construction of the Export Processing Zone as declared in *Legal Notice 201 of 2023*.

o. The Honourable Court be pleased to issue the cost for this Petition.

p. Such other Orders as this Honourable Court shall deem just and expedient to grant.

74. Under the provisions of *the Constitution* and Section 13 (4) of the *Environment and Land Court Act*, it is this Court which has the jurisdiction to determine if indeed the Petitioners' rights under Article 23, 42, 43, 69, 70, and 174 of *the Constitution* have been or are likely to be infringed upon and not the County Physical and Land Use Planning Liaison Committee (hereinafter Liaison Committee).

75. Considering that the Petitioners are not challenging the decision of the Liaison Committee, either in issuing a licence or otherwise in respect of the plan to set up an Export Processing Zone by the Respondents, and in view of the prayers sought in the Petition which are confined to the alleged infringement of the Petitioners' rights, it is the finding of this Court that the Liaison Committee does not have the requisite jurisdiction to deal with this Petition. It is this Court that has the jurisdiction to deal with the issues raised in the Petition and the Application.

The locus standi of the Petitioners:

76. The Petitioners have averred in the Petition that the Petition has been filed on their own behalf and on behalf of the residents of Gatuanyaga and beyond, who in one way or the other will be affected with the construction of the Export Processing Zone and who have not been consulted and who have not seen the Environmental Impact Assessment Report yet since it has not been done.

77. The Petitioners' case is that Article 42 of *the Constitution* grants them the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of the present and future generations through legislative and other measures, and to have obligations of the State and its organs relating to the environment fulfilled. The Petition is therefore hinged on the alleged infringement of Article 42 of *the Constitution*.

78. Article 22(1) of *the Constitution* guarantees the right of every person to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, meaning that every person has a right of ensuring that their rights in relation to the environment are not violated or threatened by way of litigation.

79. *The Constitution* provides that if a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened, the person may apply to the Court for redress, in addition to any other legal remedies that are available in respect to the same matter.

80. *The Constitution* goes further to provide that on such an Application, the Court may make any order, or give any directions, it considers appropriate to prevent, stop or discontinue any act or omission that is harmful to the environment; to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or to provide compensation for any victim of a violation of the right to a clean and healthy environment.

81. Article 70 of *the Constitution* grants any person the right to commence proceedings for the enforcement of the right to a clean and healthy environment. The said Article provides as follows:

    1. If a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a Court for redress in addition to any other legal remedies that are available in respect to the same matter.

    2. For the purposes of this Article, an Applicant does not have to demonstrate that any person has incurred loss or suffered injury."

82. It is therefore clear from the above provision that one need not have a personal interest or suffered any injury before filing a Petition alleging the infringement of the right to the a clean and healthy environment. In Joseph Leboo & 2 Others vs. Director Kenya Forest Services & Another [2013] eKLR, the Court held as follows:

    26. A reading of Articles 42 and 70 of *the Constitution*, above, make it clear, that one does not have to demonstrate personal loss or injury, in order to institute a cause aimed at the protection of the environment.

    27. This position was in fact the applicable position, and still is the position, under the Environmental Coordination and Management Act (EMCA), 1999, which preceded *the Constitution* of Kenya, 2010 .... It can be seen that Section 3(4) above permits any person to institute suit relating to the protection of the environment without the necessity of demonstrating personal loss or injury. Litigation aimed at protecting the environment, cannot be shackled by the narrow Application of the locus standi rule, both under *the Constitution* and statute, and indeed in principle. Any person, without the need of demonstrating personal injury, has the freedom and capacity to institute an action aimed at protecting the environment. The plaintiffs have filed this suit as representatives of the local community and also in their own capacity. The community, of course, has an interest in the preservation and sustainable use of forests. Their very livelihoods depend on the proper management of the forests. Even if they had not demonstrated such interest, that would not have been important, as any person who alleges a violation of any law touching on the environment is free to commence litigation to ensure the protection of such environment. I am therefore not in agreement with any argument that purports to state that the plaintiffs have no locus standi in this suit."

83. Article 70 of *the Constitution* and Section 3(4) of the *Environmental Management and Co-ordination Act* permits any person to institute a suit relating to the protection of the environment without the necessity of demonstrating personal loss or injury. As was held in Joseph Leboo case (supra), litigation aimed at protecting the environment cannot be shackled by the narrow Application of the locus standi rule, both under *the Constitution* and statute, and indeed in principle.

84. The principle behind the law permitting any person to institute a suit relating to the protection of the environment without the necessity of demonstrating personal loss or injury is because the protection of the environment is not only for the benefit of the present generation, but also for the future generation. The preamble to *the Constitution* recognizes the importance of protecting the environment for the benefit of the future generation as follows:

> " Respectful of the environment, which is our heritage, and determined to sustain it for the benefit of future generations."

85. Indeed, Section 18 of the *Environment and Land Court Act* and Section 3(5) of the *Environmental Management and Co-ordination Act* provides that this Court should be guided by the principle of intergenerational equity while resolving environmental disputes. Section 2 of the *Environmental Management and Co-ordination Act* defines intergenerational equity as follows:

> " intergenerational equity" means that the present generation should ensure that in exercising its rights to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations."

86. Intergenerational equity is crucial for ensuring a sustainable and just future by recognizing the rights of both present and future generations to access resources and opportunities. It emphasizes the need to consider the long-term consequences of current actions on those who will come after us, promoting fairness and responsible stewardship of resources. This principle is vital for addressing issues like climate change, resource depletion, and economic inequality, which can disproportionately impact future generations. This principle is now found in the constitutions of many countries, including Kenya.

87. At the World Commission on Environment and Development it was noted that: "We borrow environmental capital from future generations with no intention or prospect of repaying .... We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions."

88. Some countries, most notably Israel and Hungary, have created their own guardian or commissioner for future generations, independent voices for the long term that act as temporal checks and balances. Based on the human right to a healthy environment (Hungary) and on a basic law concerning sustainable development (Israel), the Commissioners in each country have unrestrained access to the information behind policymaking; respond to citizens' concerns; and publicly expose the long-term implications of current decisions.

89. New Zealand has a Parliamentary Commissioner for the Environment that is referred to as the Guardian of the Long View, and in the European Union, a civil-society coalition has based its emerging campaign on the overarching aim of the Lisbon Treaty to secure "the well-being of its [the EU's] people", which includes the well-being of future citizens.

90. Therefore the idea that as members of the present generation, we hold the earth in trust for the future generations informed the development of the principle of intergenerational equity. Thus, any person can move the Court with a view of protecting the environment, not only for his benefit, but for the benefit of the future generations. It is for that reason that in principle, the locus standi to file suits challenging the violation of the right to a clean and healthy environment is given to all and sundry.

91. The Petitioners herein, whether they are members of the Gatuanyaga Residents Association or not or whether they stay in the subject area or not, and whether the construction of the Export Processing

Zone industry around the four water towers affects them directly or not, have the locus to prosecute the Petition which is premised on the ground that the Respondents have infringed on their right to a clean and healthy environment. This right is applicable not only to them, but also the future generations. The Petitioners in this matter therefore have the requisite locus standi.

92. Constitutional Petitions are governed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules).

93. Rule 4 of the Mutunga Rules provides as follows:

1. Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an Application to the High Court in accordance to these rules.

2. In addition to a person acting in their own interest, Court proceedings under sub rule (1) may be instituted by—

i. a person acting on behalf of another person who cannot act in their own name;

ii. a person acting as a member of, or in the interest of, a group or class of persons;

iii. a person acting in the public interest; or

iv. an association acting in the interest of one or more of its members."

94. The above Rule allows a Petitioner to file a suit on his behalf and on behalf of a class of persons or in the public interest where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened. The Petitioners herein are acting on their own behalf, and in the public interest of the people of Gatuanyaga.

Whether the Petitioners' rights have been or are likely, prima facie, to be infringed or threatened by the Respondents

95. The Petitioners' case is that Tiva River originates from Mutonguni hills and Kitumui ridges and snakes its way through large areas which are fully inhabited by a large population, all the way to Tsavo National Park; that the river and its tributaries serve and sustain quite a good number of the County's population and that over a period of years, the Respondents have violated their constitutional duties to conserve the environment and ensure sustainable use of natural resources (particularly as regards the river and its basin) in a manner which has been detrimental to the lives, interests and properties of the residents of Kitui County, and all those who benefit from the river resources in and outside the County.

96. According to the Petitioners, the proposed Export-Processing Zone would be located on the part of the Delmonte Farm whose ground and surface water flow into four water sources namely; Kilimambogo Township; Gichuki; Wagithago; and Kwandamali. That the Kilimambogo wellspring serves St. Mary's Primary School, Kilimambogo Township, Mukunite Village and Wendano village which constitutes of the four water sources next to the land where Export Processing Zone is to be set up .

97. And the Gichuki wellspring caters to Kilimambogo Teachers College, St John Immaculate Hospital, Kianjahe and the entire Gichiki village. Whereas the Wagithago wellspring is utilized by the residents of Rurii, Makongo and Miumbu and the Kwandamali wellspring provides water to Mukawa village and parts of Thika River A and B and that the Export processing zone is to be set up next to the land were these well springs are situated. Further that construction of the proposed Export Processing Zone would entail excavation of the land interfering with the ground and surface water system support the four water points the residents of Gatuanyaga utilize for human and other consumption.

98. It is the Petitioner's case that this construction is likely to lead to industrial waste being deposited on an antiquated waste management system designed in the 1970s for a small population of about 584 households. Thus the waster would overwhelm the local waste disposal and management infrastructure, spill over into land and in turn contaminate the water sources utilized by the Petitioner and other residents of Gatuanyaga posing a great danger to their health. And this would also interfere with the combined school population of 2,625 students

99. The 6thRespondent's case is that it is the 8th Respondent who is charged with ensuring public participation for projects of this nature and the Export Processing Zone thus they are wrongly sued. They also averred that the Petition not having demonstrated personal interest in the matter they lack locus standi.

100. They contest that neither the Petition nor the Application meet the legal standards set out in Anarita Karimi Njeru vs Republic (1971)eKLR that the Petitioners have not established a direct link between the actions of National Assembly and any legal breach undermining the legitimacy of their claim.

101. Article 42 of *the Constitution* of Kenya, 2010 provides that every person has the right and is entitled to a clean and healthy environment, which right includes the right to have the environment protected for the benefit of the present and future generations through legislative and other measures particularly those contemplated in Article 69.

102. The right to a clean and healthy environment is bestowed on every person, and has been considered by the Courts and eminent authors to be essential for the existence of mankind. In Adrian Kamotho Njenga vs. Council of Governors & 3 Others [2020] eKLR, it was held that:

> 18. Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations through the measures prescribed by Article 69. The right extends to having the obligations relating to the environment under Article 70 fulfilled.
>
> 19. Unlike the other rights in the bill of rights which are guaranteed for enjoyment by individuals during their lifetime, the right to a clean and healthy environment is an entitlement of present and future generations and is to be enjoyed by every person with the obligation to conserve and protect the environment. The right has three components; the right itself, the right to have unrestricted access to the Courts to seek redress where a person alleges the right to a clean and healthy environment has been infringed or is threatened; and the right to have the Court make any order or give any directions it considers appropriate to either prevent or discontinue the act harmful to the environment, or compel any public officer to take measures to prevent or discontinue the act that is harmful to the environment or award compensation to any victim of a violation of the right to a clean and healthy environment."

103. Further to the foregoing, *the Constitution* under Article 69 obligates all persons to protect and ensure a clean and healthy environment, which include but is not limited to elimination of processes and activities that are likely to endanger the environment as well as establish systems of Environmental Impact Assessment and Environmental Audit and Monitoring of the environment.

104. This position was elaborately considered in the case of Martin Osano Rabera & Another vs. Municipal Council of Nakuru & 2 Others [2018] eKLR where the Court adopted the decision in Communication No.155/96: The Social and Economic Rights Action Centre and the Centre for

Economic and Social Rights vs. Nigeria where the African Commission on Human and People's Rights stated as follows:

> " These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health."
>
> The right to general satisfactory environment, as guaranteed under article 24 of the Africa Charter or the right to healthy environment, as it is widely known therefore imposes clear obligations upon a government. It requires the State to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources."

105. Article 70 (1) of *the Constitution* empowers any person who alleges that a right to a clean and healthy environment has been infringed or is threatened to apply for redress from the Court in addition to any other legal remedies available in respect of the matter. An Applicant alleging that a right to a clean and healthy environment need not demonstrate that any person has incurred loss or suffered injury.

106. Article 70 (2) of *the Constitution* provides that on Application for enforcement of the right to a clean and healthy environment, the Court may make any order or give any directions it considers appropriate to prevent, stop or discontinue any act or omission that is harmful to the environment, and may compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment.

107. Section 3 of the *Environmental Management and Co-ordination Act* complements the provision of Article 70 of *the Constitution*. The said Section allows any person who alleges that the right to a clean and healthy environment has been, or is being infringed or violated to bring an action notwithstanding that that such a person cannot show that the Defendant's act or omission has caused or is likely to cause him any personal loss or injury

108. Rivers all over the world are under immense pressure due to various kinds of anthropogenic activities, among them industrial developments that release their waste into the river contaminating water meant for domestic use and human consumption.

109. Finding a balance between development and a sustainable environment is crucial for the well-being of current and future generations. Development, while important for economic growth and improved living standards, can negatively impact the environment if not managed sustainably. Therefore, a holistic approach that integrates economic, social, and environmental considerations is necessary to ensure long-term prosperity and ecological health.

110. Sustainable Development is one of the national values and principles of governance in *the Constitution* that bind all State organs, State officers, public officers and all persons. In its report, Our Common Future, the Bruntland Commission defined Sustainable as development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

111. In our own laws under Section 2 of the Environmental and Management Co-ordination Act, sustainable development is defined as follows:

> "Sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems."

112. In the case concerning the Gabcikovo-Nagymaros Project, (Hungary v Slovakia), 1997 WL 1168556 (ICJ), it was held as follows:

> "Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed [and] set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities, but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development. For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabcikovo power plant. In particular, they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river."

113. Essentially, sustainable development seeks to address intra-generational equity, that is equity among the present generation and inter-generation equity that is equity between generations. As opined in Gabcikovo case (supra), sustainable development reaffirms the need for both development and environmental protection, and neither can be neglected at the expense of the other.

114. At same time it is important to note that the Petitioners did not act against the law by taking action against the National Assembly as the land in the county is gazetted as an Export Processing Zone (EPZ) and that there was inadequate public participation and or failure to adhere to constitutional principles as elaborated in the Application and Petition.

115. Although the 7th and 8th Respondent informed the Court that the Environmental Impact Assessment is one of the steps that will be undertaken there is already published a Gazette Notice on the project which declares as Export Processing Zone. This being the case then the protection for the water resources cannot be ignored.

116. It is for this reason that Article 42 of *the Constitution* obligates the State, including the 6th and 7th Respondents, to protect the right to a clean and healthy environment through implementation of legislative measures, which are already in place which clearly they have not done.

117. As was held in Moffat Kamau & 9 Others vs. Actors Kenya Ltd & 9 Others [2016] eKLR, where the procedures for the protection of the environment are not followed, then an assumption may be drawn that the right to a clean and healthy environment is under threat.

118. Waiting for scientific proof regarding the impact of the project could result in irreversible damage to the environment and in human suffering. The short term economic stagnation that may result due to the conservatory orders of this Court does not outweigh the environmental imperatives of the project.

119. While determining environmental issues, this Court is guided by certain principles, one of them being the precautionary principle. In the case of Halai Concrete Quarries & Others vs. County Government of Machakos & Others, Machakos ELC Petition No. 19 of 2020, this Court held as follows:

> " The precautionary principle is one of the most popular and commonly applied principles of ecologically sustainable development.
>
> The principle is based on Principle 15 of the Rio Declaration on Environment and Development, which Kenya is a signatory to, which states as follows:
>
> 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.' (Rio Declaration on Environment and Development, 1992).
>
> Central to the precautionary principle is the element of anticipation, reflecting a need for effective environmental measures to be based upon actions which take a longer-term approach. The principle evolved to meet the evidentiary difficulty caused by the fact that information required to prove a proposition may be in the hands of the party causing or threatening the damage to the environment. Waiting for scientific proof regarding the impact of the pollutants discharged into the soil, water and air from the impugned dump site could result in irreversible damage to the environment and in human suffering. This Court cannot therefore wait until there is evidence of the effects of the dump on the Petitioners and the residents of the area to order for its closure when the people who are mandated to ensure that the law is complied with to protect the environment and the health of people do not do so."

120. That being so, it is my finding that the Petitioners have established a prima facie case with chances of success and the Court issues the following Orders:-

a. A conservatory order is hereby issued restraining the Respondents through themselves, their servants, employees, agents and/or from commencing construction of the Export Processing Zone as declared in Legal Notice No. 201.

b. The Notice of Motion Application dated 12/01/2024 is unmerited and is thus dismissed in its entirety.

c. That costs of this Application be borne by the 7th and 8th Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 14TH DAY OF JULY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

1st and 2nd Petitioners – Absent

Mr. Motari for 1st – 5th Respondents

6th – 8th Respondents – Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE