



African Centre For Corrective & Preventive Action & another (On Their Own Right and on Behalf of the Class of Persons Affected by the Use of Glyphosate, Paraquat, Imidacloprid, Clothianidin, Fipronil, Chlorpyrifos, Thiacloprid, Thiamethoxam, Fenitrothion, Malathion and Dinotefuran) v Agrochemicals Association of Kenya & 13 others; Kenya Plantation & Agricultural Workers' Union (Interested Party) (Petition E048 of 2022) [2025] KEELC 6119 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6119 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

PETITION E048 OF 2022

JG KEMEI, J

SEPTEMBER 18, 2025

IN THE MATTER OF ARTICLES 2, 3, 19, 20, 21, 22, 23, 42, 43, 46, 69, 70, 165(5) (B), 186 AND 258 OF THE CONSTITUTION OF KENYA 2010

AND

SECTION 13 OF THE ENVIRONMENT & LAND COURT ACT NO 19 OF 2011

AND

IN THE MATTER OF THE CONTRAVENTION OF THE CONSUMER PROTECTION ACT NO 46 OF 2012

AND

IN THE MATTER OF CONTRAVENTION ARTICLE 2, 3, 42, 43, 46, 69 AND 70 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

AFRICAN CENTRE FOR CORRECTIVE & PREVENTIVE ACTION 1ST PETITIONER

KELVIN MUGAMBI KUBAI 2ND PETITIONER

ON THEIR OWN RIGHT AND ON BEHALF OF THE CLASS OF PERSONS AFFECTED BY THE USE OF GLYPHOSATE, PARAQUAT, IMIDACLOPRID, CLOTHIANIDIN, FIPRONIL, CHLORPYRIFOS, THIACLOPRID, THIAMETHOXAM, FENITROTHION, MALATHION AND DINOTEFURAN

AND

AGROCHEMICALS ASSOCIATION OF KENYA 1ST RESPONDENT



MONSANTO KENYA LTD	2 ND RESPONDENT
SYNGENTA EAST AFRICA LTD	3 RD RESPONDENT
BAYER EAST AFRICA	4 TH RESPONDENT
BASF EAST AFRICA	5 TH RESPONDENT
TWIGA CHEMICALS INDUSTRIES LTD	6 TH RESPONDENT
PEST CONTROL PRODUCTS BOARD	7 TH RESPONDENT
MINISTRY OF AGRICULTURE	8 TH RESPONDENT
AGRICULTURE & FOOD AUTHORITY	9 TH RESPONDENT
KENYA PLANT HEALTH INSPECTORATE SERVICE	10 TH RESPONDENT
MINISTRY OF HEALTH	11 TH RESPONDENT
THE COUNCIL OF GOVERNORS	12 TH RESPONDENT
THE KENYA CONSUMERS PROTECTION ADVISORY COMMITTEE	13 TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL	14 TH RESPONDENT

AND

THE KENYA PLANTATION & AGRICULTURAL WORKERS'
UNION INTERESTED PARTY

RULING

(In respect of the Petitioners' application dated 16/8/2023)

1. Before this Court is the applicant's Notice of Motion dated the 16/8/2023, expressed under Article 22 of *the Constitution* of Kenya, Rules 3(2), (3), (4), (8) and 4 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and all enabling provisions of the Law) seeking the following orders;
 - a. That the Court be pleased to issue orders allowing the petitioners to advertise this application and the petition in the daily newspaper of nationwide circulation to enable any affected and or interested parties to be enjoined in the petition.
 - b. Costs of the application.
2. The application is based on the grounds annexed thereto and the supporting Affidavit of James Mwangi Macharia, sworn on 14/8/23. The deponent states that he is the director of the 1st Petitioner, thus competent to swear the affidavit.
3. The Petitioners have filed the petition on their own behalf and on behalf of Kenyan consumers and farmers who use and consume various pesticide products sold and distributed across the country.
4. That the members of the 1st Respondent design, research, manufacture, test, advertise, promote, market, sell, and distribute chemical products containing active ingredients, including paraquat and glyphosate, within Kenya without taking the necessary measures and precautions to protect farmers;



- the chemicals are defective and dangerous to humans and bees and are unfit to be marketed and sold as they lack proper warnings about the dangers associated with their use; The respondents failed to provide consumers and farmers with valid information on the effects of the said chemicals to enable them to make well-informed decisions before purchasing the products, as well as the necessary gear for use while applying the products thus exposing farmers and consumers to lethal substances whose impact goes beyond altering the hormonal systems of plants and insects, degrading the environment and damaging the immune and nervous systems of humans.
5. To protect their consumers' rights to a clean and healthy environment, the Court has been urged to grant leave to advertise the petition, enabling all persons directly or indirectly affected by the products or actions of the respondents to be summoned to the suit.
 6. The 1st Respondent opposed the application through the Replying affidavit sworn by Eric Kimunguyi on 20/9/23. The deponent, the Chief Executive Officer of the 1st Respondent, denied that the products have any adverse effects on human health or the environment.
 7. That a public interest litigation does not justify publishing the petition in a daily newspaper. Such advertising merely invites the general public to join the suit to gather more information to bolster the case, to use the media to pursue the petition, embarrass the respondents, and sway public opinion against the abuse of the subject products. The petitioners were criticised for failing to attach the draft intended publication or notice for the Court to be satisfied that it would not embarrass the fair trial of the case or prejudice the respondents.
 8. The 2nd and 4th Respondents opposed the application and filed grounds of opposition dated 18/9/25 on the following grounds: the suit and the present application are incompetent and fatally defective due to lack of a signed written authority from the class of persons the Petitioners claim to represent; the class of persons the Petitioners purport to represent cannot be identified with sufficient certainty. Consequently, the present application is a fishing expedition and an abuse of court process, given the large and unidentifiable class against 14 different Respondents with varying objectives concerning multiple pesticide products registered by the 7th Respondent for different purposes, which prevents the existence of common issues of fact and law.
 9. The 2nd and 4th Respondents contended that the presence of the intended interested parties is unnecessary, as the Court can fully and effectively adjudicate and resolve all issues raised in the petition without their involvement in the current suit and their joinder would only complicate matters and cause delays in the determination of the case.
 10. In its grounds of opposition to the application dated 12/9/23, the 3rd Respondent stated that the petitioners have not sought or obtained orders to act in a representative capacity or to allow a representative or class action suit for them to seek orders to advertise the instant petition; no prima facie case has been disclosed against the 3rd Respondent based on which a representative action may be advanced or maintained; the petition does not meet the criteria required for a representative or class action in the absence of a standard action or common facts, given the numerous chemicals—11 in total—against 14 different respondents in a single petition; having failed to identify or define a class of persons who have suffered harm due to the 3rd Defendant's alleged actions, the orders sought to advertise the suit are merely a fishing expedition, which the Court was urged to disallow.
 11. The 5th Respondent opposed the application via the grounds of opposition dated 2/2/24, asserting that the petitioners have not made out a case against the 5th Respondent in a representative capacity. Furthermore, the inclusion of an unidentified mass of individuals contravenes the provisions of Rule 3 (5) of the Mutunga Rules, which require the Court to resolve disputes in a timely and effective manner.



12. The 7th -11th and 14th Respondents opposed the application on the grounds that it offends the provisions and spirit of Order 1 Rule 10(2) of the Civil Procedure Rules, as the joinder of the intended interested parties is speculative and unnecessary. The interested party must demonstrate an interest or stake in the suit and the Court's eventual orders, and satisfy the criteria for joinder by showing the value they would add. Lastly, they argue that the application seeks to delay the prosecution of the suit unnecessarily.
13. The 1st Petitioner filed a Further Affidavit sworn by James Mwangi Macharia on 9/4/2024. The deponent states that the 1st Respondent has not disputed that they are involved in the design, research, manufacture, advertisement, promotion, selling, and distribution of chemical products containing the active ingredients of the impugned compounds, without taking necessary measures and precautions to safeguard Kenyan farmers, who are the primary consumers of these chemical products.
14. The deponent states that the 7th Respondent has since withdrawn nine hazardous, toxic agrochemical compounds from the Kenyan market via a notice dated 10/7/2023. The active ingredient, Thiacloprid, was withdrawn due to its effects on humans, including damage to fertility, harm to unborn children, its carcinogenic potential, and its high toxicity to bees. Meanwhile, the active ingredient, chlorpyrifos, was withdrawn because of its exceedingly high minimum residue limit, which has led to complaints from Japan and the European Union. He further affirms that the 7th Respondent, through its agent, published an article in the Daily Nation on 16/03/2024, admitting that farmers in Kenya are using hazardous and harmful agrochemical products that have been banned both in Kenya and other jurisdictions.
15. The 1st Petitioner argues that the publication of the Petition will be effective in thoroughly litigating the matter and avoiding multiple suits in the interest of judicial resources. The publication will also enable the Court to apply the law consistently and promote the principle of stare decisis. He asserts that the Petition was filed in good faith and based on scientific research and findings.
16. The deponent states that the dismissal of Pet. No. 1 of 2022 in ELC Murang'a for want of prosecution was caused by the Advocate, and this should not be visited upon an innocent Client. Regarding the failure to attach a Draft Notice, the deponent indicates that the Court may provide directions on the nature of the publication; therefore, its absence is not critical. Furthermore, under Rule 9 of *the Constitution* of Kenya (Protection of the Rights and Fundamental Freedoms) Practice and Procedures Rules, 2013, commonly known as the Mutunga Rules, the Notice shall require approval by the Registrar.
17. The deponent further refers to Article 22 (2)(b)(c) of *the Constitution*, which states that actions arising from violations or threatened breaches of rights and fundamental freedoms may be initiated by a person on behalf of a class of persons or in the public interest. Therefore, whether or not there is a written authority does not make the Petition incompetent. The class of persons on whose behalf the Petition is filed is identifiable—namely, the consumers and farmers using the contested products—and the cause of action is the same for all, as their exposure is identical.
18. He further affirms that the application is based on the provisions of Rules 3(4)(5)(7)(8), 4(1)(2), 5(b), (d)(ii), (e), and 9 of the Mutunga Rules. He states that the matter is of public interest, informing the public of the proceedings, which will promote transparency, access to information, and foster goodwill and accountability among the Respondents. The deponent also references the Supreme Court of Ontario's decision in *DE Block -vs- Monsanto Canada ULC*, 2023 ONSC 6954, where the Court noted that “undoubtedly, class proceedings provide easier access to justice. It is bound to be more economical than the pursuit of multiple individual claims.” He urges the Court to approve the application as requested.



19. The 2nd Petitioner, Kelvin Kubai, filed a supplementary affidavit sworn on 18/4/24 in support of the application. He states that recent investigations carried out by the Office of the Attorney General of the State of New York, in the USA, concerning false and misleading claims made by Bayer Crop Science LP and Monsanto Company, the parent companies of the 2nd and 4th Respondents, forced their agents to cease publishing or broadcasting the disputed advertisement immediately.
20. In that regard, the deponent deposes that the said agrochemicals have been the subject of numerous successful court cases in the USA. He lists some of the cases, including: Martel Kelly J. –vs- Monsanto et Nouryon Chemicals, Anderson, Draeger and Gunther –vs- Monsanto, Jeffrey Deblock et al –vs- Monsanto (Bayer, Michael Dennis –vs- Monsanto Co., among others.
21. The 2nd Petitioner further referred to the publication by the Star Newspaper on 19/03/2024, where the Principal Secretary in the Ministry of Environment and Climate Change noted that there is an increase in the use of pesticides in Kenya, which continues to pose a risk to human and environmental health. He states that the said Principal Secretary made this remark during the launch of a programme known as Financing Agrochemical Reduction and Management (FARM), which programme aims to detoxify the agricultural sector by reducing the use of harmful agrochemicals.
22. The deponent cited the provisions of Article 35 (1) of *the Constitution* on the right to access information and stated that Kenyans, like citizens of other nations affected by hazardous and toxic agrochemicals, have the right to be informed about these proceedings to determine how best to exercise their rights. He therefore requests that the application be granted as prayed.
23. Furthermore, he stated that the basis for the opposition by the 1st, 2nd, 4th, 7th, 8th, 9th, 10th, 11th, 12th, and 14th Respondents is to hide these facts to Kenyans who may claim their constitutional rights under Articles 35 and 46 of *the Constitution*.
24. The 6th, 12th and 13th Respondents did not file any response to the application.

Directions of the Court on written submissions

25. The application was canvassed through written submissions. Parties complied and submitted their respective documents. The 1st Petitioners' submissions are dated 9/4/2024, the 1st Respondents' submissions are dated 23/4/2024, the 3rd Respondents' submissions are dated 8/05/2024, the 5th Respondents' submissions are dated 8/5/2024, while the 2nd and 4th Respondents' submissions are dated 24/07/2024. The 7th, 8th, 9th, 10th, 11th and 14th Respondents also filed written submissions, all of which I have read and considered.

The 1st Petitioner's submissions

26. The 1st Petitioner identified five issues for determination. The first issue is whether the Petitioners have the necessary locus standi to file a Constitutional Petition in the interest of a class of persons or the public at large. The 1st Petitioner cites the provisions of Article 22 (1) and (2) of *the Constitution* as well as Rule 4 (2) of the Mutunga Rules and submits that these provisions are clear on who can file a petition. The petition is against the Respondents for the use of toxic agrochemical products affecting farmers who are using these chemicals. Citing the case of Anarita Karimi Njeru –vs- Republic (1979) eKLR, the Petitioners aver that the class of persons on behalf of whom this petition has been filed is identifiable, the specific provisions of law allegedly violated are duly pleaded, and the manner in which the provisions of law have been violated has been presented before the Court. The assertion that the petition lacks particularity is baseless.



27. The second issue is whether the Petition raises matters of public interest. The 1st Petitioner states the definition of public interest litigation as provided in Black’s Law Dictionary and Rule 4 (2) of the Mutunga Rules, and argues that the Petition is filed in the interest of the public. They cite the decision by the Supreme Court of India in Ashok Kumar Pandey –vs The State of West Bengal AIR 2004, where the court stated that for a matter to be considered as public interest litigation, the Court must be satisfied about
- (a) the credentials of the applicant,
 - (b) the prima facie correctness or nature of information provided by him, and
 - (c) the information not being vague or indefinite. The information should demonstrate gravity and seriousness involved.

The 1st Petitioner contends that the prayers sought in the Petition are not for personal gain but for the vulnerable farmers and individuals using the impugned chemicals. He asserts that the Petition is based on scientific research and findings annexed to the Affidavit supporting the Petition. Therefore, there is no ulterior motive whatsoever in filing the Petition. It maintains that the Petition has been instituted as a matter of public interest and concerns classes of persons affected by the toxic active ingredients.

28. The third issue is whether the Petitioners have established a prima facie case. The 1st Petitioner submits that the petition is grounded in law and supported by evidence, thus establishing a prima facie case. Furthermore, the 2nd, 3rd, 4th, 5th, and 6th Respondents have not contested the fact that they engage in the manufacture, promotion, advertising, marketing, and sale of the impugned products. The core of the Petition is the violation of Constitutional rights resulting from the manufacture, promotion, advertising, marketing, distribution, and sale of agrochemical products.
29. The 1st Petitioner submits that the fourth issue for determination is the joinder of necessary parties in the Constitutional Petition. The 1st Petitioner cites Rule 5 of the Mutunga Rules and argues that for any party to be joined, it must comply with the conditions set therein. Any party improperly joined can be struck out. It further contends that the Petition is a class action, thereby providing easier access to justice and avoiding a multiplicity of claims. To this end, counsel cites the decision of the Supreme Court of Ontario in DeBlock vs Monsanto Canada ULC, 2023 ONSC 6954, where the court held that “undoubtedly, a class proceeding provides easier access to justice. It is bound to be more economical than the pursuit of multiple individual claims.”
30. The final issue for determination, according to the 1st Petitioner, is whether the Honourable Court possesses the power and jurisdiction to grant the prayers sought in the application. The 1st Petitioner refers to the provisions of Rule 9 of the Mutunga Rules, which permits the advertisement of the Petition on the Court’s notice board, publication in the Gazette, and in a daily newspaper with national circulation, subject to approval by the Registrar. The 1st Petitioner asserts that the Petitioners are not required to submit a draft of the Notice; rather, it is the contents that should be approved first. Consequently, failure to attach a draft is not fatal enough to warrant the dismissal of the application.
31. It is submitted that the grant of orders sought would promote the rule of law, uphold and defend *the Constitution*. The issuance of the orders shall be the most efficient and economical use of the court’s time and resources, avoid multiplicity of suits, and lead to a uniform decision. Informing the public shall promote transparency, access to information, and accountability. That the orders shall enrich the proceedings and lead to an eventual determination in a matter of great public interest.



1st Respondent's submission

32. The primary issue for determination, according to the 1st Respondent, is whether the application is bona fide. The 1st Respondent argues that the conduct of the Applicants is mala fide and driven by ulterior motives. Firstly, it took the Applicants ten months to seek leave of court to advertise the Petition; secondly, the Applicants are on a fishing expedition through newspaper advertisements. Additionally, the Petitioners initially filed HC Pet. No.1 of 2022 but failed to prosecute it, resulting in its dismissal by the court.
33. The second issue concerns whether the failure to annex a draft notice is prejudicial. The 1st Respondent argues that the advertisement of a suit is intended to notify either the persons named as opposing parties or third parties. Court approval is required to do so, as the court must supervise the process by determining whether there are valid grounds to grant leave and certify that the contents of the notice aim to ensure a fair and just resolution of the suit without prejudice to the opposing party. Therefore, any party wishing to advertise a suit must attach the draft notice. The 1st Respondent references the case of *Rose Florence Wanjiru vs. Standard Chartered Bank of Kenya Limited & 2 Others* (2014) eKLR, where the court ruled that the directions under Order 1 Rule 8 of the Civil Procedure Rules are mandatory and not merely procedural. It requests the court to dismiss the application.

The 2nd and 4th Respondents' submissions

34. The 2nd and 4th Respondents submitted that the first issue is whether the application is premature because the Court has not yet determined its jurisdiction to hear the Petition. They contend that this court lacks jurisdiction to handle the Petition since the Petitioners have not exhausted the dispute resolution process outlined in the *Pest Control Products Act*, Cap. 346, and the Pest Control Registration Regulations, 2022. They refer to the Supreme Court decision in *United Millers Limited –vs- Kenya Bureau of Standards and Others* (2021) e KLR, where the court stated that when a party objects to the Court's jurisdiction, such an objection must be addressed as a preliminary issue before any substantive merits are considered. Therefore, they argue that the application is premature because the court should first resolve the jurisdictional issue before proceeding to substantive matters.
35. The 2nd and 4th Respondents cite the Supreme Court decision in *Muruatetu & Another –vs- Kenya National Commission on Human Rights & 2 Others* (2016) KESC 12 (KLR) regarding principles for the joinder of an interested party. Additionally, they cite Rule 2 of the Mutunga Rules and contend that the Applicants have failed to clearly specify the class of farmers affected and the specific stake they hold in the legal proceedings. They argue that the intended interested parties are a vague and amorphous group of farmers, and that the applicants have not demonstrated how the prayers sought cannot be granted without involving this unidentified group of farmers. Furthermore, public interest litigation does not justify their joinder.
36. The 2nd and 4th Respondents submit that the Petitioners have failed to establish a common grievance to be pursued with the unidentified group of farmers. They contend that there are 14 different Respondents, each with a distinct claim against them. Since the causes of action are different, the court should try them separately. They argue that joinder of the intended interested parties would complicate matters and delay their resolution, contrary to Rule 3 (5) of the Mutunga Rules, which requires the expeditious determination of proceedings.



The 3rd Respondent's submission

37. The 3rd Respondent identified two issues for determination. The first issue is whether the Petitioners have established a prima facie case for advertisement. The 3rd Respondent contends that the application seeks to fill the gaps identified in the Petition. The 3rd Respondent cites the case of Rose Florence Wanjiru –vs- Standard Chartered Bank (K) Ltd & Another (2015) e KLR, where the Court, while examining public advertisement under Order 1 Rule 8 of the Civil Procedure Rules, stated that an advertisement should not be used as an opportunity to pass adverse information or litigate the case through the notice to injure the other party or the course of justice nor amend pleadings or depart from the original suit.
38. The 3rd Respondent cites the Supreme Court case of Communications Commission of Kenya & 3 Other –vs- Royal Media Services Ltd. & 7 Others (2014) e KLR, where the apex court reiterated the requirements for an application for joinder. The 3rd Respondent argues that the Petitioners have not satisfied the necessary conditions, as the Petition can be properly determined without the joinder of interested parties. The Petitioners have not shown that the individuals they seek to join share a common interest against the Respondents. They urge the Court to find that there is no valid basis for joinder and to decline any order to advertise the Petition.

The 5th Respondent's Submissions

39. The 5th Respondent submits that the Petitioners have not identified the class of persons or their stake or legal interest in the proceedings.

The 7th -11th & 14th Respondents' submissions

40. In their submissions, the 7th, 8th, 9th, 10th, 11th, and 14th Respondents, represented by the Attorney General, argue that Article 165 (3) (d) of *the Constitution* of Kenya clearly specifies issues that should be raised and determined in a Petition. They further cite the principles established in Anarita Karimi Njeru –vs- Republic [1979] eKLR and contend that the Petition is speculative and does not meet the level of precision outlined in the Anarita Karimi Njeru principle, which is why the Petitioners seek to advertise the Petition so that others may attempt to address the evident gaps.
41. They further cite Rule 2 of the Mutunga Rules, which defines an “interested party” as a person or entity with an identifiable stake, legal interest, or duty in the proceedings. They also reference the Supreme Court decision in Francis K. Muruatetu and Others –vs- Republic & 5 Others (2016) e KLR, and argue that the Petitioners have not identified the interested parties or their identifiable stake to meet the criteria for joinder. The Petitioners are on a fishing expedition to bolster their cause and sensationalise the matter.
42. The Attorney General contends that advertising the Petition through a daily newspaper is akin to altering the nature of the case or inviting unknown parties to introduce new issues. The Court's focus in this Petition should be whether the Petitioners have demonstrated the alleged constitutional infringements, and this should not be confused with other parties whose interests are yet to be established, as outlined above. They urged the court to dismiss the application for failing to satisfy the criteria for joinder as an interested party.

Highlighting of submissions

43. On the 1/4/25, parties highlighted their respective submissions before the court. The Court is grateful to Counsels for their highlights and industry.



Analysis and determination

44. The Court has considered the Petition herein, the grounds of opposition, the replying affidavit and submissions by Counsel for the parties and the issues drawn for determination. The following issues fall for determination;
- a. Whether the Petitioners/ Applicants have exhausted the existing Dispute Resolution Mechanisms before invoking the Jurisdiction of the Court.
 - b. Whether the Petition is competent as a representative suit and/or a public interest Petition.
 - c. Whether the Applicant should be allowed to advertise the petition in a national newspaper

Whether the Petitioners/Applicants have exhausted the existing Dispute Resolution Mechanisms before invoking the Jurisdiction of the Court

45. It is a fundamental principle in law that a Court cannot decide on matters over which it lacks jurisdiction. The Court's jurisdiction is derived from *the Constitution* or Statute. If a Court determines that it lacks jurisdiction to hear and determine a case, it must stop the proceedings immediately. It cannot extend or arrogate to itself jurisdiction that has not been granted by law. This principle was stated by the Supreme Court in the case of Samuel Kamau Macharia & Another –vs- Kenya Commercial Bank Limited & 2 Others (2012) eKLR.
46. The jurisdiction of this Court derives from Article 162 (2) (b) of *the Constitution* of Kenya, which establishes the Environment and Land Court. It grants the court authority to hear and determine disputes concerning the environment, as well as the use, occupation, and ownership of land.
47. In giving effect to Article 162(2)(b) of *the Constitution* of Kenya, Parliament enacted the *Environment and Land Court Act* which provides as follows under Section 13 (2) that;
- (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.”
48. With regards to the doctrine of exhaustion, the Supreme Court of Kenya explained the importance of the doctrine in the case of Benard Murage -vs- Fine Serve Africa Limited & 3 Others [2015] eKLR in the following words:
- “Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first.”



49. In the case of NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) [2023] KESC 17 (KLR), the Apex Court made the following pronouncement on the doctrine of exhaustion:

“ 87. This is further firmly rooted in article 159 of *the Constitution* which requires the Courts to promote alternative dispute resolution mechanisms. The moment a storm begins to brew; courts should not be the first port of call but rather the final resort. Before using the court's jurisdiction, it is essential to exhaust any available alternative dispute resolution options. 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 interests within the mechanisms in place for resolution outside the courts. The exhaustion doctrine acts as a safeguard to delay judicial consideration of cases to ensure that a party is vigilant in protecting his interests within the channels available for dispute settlement methods. In this way, the doctrine serves to promote an efficient justice system and an autonomous administrative state”.

50. The apex Court in the case of Benson Ambuti Atega –vs- Kibos Distillers Ltd & 5 Others [2020] eKLR emphasised that, where appropriate, the superior Courts should refer the dispute back to the relevant bodies for adjudication.

51. These decisions from the superior Court are unquestionably binding on this Court.

52. The 2nd and 4th Respondents argue that this Court lacks jurisdiction to hear and determine the Petition because the Petitioners have not exhausted the dispute resolution process outlined under the *Pest Control Products Act*, Cap. 346, and Pest Control Registration Regulation 2022. They refer to the Supreme Court decision in United Millers Ltd –vs- Kenya Bureau of Standards and Others (2021) eKLR, where the highest Court stated that when a party objects to a Court's jurisdiction, such an objection must be addressed as a preliminary issue before considering the substantive matter. They contend that the current application is thus premature, as the Court should first determine the question of jurisdiction before proceeding to any substantive issues.

53. The Court observes that although the 2nd and 4th Respondents raised several objections to the application, they chose to challenge the court's jurisdiction through written submissions. Courts have consistently held that parties are bound by their pleadings. In this instance, the objectors have not submitted a pleading raising the issue of jurisdiction or its absence. It is also well established that jurisdiction, as a point of law, can be raised suo moto by the court. Therefore, I will nonetheless determine it first.

54. In Kenya, pesticides are regulated under the *Pest Control Products Act*, Cap. 346 and the Regulations thereunder. Section 6 of the said Act provides for the Pest Control Products Board. Its functions include assessment and evaluation of pest control products and consideration of applications for registration of products among others.

55. The objectives of the Board are to deliver a regulatory service that is efficient and effective for the importation, exportation, manufacture, distribution, transportation, sale, disposal, and safe use of pest control products, while also reducing potential harmful effects on the environment. Section 12 details the offences and penalties related to them, whereas Section 13 states that the Court shall try offences under the Act. This pertains to criminal offences arising from these provisions.



56. The only dispute resolution mechanism specified under subsidiary legislation in clauses 12 and 13 concerns the Boards' refusal to register a pest control product or the suspension or revocation of the certificate of registration. In either case, the affected party has 30 days to appeal to the Minister against the decision.
57. Evidently, the said Act and the Regulations thereunder do not specify dispute resolution mechanisms for civil matters, but rather certifications and licensing.
58. It is therefore my finding that the impugned Act does not provide for administrative remedies to resolve civil disputes. Consequently, this Court has jurisdiction to hear and determine this petition.

Whether the Petition is competent as a representative suit and/or a public interest Petition

59. Black's Law Dictionary, 11th edition, defines public interest litigation as;

“Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class or a class of community have pecuniary interest or some interest by which their legal right or liabilities are affected.”

60. The Supreme Court of India in the case of Ashok Kumar Pandey v State of West Bengal, AIR 2004 SC 280 as cited by Mugambi J in Omtatah -vs- Head of Public Service & 2 Others (Constitutional Petition E301 of 2021) [2024] KEHC 198 (KLR) held that: -

“Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, the Court must be careful to see that a body of persons or a member of the public, who approaches the Court, is acting bonafide and not for personal gain, private motive, political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interests indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”

61. Further, in the case of Brian Asin & 2 Others –vs- Wafula W. Chebukati & 9 Others [2017] eKLR stated that:

“.....Public interest litigation is a highly effective weapon in the armory of law for reaching social justice to the common man. It is a unique phenomenon in the Constitutional Jurisprudence that has no parallel in the world and has acquired a big significance in the modern legal concerns.

The question is whether the proceedings before me are frivolous or vexatious bearing in mind that it is the duty of the Court to see whether the petitioner who approaches the Court



has a bona fide intention and not a motive for personal gain, private profit or political or other oblique considerations.”

62. Article 22 of *the Constitution* of Kenya provides for the enforcement of the Bill of Rights and states that,

“Every person has the right 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.”

63. Article 258 of *the Constitution*, on the other hand, provides for the enforcement of *the Constitution* and states that;

1. “Every person has the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.” The two Articles go on to state that;
2. In addition to a person acting in their own interest, court proceedings under sub-rule (1) may be instituted by—
 - a. a person acting on behalf of another person who cannot act in their own name;
 - b. a person acting as a member of, or in the interest of, a group or class of persons;
 - c. a person acting in the public interest; or
 - d. an association acting in the interest of one or more of its members

64. Further, Rule 4 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, repeats the above Articles and states that 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 the rules and states;

1. 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 person.
 - iii. a person acting in the public interest; or

65. *The Constitution* and the Mutunga Rules therefore permit anyone to file a claim alleging a breach of its provisions, regardless of whether they are directly affected by the violation.

66. The Respondents argue that the Petition filed herein does not qualify as a class action to warrant the issuance of the orders sought. They claim that the alleged interested parties have not been identified nor do they have a clear stake in the proceedings. They accuse the Petitioners of engaging in a fishing expedition to fill gaps in their Petition and to delay the determination of the case further.

67. Looking at the Petition, the Petitioners describe themselves as suing in their own right and on behalf of the class of persons affected by the impugned active compounds. In my view, this petition, being a public interest litigation, complies with the provisions of Article 22 (2) (b) and 258 (2) (b) of *the Constitution* cited above. The Respondents' assertion that the Petitioners have failed to define a class of persons who have suffered harm due to the Pesticides or a specific group is immaterial in view of the tenor and spirit of *the Constitution*. There is no doubt that this is a public interest litigation where the petitioners seek redress for alleged violations concerning the manufacturing, marketing, selling, and



promotion of specific scientifically proven toxic active ingredients in the pesticides used by the citizens of Kenya, who are consumers of agrochemical products.

68. Regarding whether the Petitioners should have complied with the provisions of Order 1 Rule 8 concerning the requirement for a signed written authority from the class of persons on whose behalf the Petitioners claim to act, as well as the assertion that the proposed Interested Parties are unnecessary under Order 1 Rule 10 (2) of the Civil Procedure Rules, the Court observes that since this is a Constitutional petition, the procedure and practice are governed and regulated by *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 (also known as “the Mutunga Rules”).
69. In the case of Francis Angueyah Ominde & Another -vs- Vihiga County Executive Committee Members Finance Economic Planning, and 3 Others; Controller of Budget and 10 others (Interested Parties) [2021] eKLR as cited in the case of Mwinzi & 173 others (Per Attached List of Schedule) -vs- Kenya Rural Road Authority & 3 Others [2024] KEELC 427 (KLR), the Court took the view that ;

“On the matter of the joinder of the 2nd petitioner, it should be pointed out that the constitutional petitions are governed and regulated by *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013, so far as procedures and processes are concerned. They are not subject to the Civil Procedure Rules, which govern processes that are brought under the *Civil Procedure Act*, Cap 21, Laws of Kenya. So far as procedure is concerned, *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013, captures the spirit of Article 159(2)(d) of *the Constitution*, which is an injunction against Constitutional proceedings being hostage to technicalities of procedure, and which enjoins courts to protect and promote the principles of *the Constitution*. The focus is trained on substance rather than process. *The Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 are more flexible compared with the provisions of the Civil Procedure Rules, with respect to who may bring proceedings and the manner of initiating the proceedings.

Two issues are raised with respect to the above. One, it is about the 1st Petitioner initiating One, it is about the 1st Petitioner initiating the proceedings jointly with the 2nd Petitioner, but without filing an authority executed by the 2nd Petitioner to include him in the petition. I have carefully and scrupulously scoured through *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013, and I have been unable to find a provision or rule which requires such an authority. It is a requirement under the Civil Procedure Rules, but the proceedings before me were not initiated under the *Civil Procedure Act*, and they are not subject to the Civil Procedure Rules, but *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013.”

70. Based on the foregoing authorities, the Court finds that the Petition cannot be dismissed or defeated on the grounds of non-compliance with the procedure contained in the Civil Procedure Rules unless the same has been incorporated into *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013.
71. The 3rd Respondent also contends that the Petition identifies eleven (11) different chemicals and fourteen (14) different Respondents in one Petition. It argues that there is no common cause of action for the Petitioners. The Petitioners, in response, assert that the consumers of the impugned products are the same and that the cause of action is also the same, as their exposure is identical. They cite the Supreme Court of Ontario’s decision in DE Block -vs- Monsanto Canada ULC, 2023 ONSC 6954,



where the Court stated that “undoubtedly, class proceedings provide easier access to justice. It is bound to be more economical than the pursuit of multiple individual claims.”

72. In my view, the Petition complies with the principle in *Anarita Karimi Njeru –vs- The Republic (1976-1980) KLR 1272* (the *Anarita Karimi Case*), which states that a person alleging a violation of a constitutional right must specify with reasonable precision the right infringed, the provisions alleged to be violated, and the manner in which the right is claimed to have been infringed; the Petition is thus competent, and there is nothing preventing the Court from entertaining it.
73. In any event, classifying the Petition as it is assists the Court in avoiding multiple lawsuits. Rule 17 of the Mutunga Rules provides the Court with discretion to consolidate several Petitions either on its own initiative or upon application by a party or parties. This procedure conserves the Court’s time by handling multiple Petitions simultaneously and issuing a single ruling on the issues involved, thereby saving valuable judicial resources. See the case of *Federation of Women Lawyers in Kenya –vs- Speaker The National Assembly & 4 Others [2018] eKLR - Petition 401 of 2017*.

Whether the Applicants should be allowed to advertise the Petition in a national newspaper

74. The Petitioners seek to advertise the Petition in a daily newspaper with nationwide circulation to allow any affected or interested parties to be included in the Petition. The Respondents argue that such an advertisement would complicate matters and that the Applicants are on a fishing expedition to fill gaps in the Petition. They also claim that the Applicants have not satisfied the requirements for the joinder of interested parties.
75. Rule 9 of *the Constitution* of Kenya (Protection of the Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides that the Court may direct that notice of the institution of the petition may be published in a daily newspaper with national circulation of the judiciary website.
76. Article 35 of *the Constitution* provides for the right to access information. It provides as follows:
1. Every citizen has the right of access to—
 - a. information held by the State; and
 - b. information held by another person and required for the exercise or protection of any right or fundamental freedom.
 2.
 3. The State shall publish and publicize any important information affecting the nation.
77. Section 4 the *Access to Information Act*, (No 31 of 2016) provides as follows:
1. Right to information Subject to this Act and any other written law, every citizen has the right of access to information held by—
 - a. the State; and
 - b. another person where that information is required for the exercise or protection of any right or fundamental freedom.
 2. Subject to this Act, every citizen's right to access information is not affected by—
 - a. any reason the person gives for seeking access; or
 - b. the public entity's belief as to what the person's reasons are for seeking access.



3. Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.
 4. This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.
 5. Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.
78. Section 6 of the said Act sets out the circumstances under which the right to access information may be restricted. Court proceedings are not among the exemptions. Generally, court proceedings are public, except for certain sensitive matters that are subject to specific restrictions. The proceedings here do not fall into that category.
79. Article 46 of *the Constitution* provides for consumers right. The provision states;
- (1) Consumers have the right-
 - (a) to goods and services of reasonable quality;
 - (d) to compensation for loss or injury arising from defects in goods or services.
 - (c) to the protection of their health, safety, and economic interests; and
 - (d) to the information necessary for them to gain full benefit from goods and services;
 - (2) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.
 - (3) This Article applies to goods and services offered by public entities or private persons.
80. As previously noted, this is a public interest litigation in which the Petitioners seek redress for alleged violations related to the manufacturing, marketing, selling, and promotion of specific alleged scientifically proven toxic active ingredients in pesticides used by Kenyan citizens; who are consumers of agrochemical products. The consumers are entitled to information about the said alleged active ingredients, including court proceedings concerning the impugned active ingredients.
81. In light of the provisions of Article 22 and Article 258 of *the Constitution* previously cited, as well as Rule 9 of the Mutunga Rules, the purpose of advertising the Petition is to inform the public about the ongoing proceedings.
82. This court would like to draw parallels from the decision of the Court of Appeal while discussing the rationale for Order 1 Rule 8 of the Civil Procedure Rules on advertising a notice upon the institution of a suit from the case of *Yiapas Ole Seese & 4 Others –vs- Sakita Ole Narok & 2 Others (2008) eKLR*, where the court stated as follows.

“The whole purpose of provisions of Order 1 Rule 8 is to ensure that all persons with unlitigated similar cause of action are desirous of having their cause determined are included in this suit for their own convenience and to obviate a multiplicity of suits. Hence the need to notify them of the Institution of the suit so that in case any of them wishes to take part he is given the opportunity to do so..... Until notices under orders 1 Rule 8 Civil Procedure Rules, are served, one may not know whether or not they will accept being treated as Plaintiffs.



Services of the notice as we stated earlier. It to give them an opportunity to make an Election whether or not to become parties. My plain reading of Order 1 Rule 8 is that such a notice is not a mandatory requirement that can render a suit fatally defective for non-compliance. The spirit of the law in requiring notice to be given to persons likely to be affected in the case of a representative nature is a procedural requirement that cannot be elevated to a fetish for non-compliance. The rule should not be treated as a rigid matter of principle but a flexible tool of convenience in the administration of justice to the parties.”

83. See also the case of Ahmed Dolal & 9 Others (Suing on their behalf and on behalf of 27 Members of Likoley Farmers) –vs- Kengen & Another [2018] eKLR where the above finding was reiterated.
84. Just as the notice under Order 1 Rule 8, advertising the Petition as provided under Rule 9 of Mutunga Rules shall ensure that all persons with unlitigated similar causes of action who wish to have their cases determined are included in this Petition for their own convenience and to prevent a multiplicity of suits. This allows any affected party who wishes to start proceedings to apply to join the case. It is for those individuals to decide whether they shall join as Petitioners or interested parties. In any case, the Respondents have not demonstrated how the publication of the Petition would prejudice them.
85. Regarding the failure to attach a draft notice, the court considers this not to be fatal since the notice is subject to approval by the Deputy Registrar in accordance with section 9(1) and (2)(b) of the said Rules. Furthermore, under the provisions of Article 159 (2) of *the Constitution*, which obliges the Court to administer justice without regard to procedural technicalities. See the case of Benchmark Murikwa Nganga -vs- Attorney General & 4 Others [2019] eKLR.

Final orders for disposal

86. From the foregoing, the court allows the application dated 16/08/2023 in the following terms;
 - a. The applicant shall, within a period of 7 days, cause the preparation of the relevant notice in conformity with the provisions of section 9 of the Mutunga Rules for consideration.
 - b. Subject to approval of the Registrar, the petitioners should be at liberty to advertise the petition within 15 days of the approval.
 - c. That upon advertisement of the Petition as stated in (a) above and pursuant to Rule 14 of the Mutunga Rules, the Court exercises its discretion and grants 30 days within which intended parties may move the court accordingly.
 - d. I make no orders as to costs
87. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Mr Njoroge for the 1st Petitioner
2. Mr Kubai h/b Macharia h/b for Tom Macharia for the 2nd Petitioner
3. Ms Muluvi h/b Mr Mutua SC for the 1st Respondent



4. Mr Oyoo h/b for Mrs Kinyenje for the 2nd and 4th Respondent
5. Ms Matara h/b Mrs Wanjau Ngige for the 3rd Respondent
6. Ms Wameyao h/b Ms Mwango for the 5th Respondent
7. N/A for the 6th Respondent
8. Mr Mwambonu for the 7th -11th & 14th Respondents
9. N/A for the 12th and 23th Respondents
10. N/A for the Interested Party
11. CA- Ms Yvette Njoroge

