



**Gollo & 3 others v Cabinet Sec Min of Defence & 4 others (Environment & Land
Petition 003 of 2021) [2023] KEELC 21927 (KLR) (13 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21927 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND PETITION 003 OF 2021
PM NJOROGE, J
NOVEMBER 13, 2023**

BETWEEN

**TACHE BONSA GOLLO 1ST PETITIONER
PATRICK HALAKE JALDESA 2ND PETITIONER
ABDULRAZAQ HAJI ADAN 3RD PETITIONER
ADAN HAPPI FALAN 4TH PETITIONER**

AND

**CABINET SEC MIN OF DEFENCE 1ST RESPONDENT
CHIEF OF DEFENCE FORCES 2ND RESPONDENT
COMMANDER OF ARMY 3RD RESPONDENT
CABINET SEC FOR LANDS & PHYSICAL PLANNING 4TH RESPONDENT
MERU COUNTY GOVERNMENT 5TH RESPONDENT**

RULING

1. The Notice of Preliminary Objection (PO) in this matter reads as follows;

4th and 5th Respondents' Notice of Preliminary Objection

Taken Notice that the 4th and 5th Respondent herein shall before the hearing of this suit raise and argue a Notice of Preliminary Objection on the point of law that:

1. The petition is an intergovernmental land dispute between Ministry of Lands, Ministry of Defence and County Government of Meru on ownership of Commercial Plot NO.A2-Meru, Plot No. L123 and Commercial Plot No. A1-meru, Plot L122.



2. The nature of this suit is one that should be guided by the express provisions of Article 6(2) of the Constitution of Kenya 2010. The article provides that governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation by avoiding litigation.
 3. Article 189 (4) of the Constitution of Kenya provides that the National Legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanisms including negotiation, mediation and arbitration.
 4. Pursuant to article 189 referred above, parliament enacted Intergovernmental Relation Act, 2012 (IGRA) which lays down the framework for cooperative, intergovernmental relations and resolution of intergovernmental disputes.
 5. Section 3 of the intergovernmental Relations Act provides that the national and county government shall take all reasonable measures to resolve disputes amicably and apply and exhaust the mechanism for alternative dispute resolution provided under the act or any other legislation before resorting to judicial proceedings.
 6. That this suit negates the principle of exhaustion; i.e. where a statute creates a procedure in a specified manner, the rule is that performance cannot be enforced in any other manner before exhausting the procedure provided in statute and that the Intergovernmental Relations Act Section 30-35 and Article 189 (4) of the Constitution outline procedures to address intergovernmental disputes.
 7. The prayers and declarations sought in the petition dated 8th May, 2019 concern the ownership and registration of land through the adjudication process whose procedure is provided for under the Land Adjudication.
 8. This court lacks the mandate to issue prayers (3) (4) and (5) of the petition in the way of payment of special and general damages, prohibitory orders or issuing of a permanent injunction against the various government departments of the respondent.
 9. This petition is premature because the Petitioner has not exhausted the dispute resolution mechanisms under the Constitution and the Intergovernmental Relations Act and Land Adjudication Act thus render the Doctrine of Exhaustion irrelevant.
2. The Preliminary Objection was canvassed by way of Written Submissions by the Petitioner and the 4th and 5th Respondents. The other respondents did not file submissions.
 3. My conspectus of the Preliminary objection's proponents' submissions is that;
 - a. The matter constitutes an Intergovernmental Relations dispute.
 - b. The Petitioners had not exhausted the laid down dispute resolution mechanisms.
 4. The Petitioner's submit that the matter in question does not constitute an Intergovernmental Relations dispute as envisaged by the Intergovernmental Relations Act. They say that this Petition seeks to have their fundamental rights to property established and enforced. They also say that the Preliminary objection does not meet the test set out in the Classic Case of *Mukisa Biscuit Manufacturing Co. Ltd Versus West End Distributors Ltd* (1916) EA 696 as the issues raised in the Preliminary Objection invite arguments which can only be resolved after the Petition has been heard and determined.



5. Although both parties have submitted at length in support of their diametrically incongruent assertions, I find that this matter can be resolved by simply establishing who the parties in this petition are.

The Petition says that the Petitioners are;

1. Tache Bonsa Gollo
2. Patrick Halake Jaldesa
3. Abducrazaq Haji Adan
4. Adan Happi Falana

The Respondents are;

1. The Cabinet Secretary, Ministry of Defence.
2. Chief of Defence Forces.
3. Commander of the Army.
4. The Attorney General.
5. Cabinet Secretary for Lands and Physical Planning
6. National Land Commission.
7. Meru County Government.
6. It is pellucid the 1st to 6th respondents are all, in one way or other, parts of the national government executive.

The 7th respondent is the County Government.

7. The suit is between private individuals, the Petitioners and the respondents who are either part of the national government or a County Government. Their dispute with the respondent's is not a Intergovernmental relations dispute. It is a dispute between individuals and National Government bodies plus the County government.

Indeed although the respondents are National Government bodies and a County Government, it is nowhere indicated that they have a dispute in this matter. This is not an Intergovernmental Relations matter. Period.

8. In the circumstances the following orders are issued;-
- a. This Notice of Preliminary Objection (PO) is hereby dismissed.
 - b. Costs for this Preliminary Objection shall follow the event and are awarded to the Petitioners.

DELIVERED IN OPEN COURT AT ISIOLO THIS 13TH DAY OF NOVEMBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Benjamin Kimathi holding brief for Mugira for 1st, 2nd and 3rd Respondents.

Benjamin Kimathi holding brief for 4th and 5th Respondents.

HON. JUSTICE P.M NJOROGE



JUDGE

