



**Mwakazi & 67 others v Tavevo Water and Sewerage Company & another
(Petition E010 of 2024) [2025] KEHC 8848 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 8848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E010 OF 2024**

AN ONGERI, J

MARCH 3, 2025

**IN THE MATTER OF ALLEGED THREAT OF CONTRAVENTION OF ARTICLES
2, 10, 27, 33, 47, 174(C) AND 232 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

**MICHAEL MWAKAZI & 67 OTHERS & 67 OTHERS & 67 OTHERS & 67
OTHERS PETITIONER**

AND

TAVEVO WATER AND SEWERAGE COMPANY 1ST RESPONDENT

WATER SERVICES REGULATORY BOARD 2ND RESPONDENT

RULING

1. The 1st Respondent filed a Notice of Preliminary Objection (NOPO) dated 13th January 2025 as follows:-
 - i. That this Honourable Court lacks the jurisdiction to hear and determine the issues raised in this Petition as the appropriate forum for disputes relating to water tariffs, regulatory compliance, and service provision is the Water Tribunal, established under Section 119 of the [Water Act](#), 2016.
 - ii. That the Petitioners have failed to exhaust alternative dispute resolution mechanisms provided under the [Water Act](#), including:-
 - a. Lodging a formal complaint with the Water Services Regulatory Board (WASREB) under Section 72(1) of the [Water Act](#).
 - b. Filing an appeal or complaint before the Water Tribunal as provided under Section 121 of the Act.



2. The parties filed submissions in the Notice of Preliminary Objection which I have duly considered.
3. The respondent submitted that the sewerage tariff contested arises from the provision of water services in Sikujua where an existing sewer line lagoon necessitate the contested sewerage levy.
4. Further, that the Petitioners have failed to exhaust alternative dispute resolution mechanisms provided under the *Water Act*, including:-
 - Lodging a formal complaint with the Water Services Regulatory Board (WASREB) under Section 72(1) of the *Water Act* and filing an appeal or complaint before the Water Tribunal as provided under Section 121 of the Act.
5. The petitioners on their part said that the orders sought are constitutional in nature and cannot be granted by the Water Tribunal.
6. The sole issue for determination is whether this court has jurisdiction to hear this petition.
7. The 1st Respondent/Applicant submitted that the right forum for this case is the Water Tribunal under Section 121 of the *Water Act*, 2016.
8. The Petition dated 29th August 2024 is seeking several orders against the Petitioners including a declaration that the introduction of 75% sewerage levy by the company to be charged on top of the Petitioner's water bills did not follow the right procedure in coming up with the said levy as prescribed by the law.
9. The Petitioner also seeking a declaration that Gazette Notice No. 10544 published by the Respondent in the Kenya Gazette introducing the subject levy/tariff is invalid/null and void.
10. The petitioner submitted that the Tribunal has no power to issue the orders sought in the petition.
11. The petitioners maintained that the orders sought are constitutional in nature and cannot be granted by the Water Tribunal.
12. I have perused the petition and I find that the petitioners are aggrieved by the introduction of 75% sewerage levy by the 1st respondent to be charged on top of the Petitioner's water bills.
13. The petitioners submitted that the 1st respondent did not follow the right procedure in coming up with the said levy as prescribed by the law.
14. I find that the regulation between the petitioners and the respondent is one that is regulated the *Water Act* 2016.
15. In the case of *Augustin Michael Murandi & 2 others v Nolturesh Loitoktok Water and Sanitation Co. Ltd (Successor in title of National Water Conservation and Pipeline Conservation)* [2017] eKLR, the court held as follows;
 - “The relationship between the petitioners and the respondent is regulated within legal framework of the provisions under the *Water Act* 2016 whereby it is important to state the relevant sections applicable.
39. According to section 11, the mandate to regulate and manage use of water resources on behalf of the National Government is vested in the Water Resources Authority. The requirements and formulation of Water Resources Management Policy throughout the Republic of Kenya is under the jurisdiction of this Authority.



40. It is therefore right to state that in consultation with county governments various water management companies do regulate water resource and use on behalf of the Authority.
41. Under section 70 (1) of the Act the Water Services Regulatory Board was established with the sole principal object to protect the interests and rights of consumers in the provision of water services.
- The constitutional provisions on right to water and access in this dispute did not oust the jurisdiction of the water tribunal.
- The better forum in regard to the parties' dispute is the jurisdiction of the tribunal created under the said provisions on dispute resolution. I am of the conceded view that the dispute squarely falls within the jurisdiction of water tribunal and not a constitutional court.
47. I am being asked to render a judgement on this petition while the jurisdiction and authority is at the first instance vested in the tribunal to adjudicate the type of controversy in the claim.
48. In my view i would be failing in my duty if i elevate matters of this nature arising out of a simple contract to a constitutional infringement or violation under the bill of rights and fundamental freedoms.
49. The circumstances as canvassed by the petitioners are not befitting the ambit prescribed under Article 22 and 23 of *the Constitution*.
50. Both this court and the water tribunal are creatures of *the constitution* and the statute. This means therefore that on hierarchy of courts, the impugned decision ought to have been filed and considered by the tribunal pursuant to section 119 and 121 of the *Water Act* 2016.”
16. Section 121 of the *Water Act* provides for the jurisdiction of the Water Tribunal as follows;
- Section 121 (1)
- “The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.”
- Section 121 (2)
- “In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.”
17. I find that this suit offends the doctrine of exhaustion. In *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, the Court of Appeal stated that:
- “It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his



own interest within the mechanisms in place for resolution outside the Courts. The ex parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution”.

18. The Court of Appeal in *Speaker of National Assembly -Versus- Karume* (1992) KLR 21 held as follows;

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly be adhered to since there are good reasons for such special procedures.”

19. I uphold the Notice of Preliminary Objection and strike out the suit.

20. Each party to bear its own costs of the suit.

DATED, SIGNED AND DELIVERED THIS 3RD OF MARCH 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

