



REPUBLIC OF KENYA



**Independent Gas Dealers' Association of Kenya v Energy & Petroleum Regulatory Authority
& another; Alfa Gas Limited & 58 others (Interested Parties) (Petition E131 of 2024)
[2025] KEHC 12738 (KLR) (Constitutional and Human Rights) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E131 OF 2024
LN MUGAMBI, J
SEPTEMBER 18, 2025**

BETWEEN

INDEPENDENT GAS DEALERS' ASSOCIATION OF KENYA PETITIONER

AND

**ENERGY & PETROLEUM REGULATORY AUTHORITY 1ST RESPONDENT
CABINET SECRETARY FOR PETROLEUM AND MINING . 2ND RESPONDENT**

AND

ALFA GAS LIMITED & 58 OTHERS INTERESTED PARTY

RULING

Introduction

1. The Petitioner in the Petition dated 12th March 2024, inter alia challenges the 1st Respondent's directive issued on 26th February 2024, directing the Interested Parties to install Closed Circuit Television (CCTV) cameras accessible to the 1st Respondent via a web-based portal. The Petitioner posits that this directive is unconstitutional, as it blatantly violates the Interested Parties' rights under Articles 10, 27, 31, 33, 35, 36, 39, 40, 41, 43, 46, 47, 48, 50 and 118 of *the Constitution*.
2. The 1st Respondent filed a Notice of Preliminary Objection dated 18th July 2024 against the Petition citing the following grounds:
 - i. This Petition is prematurely before this Court pursuant to Section 36(4) of the *Energy Act*, 2019 which provides that the Energy and Petroleum Tribunal shall have appellate jurisdiction over the decisions of the Authority (being the Energy and Petroleum Regulatory Authority)



and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

- ii. Further, Sections 85 and 117 (6) of the [Petroleum Act, 2019](#) expressly provide that matters such as the subject case should be referred to the Energy and Petroleum Tribunal.
- iii. It is therefore in the interest of justice that the Petition be dismissed with costs.

Petitioner's Case

3. The Petitioner's response and submissions to the 1st Respondent's Notice of Preliminary Objection is not in the Court file or Court Online Platform (CTS).

1st Respondent's Submissions

4. The 1st Respondent through its Counsel, Mohammed Muigai LLP filed submissions dated 25th October 2024 in support of its Preliminary Objection.
5. The 1st Respondent submitted that under Section 25 of the [Energy Act](#), the Energy and Petroleum Tribunal is established to determine disputes arising from operations of the Act and falling within the scope of its jurisdiction under Section 36. It was pointed out that Section 85 of the [Petroleum Act](#) further directs a party aggrieved by the 1st Respondent decision is to appeal the matter before the Tribunal which under Section 117(6) of the [Act](#) has appellate jurisdiction over the Authority's decisions.
6. Counsel submitted that the 1st Respondent in issuing the impugned directive was complying with requirement number 23 of the Requirements for license for Storage and Filing of LPG in Cylinders under Paragraph IX of the First Schedule of the [Petroleum \(Liquefied Petroleum Gas\) Regulations, 2019](#). Counsel added that this is a prerequisite for issuance of the storage and filing license to the Petitioner's members. Being aggrieved by this decision, Counsel maintained that the Petitioner had recourse before the Tribunal as the first port of call.
7. In this regard, Counsel relied in [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR where the Court of Appeal held that:

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
8. Furthermore, Counsel submitted that the Petitioner in filing this suit had overlooked exhaustion of the available remedy before the Tribunal. Considering this, Counsel concluded that the Petition was flawed and not properly before this Court.
9. Reliance was placed in [Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others](#) [2015] eKLR where the Court of Appeal held 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 the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. 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 of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

10. Comparable reliance was placed in *Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others* [2019] eKLR, *Tom Kusienya & 11 others v Kenya Railways Corporation & 2 others* [2013] eKLR and *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR.

Analysis and Determination

11. There is only a singular issue for determination in this ruling, which is:

Whether the 1st Respondent’s Preliminary Objection is merited.

12. The threshold of a Preliminary Objection was summarized in *Parbat Siyani Construction Limited v Kenyatta International Convention Centre* [2023] KEHC 1603 (KLR) where the Court citing the classic authorities stated as follows:

“ 54. This Court would wish to remind the parties that it is dealing with a preliminary objection. The validity of any preliminary objection is gauged against the requirement that it must raise pure points of law capable of disposing the dispute at once. It is, therefore, mandatory for a Court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence...”

13. Similarly, in the Court in *Dismas Wambola v Cabinet Secretary, Treasury & 5 others* [2017] KEHC 8777 (KLR) observed as follows:

“...a preliminary objection may only be raised on a “pure question of law.” To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.”

14. The doctrine of exhaustion is a jurisdictional principle in which the Court is barred from taking up a matter where it is apparent that there were primary remedies for dispute resolution available to the aggrieved party which were nevertheless overlooked. The Supreme Court in *Waity vs Independent Electoral & Boundaries Commission And Three Others* [2019] KESC 54 (KLR) explained the principle as follows:

“(63) Where *the Constitution* or the law, consciously confers jurisdiction to resolve a dispute, on an organ other than a court of law, it is imperative that such dispute resolution mechanism, be exhausted before approaching the latter. Were it not so, parties would bide their time, overlooking the recognized forums, and later springing a complaint at the courts. Such a scenario would be a clear recipe for forum shopping, an undertaking that must never be allowed to fester in the administration of justice. We are fortified in this regard, by the persuasive authority by the Court of Appeal, in *Geoffrey Muthinja Kabiru & 2 Others*; [2015] eKLR; wherein the Appellate Court observed:



“It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts be 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.”

15. In yet another Supreme Court decision of *Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme)* [2019] KESC 83 (KLR) the Court affirmed thus:

“...We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant’s petition lacked merit and was for dismissal.”

(118) In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.

(119) Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action.”

16. The Preliminary Objection raises a jurisdictional question under the doctrine of exhaustion hence is a pure point of law as a Court’s jurisdiction is a pure legal issue.

17. The Court of Appeal in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR) on this issue guided as follows:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on



arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself...”

18. The 1st Respondent contends that the dispute should have been presented to the Energy and Petroleum Tribunal in the first instance.
19. Section 24 of the [Energy Act](#) provides as follows:
Appeal against a decision of the Authority
 1. A person aggrieved by a decision of the Authority may appeal to the Tribunal within thirty days of receipt of the decision.
 2. Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.
20. The Energy and Petroleum Tribunal is established under Section 25 of the [Act](#). The Tribunal’ jurisdiction is provided under Section 36 of the [Act](#) which specifies the disputes and the manner in which the same are to be determined. It provides:
 1. The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this [Act](#) or any other Act.
 2. The jurisdiction of the Tribunal shall not include the trial of any criminal offence.
 3. The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.
 4. The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.
 5. The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.
 6. The Tribunal shall hear and determine matters referred to it expeditiously.
21. In addition, Section 37 details the power of review and appeals from Tribunal as follows:
 1. The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.
 2. Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.
 3. Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.
 4. The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.
22. It is apparent from the reading of this Petition and the Supporting affidavit thereof that the Petitioner is contesting the 1st Respondent’s decision that it alleges amounts to violation of the Interested Parties constitutional rights. From the point of view of the [Energy Act](#), the Interested Parties are in fact ‘licensees.’ Under Section 2 of the [Energy Act](#), a licensee is a holder of any licence issued under the Act



by the licensing authority. Although the Petition as framed claims violation of constitutional rights; it is evident that the relationship between the 1st Respondents and the Interested Parties is already a subject governed by the provisions of the Energy Act.

23. The Petitioner herein should have thus exhausted the mechanism set out under Section 36(4) of the Energy Act before filing this Petition. The Petition is thus premature for by-passing the Tribunal's jurisdiction where the Petitioner should have lodged an appeal first.
24. It is thus my considered view that this Petition is grossly misconceived and is thus not maintainable for violating the doctrine of exhaustion of remedies.
25. I uphold the Preliminary Objection and strike out this Petition with costs to 1st Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

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L N MUGAMBI

JUDGE

