



**Mbui & 5 others (On Their Behalf and that of Naivasha United Self Help Group)
v County Secretary Nakuru County Government & 5 others (Constitutional
Petition 1 of 2020) [2024] KEHC 8201 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CONSTITUTIONAL PETITION 1 OF 2020
GL NZIOKA, J
JUNE 20, 2024**

BETWEEN

**WANGOMBE MBUI 1ST PETITIONER
PETER WAWERU KAHURIA 2ND PETITIONER
GEORGE NJUGUNA KARAWAMBA 3RD PETITIONER
PETER NJOGU KARANJA 4TH PETITIONER
NGUGI NJUGUNA 5TH PETITIONER
MARY WANJIRU CHEGE 6TH PETITIONER
ON THEIR BEHALF AND THAT OF NAIVAHSA UNITED SELF HELP GROUP**

AND

**COUNTY SECRETARY NAKURU COUNTY GOVERNMENT 1ST
RESPONDENT
COUNTY GOVERNMENT OF NAKURU 2ND RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER, LANDS AND PHYSICAL
PLANNING NAKURU COUNTY 3RD RESPONDENT
CABINET SECRETARY IN CHARGE OF LANDS 4TH RESPONDENT
LAND REGISTRAR, NAKURU 5TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 6TH RESPONDENT**



RULING

1. The subject matter herein relates to a notice of preliminary objection dated 13th September 2023. The objection is based on the grounds that, the Honourable Court lacks jurisdiction and is precluded from hearing and determining the instant petition by dint of Article 165(5) of *the Constitution*. That the Petitioners claims relate to the use and occupation of, and title to the suit land which falls within the jurisdiction of the Environment and Land Court. That the instant matter ought to and should be placed before the competent court, Environment and Land Court for determination.
2. The notice of preliminary objection was disposed of by written submissions. The 2nd 3rd and 4th respondents filed submissions dated 31st October, 2023 and argued that, the prayers sought by the petitioner strictly relate to use, occupation and title of the suit land and therefore the petition fall in the ambit of the Environmental and Land Court. That under Article 165(5) of *the Constitution*, the High Court is barred from assuming jurisdiction in respect to matters falling within the jurisdiction of specialized courts as was held by the Court of Appeal in the case of; *Law Society of Kenya Nairobi Branch v Malindi Law Society and 6 others* [2017] eKLR .
3. The respondents submitted that the court lacks the requisite jurisdiction to determine the petition as to do so would be an abuse of the court process and urged the court to down its tools as held in the case of *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where the Court of Appeal stated that a court of law downs its tools in a matter the moment it holds the opinion that it lacks jurisdiction.
4. Further, in the case of; *Phoenix of East Africa Assurance Company Ltd vs SM Thiga T/A Newspaper Services* (2019) eKLR the Court of Appeal stated that jurisdiction is primordial in every suit and a suit void of jurisdiction is dead on arrival and cannot be remedied.
5. However, the petitioners in submissions dated 14th November, 2023 argued that under Article 165 of *the Constitution* the High Court has the mandate to hear and determine all constitutional matters. That in the present suit, the County Government vide a public notice dated 30th October 2019 issued a notice that the subject abattoir was scheduled for decommissioning and relocation without necessary public participation.
6. The petitioners cited the case of *Mugo & 14 others vs Matiang'i & another; Independent Electoral and Boundary Commission of Kenya & 19 Others (interested Party) (Constitutional Petition 4 of 2019)* [2022] KEHC 158 (KLR) (12 January 2022) where the High Court at Chuka set out the principles and purpose of public participation.
7. The petitioners submitted that the failure by the respondents to carry out public participation, stakeholder consultations and administrative fair procedures was contrary to Article 10 and 47 of *the Constitution*. That in the circumstances, this court has jurisdiction to hear and determine the matter with respect to the rights guaranteed under *the Constitution* alongside the use and occupation of the subject land.
8. Reliance was placed on the case of; *Law Society of Kenya v Federation of Kenya Employers* [2021] eKLR where the High Court in Nairobi cited with approval the case of; *Sollo Nzuki v Salaries and Remuneration Commission & 2 others* [2019] eKLR where Odunga J (as he then was) stated that where matters raised fall within and outside the jurisdiction of the High Court it would be a travesty for



the court to decline jurisdiction as it means litigants would be forced to institute two sets of legal proceedings and which would violate the provisions of Article 159 of *the Constitution*.

9. The petitioners further relied on the case of *Patrick Musimba vs The National Lands Commission and Others Nairobi High Court Petition 613 of 2014* where it was held that both the High Court and the ELC Court have concurrent and/or coordinate jurisdiction and can determine constitutional matters when raised and that touch on environment and land, and that *the Constitution* and the ELC Act do not limit the High Court's jurisdiction in this respect.
10. Having analysed the preliminary objection and the submissions. I find that, the jurisdiction of the High Court is established under Article 165 (3) of *the Constitution* of Kenya which states:

- “(3) Subject to clause (5), the High Court shall have—
- (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and (e) any other jurisdiction, original or appellate, conferred on it by legislation.”

11. On the other part, the jurisdiction of the Environment and Land Court is provided for under Article 162 (2) and (3) of *the Constitution* that provides: -

- “(2) 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.



- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
12. In the same vein the *Environment and Land Court Act* stipulates the following matters shall be heard by the Environment and Land Court:
- “(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*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.” (Emphasis added).
13. From the amended petition dated 9th May 2023. I note that order (iii) which prays for:
- iii. An order that the petitioners be allocated five (5) acres, title and rights on land where the abattoir is situated namely the same be exercised from Title Number Naivasha Municipality Block 2/998 for purposes of safeguarding the abattoir and upgrading and 5th, 6th and 7th & 8th respondents be compelled to facilitate the process.
- And order (v) prays that:
- v. A declaration that the site where the Naivasha sub-County abattoir is situated is a public utility and public/petitioner have economic right to use in slaughtering their animals as law require.
14. It is my finding that as prayers (iii) is on ownership of the subject property. The matter falls under Environmental and Land Court and once that is taken care of then the rest of the issues will fall in place.
15. In the interest of justice I transfer the matter to Environmental and Land Court.



16. The Hon. Deputy Registrar to transfer the file to Deputy Registrar Environmental and Land Court for transmission to Judge Environmental and Land Court further orders.

DATED, DELIVERED AND SIGNED THIS 20TH DAY JUNE 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Ngugi for the Petitioner

Mr. Kinuthia for 2nd & 4th Respondents

Ms. Ogutu Court Assistant

