



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ngoka v Odera & 11 others (Environment & Land Petition  
E006 of 2024) [2025] KEELC 4477 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4477 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND PETITION E006 OF 2024**

**AY KOROSS, J**

**MAY 13, 2025**

**IN THE MATTER OF ARTICLES: 21 (1), 27 (1, 2, AND 4), 28, 40 (1  
(A) AND (B), 42 (A), 43 (1) (B), 47 (1) AND (2), 50, 66, 69 (1) AND  
(2) AND 70 OF THE OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: LAND PARCEL NO. LR.27980 SITUATED IN  
MAVOKO SUB-COUNTY, NEXT TO GREAT WALL ESTATE, PHASE  
2, ALSO POPULARLY KNOWN AS "MAVOKO DEVELOPERS." &  
52 PLOTS BEING RESULTANT SUB-DIVISIONS THEREFROM**

**BETWEEN**

**SILAS JOHNSON MUTUNGA NGOKA ..... PETITIONER**

**AND**

**BENDETA ODERA ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE MUTHOKA ..... 2<sup>ND</sup> RESPONDENT**

**LAWRENCE GEORGE OGUTU & JAYNE MUTINDI MULI. 3<sup>RD</sup> RESPONDENT**

**JOHN MUUKE MAINGI & JACINTA MWIKALI MUUKE .... 4<sup>TH</sup> RESPONDENT**

**MAVOKO DEVELOPERS LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MACHAKOS ..... 6<sup>TH</sup> RESPONDENT**

**MINISTRY OF INTERIOR & NATIONAL COORDINATION .... 7<sup>TH</sup>  
RESPONDENT**

**NATIONAL POLICE SERVICE ..... 8<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 9<sup>TH</sup> RESPONDENT**

**THE OCS-ATHI RIVER POLICE STATION ..... 10<sup>TH</sup> RESPONDENT**



**THE HONOURABLE ATTORNEY GENERAL ..... 11<sup>TH</sup> RESPONDENT**  
**ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 12<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling seeks to determine whether this court has jurisdiction to entertain the petition and also decide on the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents' preliminary objection (PO) dated 30/09/2024 in which they raised the following grounds: -
  - a. That no cause of action has been raised against the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents.
  - b. That the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents have been wrongfully joined as parties to the suit.
2. In opposition to the PO, the petitioner filed a replying affidavit sworn on 29/01/2025 in which he maintained that the PO was misconceived, lacked merit and was an abuse of the court process.
3. He maintained that the petition raised matters of public interest and that he sought to safeguard his rights that had ostensibly been violated by the respondents. It is noted that the other respondents did not participate in these proceedings.
4. As directed by the court, Mr. Peter Kuria, Senior State Counsel, filed the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents' written submissions dated 29/10/2024, whereas the petitioner's law firm on record, M/s. Musungu Pekke & Co. Advocates filed written submissions dated 29/01/2025.
5. This court has considered these submissions and is appreciative of the elegantly composed submissions whereby counsels made arguments on their opposing positions.
6. Additionally, albeit not raised in the PO, both counsels addressed this court on the critical issue of whether, in the first place, it had jurisdiction to entertain the petition.

**Issues for determination.**

7. Having carefully considered the PO, affidavit and the filed written submissions, the following issues, which shall be handled separately, arise for determination.
  - a. Whether this court has jurisdiction to entertain the petition.
  - b. Whether the PO met the legal threshold and whether its grounds are merited.
  - c. What orders should be issued, including an order as to costs?

**Analysis and Determination**

**Whether this court has jurisdiction to entertain the petition.**

8. Since it is settled law that courts should down their tools if they are not clothed with the necessary jurisdiction, this issue will be determined first before delving into the PO.



9. The jurisdiction of the ELC is derived from Article 162(2) of *the Constitution* and Section 13 of the ELC Act. We will start with Article 162(2) of *the Constitution*, but to contextualize it, it is prudent to look at the entire Article 162 of *the Constitution*. This provision of the law provides as follows: -

- “(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
  - (a) employment and labour relations; and
  - (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).
- (4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.”

10. Bringing life into Article 162(2) of *the Constitution*, parliament enacted the ELC Act and delineated the jurisdiction of the ELC court. Section 13 thereof states as follows: -

- “(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.



- (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
- (a) interim or permanent preservation orders including injunctions;
  - (b) prerogative orders;
  - (c) award of damages;
  - (d) compensation;
  - (e) specific performance;
  - (f) restitution;
  - (g) declaration; or
  - (h) costs.”

11. Both counsels agree that these provisions of the law confer this court with jurisdiction. Nonetheless, they hold a contrarian view regarding its applicability to the petitioner’s case.
12. Mr. Kuria argued that even if, in his view, the petitioner had not disclosed any material infringement or the violation of constitutional rights, to warrant constitutional litigation, there was an adequate statutory avenue for the resolution of the disputes raised in the petition.
13. Mr. Kuria was of the considered view the petitioner’s claims fell within the purview of the Physical Planning and Development Act 2019 and the Physical and Land Use Planning (Development Permission and Control) (General) Regulations 2021. It was on this basis that counsel argued there was no constitutional question raised in the petition.
14. In response to this issue of jurisdiction, the petitioner’s counsel simply maintained that this court has jurisdiction and argued that, because the petition had stated the constitutional provisions that had been contravened, it sufficed that the petition had met the legal threshold.
15. With all due respect to the respondent’s counsel and to an extent in agreement with Mr. Kuria, as held by the Apex court in *Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023)* [2023] KESC 113 (KLR) (28 December 2023), the availability of an alternative remedy does not necessarily bar an individual from seeking a constitutional relief.
16. Nevertheless, on a case-by-case basis, the court has to take a nuanced approach and consider the relationship between constitutional reliefs on violation of rights vis-à-vis an alternative means of redress. In doing so, the court has to consider the adequacy of the primary body in dealing with the reliefs sought in the petition. See paragraph 105 in *Nicholus v Attorney General (Supra)*.
17. On scrutiny of the orders pursued in the petition dated 6/06/2024, it arises the purpose for which the reliefs are sought largely relate to the 6<sup>th</sup> respondent’s approval of development plans for multi-dwelling and commercial houses constructed on parcels of land that were subdivisions of L.R. 27980 for which the petitioner and 1<sup>st</sup>- 5<sup>th</sup> respondents are beneficiaries thereof.
18. It seems this approval did not augur well with the petitioner, since at the time he allegedly acquired his portion, the alleged subsisting development plan only made provisions for single residential houses, yet the new approvals and developments had interfered with his comfort.



19. Suffice it to say, the appropriate primary body to deal with the matters raised in the petition is the County Physical and Land Use Planning Liaison Committee, which is created under Section 76 of the *Physical and Land Use Planning Act* (PLUPA).
20. In the context of this case, the 6<sup>th</sup> respondent usually develops the Local Physical and Land Use Development Plan, and in doing so, it is governed by Section 45 of PLUPA, which provides: -
- “(1) A county government shall prepare a local physical and land use development plan in respect of a city, municipality, town or unclassified urban area as the case may be.
  - (2) A local physical and land use development plan may be for long-term physical and land use development, short-term physical and land use development, urban renewal or redevelopment and for the purposes set out in the Second Schedule in relation to each type of plan.
  - (3) A local physical and land use development plan shall be consistent with an Integrated City or Urban Development Plan as contemplated under Part V of the *Urban Areas and Cities Act* (Cap. 275)”
21. Furthermore, Section 49 of PLUPA provides a comprehensive adjudicatory framework on disputes relating to the Local Physical and Land Use Development Plan by stating as follows: -
- “(1) Within thirty days of the preparation of a local physical and land use development plan, a county planning authority shall publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media informing the public that the plan is available at the places and times designated in the notice for inspection and that an interested person may comment on the content of the plan.
  - (2) The provisions of section 40 relating to the making of representations or objections to the county physical and land use planning liaison committee concerning county physical and land use development plans and to the consideration by the committee of such representations or objections and to appeals shall apply mutatis mutandis to this section.
  - (3) The provisions of section 41 relating to the approval or disapproval of a county physical and land use development plan shall apply mutatis mutandis to the approval or disapproval of a local physical and land use development plan.”
22. The detailed modalities of appealing to the County Physical and Land Use Planning Liaison Committee are further elaborated by Regulation 12 of the Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations, which provides: -
- (1) A person aggrieved by a decision of the County Executive Committee Member concerning the local physical and land use development plan may, within sixty days of being notified of the decision, appeal to the County Physical and Land use Liaison Committee in writing against the decision in Form PLUPA L-3 as set out in the First Schedule.
  - (2) Representations made by the County Executive Committee Member in response to an appeal lodged before the County Physical and Land use Liaison Committee shall be in writing.



- (3) The Liaison Committee shall consider the appeal within thirty days and may set aside, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decision and communicate the decision to the appellant within fourteen days.
- (4) In exercising its power to set aside, confirm or vary the decision appealed against, the County Physical and Land use Liaison Committee shall do so in accordance with the rules of natural justice and fair administrative action.
- (5) A person dissatisfied with the decision of the County Physical and Land use Liaison Committee may lodge an appeal to the Environmental and Land Court within a period of thirty days from the date of the making of the decision by the Liaison Committee. Emphasis added.
23. It is evident from this Regulation 12 (5) that this court exercises appellate jurisdiction concerning matters raised in the petition. Therefore, this court agrees with Mr. Kuria that it does not have jurisdiction to entertain the petition.
24. In the end, it is unnecessary to address issue (b), while on the last issue, this court strikes out the petition. Because it is trite law that costs follow the event, costs are awarded to the 7th, 8th, 9th, 10th and 11th respondents. Since the other respondents have not participated in these proceedings, costs are not awarded to them. This file is hereby effectively marked as closed.
- Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 13<sup>TH</sup> DAY OF MAY, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**13.05.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

No appearance for the parties

Mr. Abdisalam- Court Assistant

