



Kenya Women Microfinance Bank Limited v County Government of Nakuru & another; Hunky Energy Limited (Interested Party) (Environment and Land Petition E007 of 2024) [2025] KEELC 4754 (KLR) (Environment and Land) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4754 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ENVIRONMENT AND LAND

ENVIRONMENT AND LAND PETITION E007 OF 2024

MC OUNDO, J

JUNE 26, 2025

IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24, 40, 50, 64 & 162 (2) (B) OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

IN THE MATTER OF LAND ACT, NO. 6 OF 2012 (SECTION 111)

AND

IN THE MATTER OF SECTION 113(1) OF THE LAND ACT, NO. 6 OF 2012

AND

IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT NO. 70 OF 2015

AND

IN THE MATTER OF THE GAZETE NOTICE NO. 5545 OF 7TH AUGUST 2020

AND

IN THE MATTER OF GAZETTE NOTICE NO. 7656 OF 2ND OCTOBER 2020

AND

IN THE MATTER OF COMPULSORY ACQUISITION OF THE PROPERTY KNOWN AS LAND REFERENCE NO. 396/39 (1.613 HA)

AND

IN THE MATTER OF COMPULSORY ACQUISITION OF THE PROPERTY KNOWN AS LAND REFERENCE NO. 396/67 (1.6139HA)



BETWEEN
KENYA WOMEN MICROFINANCE BANK LIMITED PETITIONER
AND
COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT
AND
HUNKY ENERGY LIMITED INTERESTED PARTY

RULING

1. Contemporaneously with its Petition, the Petitioners filed a Notice of Motion Application dated 8th July 2024 seeking for conservatory orders restraining the Respondents from acting and/or giving effect to the Award dated 19th November 2020 without first paying directly to it, the amount owed to it by the Interested Party, being Kshs. 206,000,000/= in full together with the full interests accrued at commercial rates from the date of the Award, being 19th November 2020 from the Compulsory Acquisition of all that property known as Reference No. 396/39 and Land Reference No. 396/67 to the Petitioner.
2. In response, the Interested Party herein filed a Notice of Preliminary Objection dated the 11th March 2025 wherein it urged the Court to strike out the Petition with costs for reason that the Honourable Court lacks the requisite jurisdiction to entertain the suit in view of the provisions of section 133C of the *Land Act* and secondly that the entire suit was redundant, inept and an abuse of the court process. In its Notice of Motion Application dated 20th March 2025 brought under the provisions of rules 1a, 1b and 3a of the *Civil Procedure Act*, Order 2 rule 15 of the Civil Procedure Rules, 2010, Section 133C of the *Land Act*, Cap 280, Section 9(2) & (3) of the *Fair Administrative Action Act*, 2015, and all other enabling provisions of law, the interested Party sought for the Petitioner's Notice of Motion Application dated 8th July, 2024 together with the entire Petition be struck out with costs.
3. The said Notice of Motion application was premised on the grounds therein as well as the Supporting Affidavit of an even date, sworn by Jackson Kariuki Kahungura, one of the Directors of the Interested Party who reiterated the Petition herein was based on matters relating to compulsory acquisition of land. That subsequently, the proper forum to lodge such a matter was before the Land Acquisition Tribunal as per the provisions of section 133c of the *Land Act*, Cap 280 of the laws of Kenya.
4. That the Applicant had not exhausted the provided legal procedure and framework for redress as it had bypassed the Land Acquisition Tribunal which was clothed with the requisite jurisdiction to hear and determine any complaint relating to compulsory acquisition of land. That in view of the forgoing, the Honourable Court lacked jurisdiction to entertain both the Application and the Petition which should be struck out.
5. In response vide replying affidavits sworn on 7th of April 2025, the Petitioner through its legal officer deponed that the Application was without merit and was a calculated attempt to defeat the Petitioner's/Applicant's pursuit of justice through a misapplication of the doctrine of exhaustion and



a narrow interpretation of Section 133C of the Land Act and Article 159(2)(d) of the Constitution of Kenya.

6. That contrary to the assertions made by the Interested Party, the doctrine of exhaustion was not absolute and should not be applied mechanically where alternative forums are incapable of granting effective relief as held in Republic v National Environment Management Authority ex-parte Sound Equipment Limited [2011] eKLR. That the alternative forum envisaged under Section 133C of the Land Act, the Land Acquisition Tribunal, had limited jurisdiction confined to issues of quantum and did not have the requisite constitutional mandate to adjudicate questions of legality, administrative justice, and fundamental rights violations arising from compulsory acquisition.
7. That the Petitioner's/Applicant's grievance was not limited to dissatisfaction with compensation but was premised on the entire process leading to and culminating in the alleged acquisition, including but not limited to lack of due process, procedural irregularities, lack of prior notice, and violation of fair administrative action for which the Interested Party ignored the broader constitutional context within which the present dispute arose wherein it sought to unjustifiably insulate itself from scrutiny under the guise of procedural propriety.
8. That judicial precedent supported the proposition that where constitutional rights were implicated, the Environment and Land Court retained jurisdiction notwithstanding the existence of alternative forums as stated in the case of Geoffrey Muthinja Kabiru & 2 Others v Samuel Mungai Nzioka & 2 Others [2015] eKLR. That further, the Supreme Court in United Millers Limited v Kenya Bureau of Standards & 5 Others [2021] eKLR reaffirmed the principle that the doctrine of exhaustion did not oust judicial jurisdiction where there was an allegation of violation of constitutional rights or where the alternative mechanism was inadequate.
9. That the Petitioner/Applicant had made out a prima facie case regarding the irregularities and unlawful conduct surrounding the acquisition of its property, including contravention of statutory procedures, non-engagement, and opaque compensation criteria, all of which deserve judicial interrogation wherein the Interested Party, being a direct beneficiary of the impugned process, could not now invoke the doctrine of exhaustion as a sword to cut off the Petitioner's/Applicant's legitimate quest for justice and accountability.
10. That the jurisprudential trend favored substantive adjudication over procedural expediency and the dismissal of the Petition would thus offend both the letter and spirit of the Constitution, wherein allowing the Interested Party's application would result in grave injustice to the Petitioner/Applicant and embolden abuse of power in compulsory acquisition exercises. That the Petition was properly before the Court as it had disclosed sufficient grounds for determination on the merits, for which it should be allowed to proceed in the interest of justice, fairness, and constitutional supremacy.
11. The Application dated 20th March, 2025 was disposed of by way of written submissions wherein in support of its application, the Interested Party vide its submissions dated 20th March 2025 framed one issue for determination to wit; whether it established a proper basis for its application.
12. It reiterated the contents of its Supporting Affidavit to submit that the court lacked jurisdiction to hear and determine the Applicant's application and petition in view of the provisions of Section 133C of the Land Act. That it was trite law that without jurisdiction, a court must down its tools and not proceed with the hearing and determination of the matter. Reliance was placed in the landmark case of Owners of Motor Vessels "Lillian S" v Caltex Oil (Kenya) Ltd (1989) KLR 1.
13. That in the instant case, the dispute had arisen from an intended compulsory acquisition of Land Reference Number 396/39 and 67 (suit property) by the 1st and 2nd Respondents jointly for the



purposes of creation of an access route, the Interested Party herein being the registered proprietor of the suit property. That the Applicant herein had indicated to the 1st and 2nd Respondent during the process of the compulsory acquisition, that it had registered legal charges over the suit properties in favour of the Interested party amounting to an outstanding loan of Kshs. 206,000,000/= where it had declared in writing, during a public inquiry, that the compulsory acquisition would proceed as long as the compensation phase ensured settlement of the outstanding loan amounts including interest for which it had provided the bank details for the payment. That subsequently, the dispute herein involved compulsory acquisition of land.

14. It placed reliance on the provisions of Section 133 A and 133 C of the *Land Act* to submit that the said provisions had designated the Land Acquisition Tribunal as the primary forum for resolving matters of compulsory acquisition before any other legal avenue could be pursued. That the Applicant herein ought therefore to have first lodged their complaint with the Land Acquisition Tribunal before instituting a suit in the court.
15. It placed reliance on the decided case of Speaker of National Assembly v Karume [1992] KECA 42 (KLR) to submit that the Honorable Court lacked the requisite jurisdiction to hear and determine the instant matter because the appropriate forum for addressing the issues herein was through the Land Acquisition Tribunal. That subsequently, the present matter ought to have been lodged as a complaint before the said Tribunal in accordance with the Applicable law.
16. That the entire Petition was inept and an abuse of the court process, the Applicant having bypassed the legally prescribed dispute resolution mechanism. That the doctrine of exhaustion of remedies required that where a specific statute provided a dispute resolution mechanism, parties must first utilize that mechanism before approaching the courts.
17. Reliance was placed on the provisions of Order 2 Rule 15 (1) (d) (sic) to submit that the Applicant herein having filed the present Petition in Court without first exhausting the mandatory alternative remedy as provided for under Section 133C of the *Land Act*, the said Petition should be struck out for being an abuse of the process of Court. Further reliance was placed in a combination of decisions in the case of Kenya Planters Co-operative Union v Kenya Commercial Bank Ltd & 3 Others [2014] eKLR as cited in Quadco Seventy Five Limited v Kenyan Airports Authority & another [2020] KEHC 8974 (KLR) and Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR) as well as the provisions of Section 9 (2) & (3) of the *Fair Administrative Action Act* on the need for parties to first exhaust all available statutory remedies before approaching the court.
18. That the Application dated 20th March 2025 was merited and should thus be allowed with costs.

Petitioner's Submissions.

19. The Petitioner's response in opposition to the Interested Party's application and submissions, summarized the factual background of the matter and proceeded to submitted that the Preliminary Objection was not grounded on the correct interpretation of the jurisdiction of the Environment and Land Court (ELC), as defined under the provisions of Article 162(2)(b) of *the Constitution*. That the said Preliminary Objection further failed the test set out in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 because the matters raised therein on the face of it required factual inquiry, including whether the acquisition process had been legal, making it inappropriate for determination as a pure point of law.
20. It placed reliance on the provisions of Section 13 of the Environment and *Land Act* to submit that the Court had both the original and appellate jurisdiction to hear and determine all disputes in accordance



with the provisions of Article 162(2)(b) of the Constitution and the provisions of any other written law relating to the environment and land.

21. That it was beyond peradventure that the Application and Petition herein were of the nature as to invoke the Honourable Court's jurisdiction and rightly so as they concerned the ability of the Applicant/Petitioner to assert its right to property, as a result of the registered charges. That the right to property had been impeded by the act of the Gazettement of the suit property as earmarked for compulsory acquisition, only for the process to be abandoned at the payment stage without due regard to the Petitioner's rights. Reliance was placed on the provisions of Article 162 (2) (b) as well as the Court of Appeal's decision in *National Land Commission v Afrison Export Import Limited & Another* [2019] eKLR to submit that it was trite law that where the core dispute revolved around land, where financial or contractual elements were involved, the Honourable Court retained the requisite jurisdiction.
22. Its further reliance was placed on the decided case of *Republic v National Land Commission & 2 Others ex Parte Henry Wainaina Wakihoro* [2017] eKLR to submit that the Supreme Court and the Court of Appeal had consistently upheld that disputes concerning land valuation, compensation and acquisition process should be filed at the ELC. That considering the facts and circumstances of the dispute herein, this Court was the primary forum since its jurisdiction extended to compulsory acquisition, compensation claim, environmental conservation and land use regulation.
23. That the Interested Party's averments on the question of exhaustion of alternative remedies were based on a mis-interpretation of the jurisdiction of the Land Acquisition Tribunal, which was limited in terms of the remedies that it could grant. That where constitutional rights were involved, the exceptions to the doctrine of exhaustion immediately kicked in to extinguish the said requirement. That indeed, on the face of it, the Petition before the Honourable Court had been brought pursuant to the provisions of Articles 19, 20, 21, 22, 23, 24, 40, 50, 64 & 162 (2) (b) of the Constitution.
24. That in contrast, the Land Acquisition Tribunal was a statutory body with a limited mandate primarily concerning disputes over compensation under the Land Act 2012 and therefor lacked the jurisdiction to entertain broader legal challenges to incomplete acquisition, unlawful acquisition, abuse of statutory power or violation of constitutional rights.
25. Its reliance was hinged on the decision in the cases of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, *Fleur Investment Limited v Commissioner of Domestic Taxes & Another* [2017] eKLR, *Krystalline Salt Limited v Kenya Revenue Authority* [2019] eKLR and *Moffat Kamau & 9 others v Aelous Kenya Limited & 9 others* [2016] KEELC 565 (KLR) to submit that the Petition and Application fell outside the Land Acquisition Tribunal's jurisdiction which mandate was strictly confirmed to determining compensation disputes and not lawfulness of an acquisition process, procedural violations or constitutional breaches.
26. That the issues raised herein were within the primary duty of the Honourable Court wherein the court should treat the Preliminary Objection for what it was- a deliberate attempt to slow down the wheels of justice and prevent the Applicant/Petitioner from realizing the security, in terms of the suit property. it thus urged the court to dismiss the Preliminary Objection with costs.

Determination.

27. I have considered the grounds set out in the Notice of Preliminary Objection dated 11th March 2025, the Notice of Motion dated 20th March 2025 and submissions of the Counsel for the parties to the



instant Petition. I have also considered the Petition and the substance of the dispute disclosed as well as the annexures therein.

28. Subsequently, I find that the issue that arises for determination with regard to the Interested Party's Preliminary Objection and Notice of Motion Application herein being whether this Court has the requisite jurisdiction to hear and determine the instant Petition in view of the provisions of Section 133C of the Land Act.

29. In the landmark case of Mukisa Biscuit Manufacturing Co. Ltd –VS- West End Distributors Ltd. [1969] E.A. 696, Law JA had held as follows with regards to a Preliminary Objection:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

30. On the other hand, the concept of jurisdiction was outlined in yet another famous case of Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 where Nyarangi JA had observed that:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 its tools in respect of the matter before it at the moment it holds the opinion that it is without jurisdiction.”

31. Indeed, the Supreme Court of Kenya had also pronounced itself on the issue of jurisdiction in the case of Macharia & another v Kenya Commercial Bank Limited & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling) where it had held as follows at paragraph 68 of the decision:

“A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...”

32. The wide jurisdiction of the Environment and Land Court (ELC) is outlined under the provisions of Article 162 (2) (b) of the Constitution as follows:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

- (a)
- (b) the environment and the use and occupation of, and title to, land.”



33. To give effect to the said provisions, the Parliament of Kenya had enacted the [Environment and Land Court Act](#) which outlines the jurisdiction of this court at Section 13 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) Deleted by [Act No. 12 of 2012](#), Sch.
- (6) Deleted by [Act No. 12 of 2012](#), Sch.
- (7) 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;
 - (g) restitution;
 - (h) declaration; or
 - (i) costs



34. Having set out the jurisdiction of this court as per the aforementioned provisions, I find that the Interested Party's Preliminary Objection herein challenges the jurisdiction of this court to hear and determine the instant Petition and which if upheld could preliminarily bring the instant Petition to an end.
35. In the present matter, the Interested party has deponed that the Applicant had not exhausted the provided legal procedure and framework for redress as it had bypassed the Land Acquisition Tribunal which was clothed with the requisite jurisdiction to hear and determine any complaint relating to compulsory acquisition of land as provided for under Section 133C of the *Land Act*.
36. The said Section 133C of the *Land Act* outlines the jurisdiction of the Land Acquisition Tribunal as follows:
- “ 1. The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.
 2. A person dissatisfied with the decision of the Commission may, within thirty days apply to the Tribunal.
 3. Within sixty days after the filing of an application under this part, the Tribunal shall hear and determine the application.
 4. Despite subsection (3), the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.
 5. If, on an application to the Tribunal, the form or sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.
 6. Despite the provision of Sections 127, 128, and 148(5), a matter relating to the compulsory acquisition of land or creation of wayleaves, easements, and public right of way shall, in the first instance, be referred to the Tribunal.
 7. Subject to this Act, the Tribunal has power to confirm, vary or quash the decision of the Commission.
 8. The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23(2) and 47(3) of *the Constitution*, using the framework set out under Fair Administrative Action or any other law.”
37. On the other hand, Section 133D of the *Land Act* vests in the Environment and Land Court the Appellate jurisdiction over decisions emanating from the Land Acquisition Tribunal. The said section provides as follows: -
- “(1) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the prescribed time and manner, appeal to the court on any of the following grounds:



- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the Tribunal failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(2) An appeal from the decision of the Tribunal may be made on a question of law only.”

38. The Interested Party argues that the Court does not have jurisdiction to entertain the Application and the Petition herein because the instant disputes involved land transaction, specifically compulsory acquisition of land. That the Land Acquisition Tribunal had been designated as the primary forum for resolving matters of compulsory acquisition before any other legal avenue could be pursued. That subsequently, the Applicant herein ought to have first lodged their complaint with the Land Acquisition Tribunal before instituting a suit in the court.
39. The Petitioner/Applicant on the other hand claimed violation of its constitutional rights under Article 40 of *the Constitution* of Kenya and Section 111(1) of the *Land Act* during the compulsory acquisition of land reference Nos. 396/39 and 67 vide Gazette Notices No. 5545 of 7th August, 2020 and 7656 of 2nd October 2020 respectively for purposes of creating a public access to Lake Naivasha.
40. The Petitioner/Applicant’s claim was that during the Public inquiry, it had registered its interest in the said properties to be compulsorily acquired by the 1st Respondent by clearly indicating that the properties were subject of an overriding interest registered to it being an Instrument of Legal Charges dated 19th January 2016 and 9th September 2016. That it had been agreeable to the compulsory acquisition of the aforementioned properties on condition that the amount owed to it, that is, Kshs. 206,000,000/ by the Interested Party herein, being the registered proprietor of the said properties, was to be paid to it after which they would execute the Discharge of Charge in respect of the two titles. That however, in an interesting turn of event, the after 2nd Respondent released two final assessment of Awards both dated 19th November, 2020 solely addressed to the Interested Party in relation to the Compulsory Acquisition of the said properties, the process had been abandoned at the payment stage without due regard to the Petitioner’s rights.
41. The Petitioner thus sought a declaration that its Constitutional right to property as protected under Article 40 of *the Constitution* was infringed and that the 2nd Respondent be ordered to indicate the interests of the Petitioner herein in the Award dated 19th November 2020. It further sought that the 1st Respondent be ordered to release the money from the compulsory acquisition amounting to Kshs. 206,000,000/= in full together with the interests accrued at commercial rates from the date of the Awards, to the Petitioner.
42. Indeed, the Supreme Court of Kenya had rendered itself in regard to the doctrine of exhaustion in the Case of NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) (Constitutional and Human Rights) (24 February 2023) (Judgment) (with dissent - MK Ibrahim & W Ouko, SCJJ) where it had held as follows at paragraphs 40 and 41: -

“ 40. The doctrine of exhaustion of administrative remedies was settled by this court in the case of Albert Chaurembo 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 Maurice 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) SC petition No 3 of 2016; [2019] eKLR. This court stated as follows at paragraph 118:

“..... Even where superior courts had jurisdiction to determine profound questions of law, the 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”.

41. In the persuasive case of *R v National Environmental Management Authority, CA No 84 of 2010*; [2011] eKLR the Court of Appeal observed as follows:

“The principle running through these cases is where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it...”.

43. The Court of Appeal in the Case of *Kibos Distillers Limited & 4 others v Benson Ambuti Atega & 3 others* [2020] KECA 875 (KLR) emphasized the doctrine of exhaustion as follows:

“To this extent, I find that the learned judge erred in law in finding that the ELC had jurisdiction simply because some of the prayers in the petition were outside the jurisdiction of the Tribunal or National Environmental Complaints Committee. A party or litigant cannot be allowed to confer jurisdiction on a court or to oust jurisdiction of a competent organ through the art and craft of drafting of pleadings. Even if a court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legislatively been mandated to hear and determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a court or body to hear and determine all and sundry disputes. Original jurisdiction simply means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the dicta that in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where it was stated that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

44. I have considered the statutory provisions on the jurisdiction of the Environment and Land Court under Section 13 (2) (b) of the *Environment and Land Court Act*, Sections 127, 128, 148 (5) and 133D of the *Land Act* and the jurisdiction of the Land Acquisition Tribunal under Section 133C of the *Land Act*. I have also considered the nature of the dispute raised in the Petition herein, the claim relating to the violation of Constitutional rights and find that the same revolved around the delay in compensation in Compulsory Acquisition which issue can be achieved through the Land Acquisition Tribunal. In



any case, the *Land Act* provides for the Appellate jurisdiction of this Court in case the Petitioner will not be satisfied by the Tribunal's decision.

45. The upshot is that the Interested Party's Notice of Preliminary Objection and Notice of Motion Application dated 11th March 2025 and 20th March 2025 respectively are found to be meritorious and are allowed in the following terms:
- i. Both the Application and Petition herein are struck out on the ground that the jurisdiction of this court has been invoked prematurely.
 - ii. The Petitioner shall be at liberty to ventilate their grievances in the appropriate primary adjudication fora established by Law.
 - iii. Each Party shall bear their own costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 26TH DAY OF JUNE 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

