



**Miri & another (Suing as Representatives of Redsoil Ridge Residents Association) v Munene & 2 others (Environment and Planning Petition E002 of 2025) [2025] KEELC 4675 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4675 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND PLANNING PETITION E002 OF 2025**

**JM ONYANGO, J**

**JUNE 19, 2025**

**RULING**

**IN THE MATTER OF ARTICLES 2(1), 10, 22, 23, 40, 42, 47, 70,  
162(2) (B) AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**=AND=**

**IN THE MATTER OF THE ALLEGED VIOLATION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLES 40 AND 42 OF THE CONSTITUTION OF KENYA, 2010**

**=AND=**

**IN THE MATTER OF THE ENVIRONMENTAL  
MANAGEMENT AND COORDINATION ACT, 1999 (CAP. 387)**

**=AND=**

**IN THE MATTER OF THE PHYSICAL AND LAND  
USE PLANNING ACT, 2019 (NO. 13 OF 2019)**

**=AND=**

**IN THE MATTER OF ILLEGAL CONSTRUCTION OF A COMMERCIAL MULTI-  
DWELLING BUILDING ON LAND PARCEL NO. RUIRU/TOWNSHIP/2089 IN  
REDSOIL RIDGE ESTATE, MUKUYU, RUIRU SUB-COUNTY, KIAMBU COUNTY**

**BETWEEN**

**WILSON MURIUKI MIRI AND JOHN WANJOHI (SUING  
AS REPRESENTATIVES OF REDSOIL RIDGE RESIDENTS  
ASSOCIATION) ..... PETITIONER**

**AND**

**DANIEL MUNENE ..... 1<sup>ST</sup> RESPONDENT**



**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) .... 2<sup>ND</sup>  
RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 26<sup>th</sup> March 2025 the Petitioners filed an application pursuant to Articles 22,23,40,42 and 70 of *the Constitution* of Kenya, 2010; Rules 23 and 24 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules , 2013; Section 57 of the *Physical and Land Use Planning Act* ,2019; Section 58 of the Environment Management and Coordination Act , 1999 and all other enabling provisions of the law seeking orders that:
  - a. Spent
  - b. Pending the inter partes hearing of this application, a temporary injunction do issue restraining the 1<sup>st</sup> Respondent, his agents, servants, employees or assigns from continuing or undertaking any further construction on land parcel No. RUIRU/TOWNSHIP/2XX9.
  - c. The Officer in Charge Mugutha Police Station to ensure compliance.
  - d. The costs of this application be provided for.
2. The application is anchored on the grounds that the 1<sup>st</sup> Respondent has commenced construction on land parcel number RUIRU/TOWNSHIP/2XX9 without obtaining the requisite development permission from the 3<sup>rd</sup> Respondent and an Environmental Impact Assessment License from the 2<sup>nd</sup> Respondent in violation of the *Physical and Land Use Planning Act*, 2019 and the Environmental Management and Coordination Act , 1999 and that the said construction is interfering with the Petitioners' property rights and the environment.
3. In support of the application, Wilson Muriuki Miriti and John Wanjohi filed an affidavit sworn on the 26<sup>th</sup> day of March in which they deponed that they are the Secretary General and Chairman respectively of Redsoil Ridge Residents Association and that they were authorized to swear the said affidavit on their own behalf and on behalf of the other members of the Association. The Association is a welfare Association responsible for regulating and maintaining peaceful co-existence among the residents and ensuring compliance with county laws and estate regulations.
4. They deposed that the 1<sup>st</sup> Respondent is the registered owner of land parcel number RUIRU TOWNSHIP/2XX9 situated within Redsoil Ridge Estate. That the 1<sup>st</sup> Respondent has commenced construction of a commercial building in the estate without obtaining the requisite construction license from the 3<sup>rd</sup> Respondent and an Environmental Impact Assessment License from the 2<sup>nd</sup> Respondent. That following complaints by the Applicants, the 3<sup>rd</sup> Respondent issued the 1<sup>st</sup> Respondent with an Enforcement Notice which they ignored.
5. They added that the continued construction will permanently alter the character of the estate, overburden the shared infrastructure, devalue the property and pose environmental risks to the residents. They urged the court to grant interim injunctive relief pending the hearing of the application and the Petition.



6. The application is opposed by the Respondents. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on the 3<sup>rd</sup> day of April 2025 while the 3<sup>rd</sup> Respondent filed Grounds of Opposition and a Preliminary Objection dated 7.4.25. In the Preliminary Objection, the 3<sup>rd</sup> Respondent raised the following points:
  - i. That this Honourable Court lacks the original jurisdiction to entertain the present suit owing to the doctrine of exhaustion of statutory remedies for the following reasons:
    - a. The Petitioners herein primarily raise the question of planning, use and development of land and approvals which matters are regulated under the [Physical and Land Use Planning Act](#), 2019.
    - b. Under Section 61(3) of the [Physical and Land Use Planning Act](#), 2019, an applicant or interested party that is aggrieved by the decision of the County Executive Committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Liaison Committee.
    - c. That this Court is not the right forum to hear and determine matters relating to development approvals at the first instance.
    - d. That the correct and right forum is the County Physical and Land Use Planning Liaison Committee.
    - e. The Petitioners herein have failed, ignored and/or neglected to exhaust the alternative means of dispute resolution as provided by the said legislation
  - ii. That the entire suit contravenes the provisions of Article 159(2) (c) of [the Constitution](#) of Kenya, 2010.
  - iii. That the instant suit is therefore premature, an abuse of the court process, vexatious and frivolous.
7. The court directed that the Preliminary Objection be heard first and that the same be canvassed by way of written submissions and the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed their respective submissions. At the time of writing this ruling the Plaintiff had not filed any submissions.

### **3<sup>rd</sup> Respondent's Submissions.**

8. In their submissions dated 19<sup>th</sup> May 2025, the 3<sup>rd</sup> Respondents submitted that this Honourable court lacks the jurisdiction to hear and determine this suit as [the Constitution](#) of Kenya, 2010 and the [Physical and Land Use Planning Act](#), 2019 empowers the County Physical and Land Use Planning Liaison Committee to hear appeals by an applicant or interested party who is aggrieved by the decision of the County Executive Committee member regarding an application for development permission.
9. It is their contention that they issued the 1<sup>st</sup> Respondent with a Stay order Notice dated 7<sup>th</sup> March 2025 pursuant to the [Physical and Land Use Planning Act](#) 2019. Paragraph 3 of the said Notice provides that if any party is aggrieved by the stay order they should appeal to the County Physical and Land Use Planning Liaison Committee within 14 days as outlined in the [Physical and Land Use Planning Act](#).
10. They submitted that in this case there is legislation that has conferred jurisdiction to other bodies to deal with the issues raised herein before they can be brought to this court. They referred to Sections 61(3) and 72 (3) of the [Physical and Land Use Planning Act](#) which provides that where a person is aggrieved by an enforcement notice he may appeal to the County Physical and Land Use Planning Liaison Committee within 14 days of being served with the notice and the said appeal shall be heard and determined within 30 days.



11. The 3<sup>rd</sup> Respondent is therefore of the view that the court lacks original jurisdiction as the law provides for alternative means of resolving the dispute.
12. They relied on the case of the Owners of Motor Vessel Lillian S v Caltex Oil Kenya Limited 1989 KLR where the court held that “jurisdiction is everything and without it, the court has no power to make one more step..”
13. They further relied on the case of Samuel Macharia Kamau v KCB & Others (2012) eKLR for the proposition that jurisdiction flows from either *the Constitution* or legislation or both and that the court can only exercise jurisdiction as conferred by *the Constitution* or other written laws ... it cannot expand jurisdiction through judicial craft or innovation.
14. They submitted that the jurisdiction of this Honourable court has been prematurely invoked as the Petitioners should first have approached the County Physical and Land Use Planning Liaison Committee.
15. They relied on Petition No. 117 of 2019 KO Holding Ltd v County Government of Kiambu & Another and Mutanga Tea and Coffee Company Ltd v Shikara Ltd & Another (2012) eKLR and Speaker of the National Assembly v Karume (1992) KLR 22 where the court held that it had no jurisdiction as the law provided for alternative means of resolving the dispute.
16. They therefore urged the court to uphold the Preliminary Objection and dismiss the suit for being premature, an abuse of the court process, frivolous and vexatious.

#### **1<sup>st</sup> Defendant’s Submissions.**

17. The 1<sup>st</sup> Defendant Respondent filed their submissions dated 11<sup>th</sup> June 2025 through the firm of Kanyi Kiruchi & Company Advocates. Learned counsel for the 1<sup>st</sup> Defendant submitted that the court lacks jurisdiction to hear and determine this matter in view of the provisions of section 61(3) and (4) of the *Physical and Land Use Planning Act*, 2019.
18. It was his further submission that the correct forum to hear and determine matters relating to Environmental Impact Assessment EIA licenses as per Section 129 (10) of the Environmental Management and Coordination Act is the National Environment Tribunal.
19. He relied on the case of Northern Block Residents v National Environment Management Authority & 2 Others ELC Judicial Review Application E001 of 2024 KEELC 6170 KLR where the learned judge cited the case of Kibos Distillers Limited & 4 Others v Benson Ambuti Atega & 3 Others (2020) eKLR where the Court of Appeal faulted the ELC for assuming jurisdiction before the parties had exhausted other mechanisms of resolving their dispute. The court observed that the ELC jurisdiction under section 130 of EMCA is appellate while under sections 15, 19 and 38 of the Physical Planning Act it was not appellate. The court opined that a court with original jurisdiction in some matters and appellate jurisdiction in other matters cannot usurp original jurisdiction of other competent organs. That a court cannot arrogate itself original jurisdiction simply because the claims are multifaceted.
20. Counsel submitted that procedures should be followed and that the petitioners were acting ultra vires by usurping the powers of the Planning Development Authority by bringing this suit. Counsel denied that the 1<sup>st</sup> Defendant had been served with an Enforcement Notice as its construction had already been approved and licenses issued.



21. Counsel buttressed his argument with the case of *Albert Chaurembo Mumbo & 7 Others v Maurice Munyao & 148 Others* (2019) e KLR where the Supreme Court held that:

“even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant statute”.

### **Analysis And Determination.**

22. Having considered the application, preliminary objection and the submissions filed by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the only issue for determination is whether the Preliminary Objection should be upheld.

23. Before delving into the merits of the Preliminary Objection, it is important to determine whether the Preliminary Objection raised meets the legal threshold of a P.O. In the case of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors* (1969) EA 696 is clear on the the Court of Appeal observed that:

“... 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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

24. From the above explanation, it is clear that the question of jurisdiction is a pure point of law. As was stated in the case of *The Owners of Motor Vessel Lillian S v Caltex Oil Kenya Limited* jurisdiction is everything.

25. Sections 61(3) and 72 (3) of the *Physical and Land Use Planning Act* provide that where a person is aggrieved by an enforcement notice he may appeal to the County Physical and Land Use Planning Liaison Committee within 14 days of being served with the notice and the said appeal shall be heard and determined within 30 days.

26. Section 72(3) and (4) of the *Physical and Land Use Planning Act* 2019 contains the following framework on the adjudication of disputes relating to enforcement notices:

“(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.



(4) Any party aggrieved with the determination of the County Physical and Land Use Planning Liaison Committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.”

27. In the instant case, the 1<sup>st</sup> defendant denies that he was issued with an enforcement notice by the 3<sup>rd</sup> Respondent although the 3<sup>rd</sup> Respondent has stated that they issued the said notice.

28. He instead stated that he obtained the necessary development approvals from the 2nd and 3rd Respondents and he has annexed copies of the same to his Replying Affidavit. Be that as it may, with regard to development permissions Section 61(3) of the *Physical and Land Use Planning Act* provides that:

“(3) An Applicant or an Interested Party who is aggrieved by the decision of a County Executive Committee member regarding an application for development permission may appeal against the decision to the County Physical and Land Use Planning Liaison Committee within 14 days of the decision by the County Executive Committee member and that committee shall hear and determine the appeal within 14 days of the appeal being filed. An applicant or interested party who files an appeal under subsection (3) may appeal against that decision to the Environment and Land Court.”

The Applicants did not approach the said committee and instead opted to file this suit. As was held in *Albert Chaurembo Mumbo* (supra):

“even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant statute”.

29. The above holding is in line with the principle of exhaustion of remedies whose rationale was explained in the case of *William Odhiambo Ramogi & 4 Others v Attorney General & 3 Others, Muslims for Human Rights, Interested Parties* (2020) eKLR as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine 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. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in *R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:

This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words:

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 adhered to since there are good reasons for such special procedures.



While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR, where 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”.

30. In the present case, it is clear that the *Physical and Land Use Planning Act* and EMCA provide for alternative means of resolving the dispute which the applicants have brought before this court prematurely. In the circumstances I am constrained to agree with the 3<sup>rd</sup> Respondent that this court has no jurisdiction.
31. Accordingly, I uphold the Preliminary Objection and strike out the application and the suit in its entirety.
31. The petitioners shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

.....  
**J. M ONYANGO**

**JUDGE**

In the presence of:

Mr Wachira for Mr Kanyi for the 1st Respondent

Mr Mutwiri for the Petitioners

Mr Ngugi for the 3rd Respondents

Court Assistant: Hinga

