



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

E.L.C PETITION NO. E004 OF 2020

PETER THUITA MWANGI.....PETITIONER

VERSU

NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED...RESPONDENT

RULING.

1. This is a Ruling in respect of a preliminary objection raised by the Respondent on the ground that this Court does not have jurisdiction to entertain either the notice of motion filed by the Petitioner or the Petition itself. In addition, the Respondent contends that the petition herein is an abuse of the process of the court which ought to be struck out with costs.

2. The parties were directed to file written submissions in respect of the preliminary objection. The Respondent filed their submissions dated 22nd September 2020 and the Petitioner filed his submissions dated 5th October 2020. I have considered the submissions filed and the only issue for determination is whether this court has jurisdiction to entertain the Notice of Motion or Petition.

3. The Respondent contends that this court does not have jurisdiction to entertain this petition because under Section 121(2) of the Water Act No.43 of 2016, it is the Water Tribunal which has jurisdiction to entertain any dispute arising between the Petitioner and the Respondent. **Section 121(2) of the Water Act No.43 of 2016** provides as follows:-

“ In addition to the powers set out in sub-section (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism”.

4. The Respondent relied on the decision in **Augustine Michael Murandoi & 2 Others Vs Nolturesh Loitoktok Water and Sanitation Co.Ltd (Successor in title of National Water Conservation and Pipeline Conservation (2017) eKLR** where Justice Nyakundi dismissed an application for conservatory orders seeking reconnection of the Petitioner’s water which had been disconnected by the Respondent on the ground that the court did not have jurisdiction.

5. The Petitioner on the other hand argued that the preliminary objection does not meet the threshold of what constitutes a preliminary objection and that the parties have not admitted the existence of a business contract as to oust the jurisdiction of this Court. The Petitioner relied on the decision in **Muranga County Government Vs Muranga South Water and Sanitation Co Ltd & another (2019) eKLR**.

6. I have looked at the Petition as well as the notice of motion together with the annexures thereto. There is no doubt that there is a business contract between the Petitioner and the Respondent as clearly indicated in the letter dated 20th November 2019. The dispute between the petitioner and the Respondent falls within section 121(2) of the Water Act 2016 and any dispute should therefore have been filed before the Water Tribunal which has jurisdiction to entertain the dispute.

7. In the **Muranga County Government Vs Murang’a South Water and Sanitation Co.Ltd & another (supra)**, the Court found that there was no business contract between the petitioner and the Respondent to warrant the dispute to go to the Water Tribunal . This is unlike in this case where the existence of a contract is admitted by the Respondent. It therefore follows that this court does not have jurisdiction to entertain the notice of motion together with the petition. I therefore uphold the preliminary objection by the Respondent and proceed, to strike out the notice of motion as well as petition with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 11th day of November 2020.

E.O.OBAGA

JUDGE

In the virtual presence of:-

M/s Okoth for the Respondent

Mr Kimetto for Mr. Juma for Petitioner

Court Assistant: Hilda

E.O.OBAGA

JUDGE