



**Krygoski Mining Limited & another v Cabinet Secretary, Ministry of Mining,
Blue Economy and Maritime Affairs & 2 others (Environment and Land Petition
E037 of 2025) [2025] KEELC 6482 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E037 OF 2025
MN KULLOW, J
SEPTEMBER 30, 2025**

BETWEEN

KRYGOSKI MINING LIMITED 1ST PETITIONER

B & M MINING COMPANY LIMITED 2ND PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND
MARITIME AFFAIRS 1ST RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

HAVANA NATURAL RESOURCES LIMITED 3RD RESPONDENT

RULING

1. Before me for determination is the 1st and 2nd Respondents Notice of Preliminary Objection dated 30th May 2025, supported by the 3rd Respondent's Grounds of Opposition dated 26th May 2025, seeking to strike out the Petition and the Notice of Motion (both dated 19th May 2025) on the ground that this Court lacks jurisdiction in view of the statutory mechanisms under the *Mining Act*, 2016 and the doctrine of exhaustion.
2. The Petition invokes Articles 10, 22, 23, 40 and 47. The Petitioners aver that the 1st Petitioner lodged a Discovery Report on 28th April 2025 under Section 9 of the *Mining Act*. They assert that Section 9(2) required the cabinet Secretary to issue a written acknowledgment, while Section 9(3) accords a first right of refusal to apply for a mineral right. They also rely on Regulation 14(1) which grants a 90-day exclusive right to apply and Regulation 14(2) which closes the area to other applications during that period.



3. They plead that despite this, Gazette Notice No. 4844 of 2025 publicized an application by the 3rd Respondent, and the Online Mining Cadastre shows the Discovery Report as “terminated.” They allege breach of legitimate expectation and violations of Articles 40 and 47.
4. The Notice of Motion filed under certificate of urgency seeks: interim injunctions restraining the 1st Respondent from granting a licence to the 3rd Respondent as per the Gazette Notice No. 4844 of 2025, conservatory orders staying any intended grant and a direction compelling the 1st Respondent do provide a copy of the 3rd Respondent’s application.
5. The Motion cites exploration by the 2nd Petitioner for over 20 years, investment of USD 3,000,000, and objections by the Kenya Chamber of Mines and approximately 500 landowners as among the key grounds that support its application.
6. On 12th June 2025, Mr. Kahura appeared for the Petitioners; Mr. Allan Kamau for the 1st and 2nd Respondents and Mr. Paul Buti for the 3rd Respondent. All parties confirmed filing of submissions and sought to highlight the same. The Court has considered the oral highlights alongside the written submissions and the entire record.

Issue for Determination

7. Having considered the pleadings, the Preliminary Objection and the rival submissions, the issue for determination at this stage is:
 - a. Whether this Court has jurisdiction to hear and determine the suit in view of Sections 34, 154 and 155 of the *Mining Act*, 2016 and the doctrine of exhaustion.

Analysis and Determination

A. Nature of a Preliminary Objection

8. In *Mukisa Biscuits Manufacturing Co. Ltd...Vs...West End Distributors Ltd* (1969) EA 696 a Preliminary Objection was described to mean:-

“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”.

9. Further Sir Charles Nebbold, JA stated that: -

“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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

10. From the above authorities, this Court is satisfied that a proper Preliminary Objection raises a pure point of law, assumed on the basis that the opponent’s facts are correct. It cannot succeed where disputed facts must be ascertained or judicial discretion invoked.



11. Similarly, in *Quick Enterprises Ltd. Vs. Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999, the Court held that: -It is this Court’s opinion that in determining a Preliminary Objection, the Court will also take into account that the Preliminary Objection must stem from the pleadings and raise pure point of law. See the case of *Avtar Singh Bhamra & Another...Vs....Oriental Commercial Bank*, Kisumu HCCC No.53 of 2004, where the court held that: -

“ A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

B. Jurisdiction of the Court

12. The source and extent of jurisdiction conferred to a court was succinctly stated by the Supreme Court at Paragraph 68 in *Samuel Kamau Macharia & Another Versus Kenya Commercial Bank and 2 others* – Supreme Court of Kenya Civil Application No. 2 of 2011 (unreported) thus:

“ 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. Where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can, parliament confer jurisdiction upon a court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon parliament to set the jurisdiction of the court of law or tribunal the legislature would be within its authority to prescribe the jurisdiction of such court or tribunal by statute law.”

13. Turning to the statutory scheme, Section 34 (4) of the *Mining Act*, 2016 provides as hereunder:

“ 34 (4) Subject to sub-section (3), a person or community may object to the grant of a licence within twenty-one days in the case of an application for a prospecting licence; and within forty-two days in the case of an applications for a mining licence.”

14. Further, Section 34 (5) of the *Mining Act*, 2016 provides as follows: “34 (5) The Cabinet Secretary shall hear and determine any objection to an application under subsection (4) through the Minerals Rights Board”

15. On the face of the pleadings, Section 34(4) was indeed triggered: the Kenya Chamber of Mines and approximately 500 landowners lodged objections to the application publicized by Gazette Notice No. 4844 of 2025. By law, those objections must be heard and determined by the Cabinet Secretary through the Minerals Rights Board under Section 34(5). That determination has not yet been made.

C. Doctrine of Exhaustion

16. From the foregoing statutory framework, it is clear that Parliament has established a front-loaded dispute resolution process in mining matters. Objections lodged under Section 34(4) must be heard and determined by the Cabinet Secretary through the Minerals Rights Board under Section 34(5). In this case, such objections have already been filed but remain pending determination.
17. The Petitioners, however, invite this Court to intervene before that process is concluded. Entertaining their Notice of Motion would, in effect, pre-empt an administrative mandate expressly vested in the Cabinet Secretary and the Minerals Rights Board. This raises the central question of the doctrine of exhaustion.



18. Black's Law Dictionary (10th ed.) defines exhaustion as follows:
- “The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.”
19. The principle was affirmed in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, the Court held:
- “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.”
20. The statutory command is reinforced by Section 9(2) of the *Fair Administrative Action Act* which provides that:
- “The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.”
21. While Section 9(4) of the same Act allows exemption “in exceptional circumstances and on application by the applicant,” no such application has been made in this case. The Petitioners have not demonstrated exceptional circumstances such as demonstrable futility, structural bias, or other compelling reasons that would justify bypassing the statutory scheme.

D. Jurisdiction under *the Constitution* and Statute

22. The Petitioners contend that this Court retains jurisdiction under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. Indeed, those provisions clothe this Court with subject-matter jurisdiction over disputes relating to land, minerals, and natural resources.
23. However, as underscored by the Supreme Court in *Samuel Kamau Macharia & Another V Kenya Commercial Bank and 2 others (Stated Above)* jurisdiction must be exercised strictly within the limits set by *the Constitution* and statute. Where Parliament has prescribed a specific and adequate procedure for dispute resolution, courts must defer to that process unless a proper case for exemption is made.
24. Thus, while this Court has jurisdiction over mining disputes in principle, the doctrine of exhaustion requires that parties first pursue and conclude the statutory mechanisms provided under the *Mining Act* before seeking judicial intervention.
25. In the present matter, three sequential steps remain unexhausted:
- I. First, the hearing and determination of the Section 34(4) objections by the Cabinet Secretary through the Minerals Rights Board (Section 34(5));
 - II. Second, Any further internal or alternative dispute resolution avenues under Part IX of the *Mining Act* (Sections 154–155), where applicable; and



III. A statutory appeal to the High Court under Section 157.

26. To grant the interim reliefs sought in the Petitioners' Motion would be to pre-empt and supplant the first-instance mandate vested by statute in the Cabinet Secretary and the Minerals Rights Board. Consistent with the doctrine of exhaustion and the authorities cited, this Court must decline jurisdiction at this stage.
27. The upshot of the above is that the Preliminary Objection dated 30th May 2025 is merited and allowed and the Petition and the Notice of Motion, both dated 19th May 2025, are hereby struck out in limine for prematurity with costs of the Preliminary Objection awarded to the 1st to 3rd Respondents.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THE 30TH DAY OF SEPTEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Kahura for the Petitioner

Mr. Adam Deja____ for the 1st and 2nd Respondents

Mr. P. Buti____ for the 3rd Respondent

Philomena W.____ Court Assistant

