



Limo & 8 others v Eldoret Water and Sanitation Limited & another (Constitutional Petition E001 of 2025) [2025] KEELC 6257 (KLR) (17 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6257 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
CONSTITUTIONAL PETITION E001 OF 2025**

EM WASHE, J

SEPTEMBER 17, 2025

IN THE MATTER OF: ALLEGED VIOLATION AND INFRINGEMENT OF THE RULE OF LAW AND CONSTITUTIONAL RIGHTS AS GUARANTEED AND PROTECTED UNDER ARTICLES 2(1), 3(2), 10, 27, 35, 47 AND 69 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE PROVISIONS OF LAW AS GURANTEED AND PROTECTED UNDER THE STATUTES; COUNTY GOVERNMENT ACT NO. 17 OF 2012, WATER ACT NO. 43 OF 2016, ACCESS TO INFORMATION ACT AND FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

AND

IN THE MATTER OF: INCREASED LEVY CHARGES ON PRIVATE EXHAUSTERS VIDE THE GAZETTE NOTICE NO. 12825 DATED 4TH OCTOBER 2024

AND

IN THE MATTER OF: ARTCILES 22(2) & (3) AND 258 OF THE CONSTITUTION AND THE RULES MADE THEREUNDER; THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 - THE MUTUNGA RULES

AND

IN THE MATTER OF: ARTICLES 3(1), 22(1), 23, 258, 259 AND 260 OF THE CONSTITUTION

BETWEEN

MARK LIMO 1ST PETITIONER

THUO MBURU 2ND PETITIONER

WILLIAM CHEROP 3RD PETITIONER

MIRIAM KOMEN 4TH PETITIONER



MICHAEL NDERITU 5TH PETITIONER
EDWARD KAMIRI 6TH PETITIONER
STEPHEN LIMO 7TH PETITIONER
FRED NGARE 8TH PETITIONER
BARNABA CHELAGAT 9TH PETITIONER

AND

ELDORET WATER AND SANITATION LIMITED 1ST RESPONDENT
WATER SERVICES REGULATORY BOARD 2ND RESPONDENT

JUDGMENT

1. The 1st to 9th Petitioners (hereinafter referred to as “the Petitioners”), filed a Petition dated 27th May, 2025 (hereinafter referred to as “the present Petition”) against the 1st and 2nd respondents seeking for the following orders: -
 - a. A declaration that the increment of Private Exhausters charges vide Legal Gazette Notice No. Gazette Notice No. 12825 issued on 4th October, 2024 by the 1st Respondent violates the Petitioners legitimate expectation of fair administrative action on the part of the 1st Respondent as guaranteed and protected under Article 47 of *the Constitution*.
 - b. A declaration that the Petitioner members’ fundamental rights and freedoms as enshrined under Article 27 and 47 of *the Constitution* of Kenya 2010 have been contravened and infringed upon by the 1st Respondent.
 - c. A declaration that the process that led to the increased charges with regard to Private Exhausters in respect of dumping into the 1st Respondent’s sewer system vide Legal Gazette No. Legal Gazette Notice No.12825 is flawed, irregular and as such null and void ab ignition.
 - d. An order of prohibition, prohibiting the Respondents from enforcing the increased charges against the Private Exhausters vide Legal Gazette Notice No. 12825 issued on 4th October 2024.
 - e. An order awarding costs of the Petition to the Petitioners.
 - f. Any other and further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the Petitioner Members fundamental rights and freedoms; the enforcement and defence of *the Constitution* pursuant to Article 23(3) of *the Constitution*.
 - g. Costs of and incidental to this Petition.
2. The present Petition was duly served on the Respondents who opposed the same through a Replying Affidavit dated 17th July, 2025.
3. Parties were then directed to file their written submissions in support of their positions in the present Petition.



4. The Court upon perusal of the pleadings and the submissions by the parties noted that the issues in the present Petition fall squarely within the issues in Eldoret Environment & Land Court Petition No. E009 of 2024.
5. Specifically, the Petitioners in the present Petition are seeking to challenge and quash the procedure applied by the 1st and 2nd Respondents in the review of the water and sewerage tariffs approved by the 2nd Respondent through the Gazette Notice No. 12825 published on the 04.10.2024.
6. This Court in its judgment in Eldoret Environment & Land Court Petition No. E009 of 2024 pronounced itself on the forum in which assessment of the procedural propriety undertaken by the 1st and 2nd Respondents leading to the publication of the Notice No. 12825 dated 04.10.2024 should be entertained.
7. The finding of this Court in Eldoret Environment & Land Court Petition No. E009 of 2024 is that this Court is statutorily barred by the provisions of Section 121 of the Water Act, 2016 from evaluating the procedural propriety undertaken by the 1st and 2nd Respondent as the first forum.
8. It was this Court's considered view and finding that any exercise to review the procedural propriety undertaken by the 1st and 2nd Respondents prior to publication of the reviewed water and sewerage tariffs must be presented to the Water Tribunal in line with Section 119 and 121 of the Water Act, 2016.
9. As such, this court hereby makes a similar finding in this present Petition and further deems the present petition to have contravened the provisions of Sections 121 of the Water Act which requires the evaluation of the procedural propriety to be undertaken by the Water Tribunal.

Conclusion

10. In conclusion, this court hereby makes the following orders in determination of the present Petition; -
 - A. That the petition dated 27th may, 2025 contravenes the provisions of section 121 of the Water Act, 2016 and is therefore Struck Out.
 - B. That the Respondents are awarded costs of the present Petition.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON THIS 17TH SEPTEMBER 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Brian

Advocates For The Petitioners: Mr. Nabasenge

Advocates For The Respondents: Ms.Chelimo holding brief for Mr Onyango

