



Mwaura (Petitioning as the Executive Chairman and Chairman of the Development and Infrastructure Committee of Golf View Estate Residents Association) v County Government of Murang’a & 2 others (Environment and Land Constitutional Petition E003 of 2024) [2025] KEELC 6556 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6556 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E003 OF 2024
MN GICHERU, J
SEPTEMBER 30, 2025

BETWEEN

BENSON KAIRANGA DANIEL MWAURA PETITIONER
PETITIONING AS THE EXECUTIVE CHAIRMAN AND CHAIRMAN OF THE
DEVELOPMENT AND INFRASTRUCTURE COMMITTEE OF GOLF VIEW
ESTATE RESIDENTS ASSOCIATION

AND

COUNTY GOVERNMENT OF MURANG’A 1ST RESPONDENT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
RESPONDENT
PEBBLES ACADEMY LIMITED 3RD RESPONDENT

RULING

1. This ruling is on the Notice of Motion dated 29-8-2024. The Motion which is brought under Articles 1, 2, 3, 10, 21, 22, 23, 24, 35, 42, 47, 48, 50, 70, 162(2)(b), 165(5) (b) and 258 of *the Constitution* of Kenya, Sections 9(4) of the Fair Administrative Action, 3 and 3 A of the Environmental Management and coordination Act – “the EMCA and 13 of the *Environment and Land Court Act* seeks the following residual orders.
2. That this Court exempts the Petitioners from the requirement to pursue alternative remedy provided by statute herein and more specifically the *Physical and Land Use Planning Act* (Cap 303) “the PLUPA”) and the EMCA and any other statute and be pleased to admit the petition and the instant application for hearing pursuant to section 9(4) of the Fair Administrative Action, Act (the FAA).



4. Pending the hearing and determination of the Petition herein this Court be pleased to issue orders of temporary injunction against the 3rd Respondent restraining it by itself, its officers, employees, servants and/or agents from continuing with or undertaking any development works and/or further construction on Samuru/Mwitingiri/Block1/25, 26, and 27, suit parcels.
 5. Pending the hearing of this petition, the Court be pleased to issue an order compelling the 1st Respondent to supply the petitioner with
 - i. Copies of applications submitted by the 3rd Respondent for approval of change of user and approval of architectural, structural and building plans together with all supporting documents as follows,
 - ii. Evidence submitted by the 3rd Respondent of mandatory public participation on the Environmental Impact Assessment Study.
 - iii. Evidence submitted by the 3rd Respondent of advertisement for change of user.
 - iv. Evidence of resubmissions of architectural and structural plans by the 3rd Respondent as alluded in CECM's letter of 24/2/2023.
 - v. Evidence submitted of amalgamation of the suit parcels.
 - vi. Evidence of payment of requisite fees by the 3rd Respondent.
 - vii. Any other supporting documents tendered by the 3rd Respondent.
 - viii. All documents and comments received by the 1st Respondent from relevant authorities or agencies in line with section 60(1) of the County Governments At.
 - ix. Approval for change of user and architectural, structural and building plans.
 6. Pending the hearing of the petition herein, this Court be pleased to issue an order compelling the 2nd Respondent to provide the Petitioners with;
 - i. Copy of the Impact Assessment Study report and application for
 - ii. Environmental Impact Assessment Licence.
 - iii. Copies of all supporting documents attached to the application
 - iv. Evidence of payment of the prescribed fees.
 - v. Evidence of publication by the 2nd Respondent of notice obligated under S.59 of the EMCA.
 - vi. Comments on EIA by the lead agencies in terms of S.60 of the EMCA.
 7. That the Respondents be condemned to pay the costs of this application.
2. The motion is based on six (6) grounds and is supported by an affidavit sworn by Benson Kairanga, the executive chairman of Golf View Estate Residents Association dated 29/8/2024. The said affidavit has fifteen annexures. The gist of the grounds and the affidavit is as follows. One, the applicants in their petition aver breach by the Respondents of the constitutional rights of the supremacy of the people under Articles 1, 2 and 3 to defend *the constitution*, to public participation, to equal protection of the law and freedom from discrimination, of access to information, to a clean and health environment to fair administrative action among others on account of developments being



carried on by the 3rd Respondent within the jurisdiction of Gold View Estate Residents Association of which the Petitioners are members and officials. Two, the Petitioners aver in their petition that the said developments are being conducted in violation of their constitutional rights and that the 1st and 2nd Respondents are in breach of various statutory provisions in the exercise of their mandate as pertains the developments complained of. Three, the 3rd Respondent is engaged in development and/or construction works on the suit parcels contrary to the process and law and continues to breach the applicant's rights and fundamental freedoms and it is in the interest of justice that its activities be halted pending the hearing and determination of the petition herein otherwise the petition will be rendered nugatory and a mere academic exercise. Four, the orders sought herein will serve the furtherance of the applicants' access to information in order to be able to effectively project their constitutional rights by way of their petition herein. Five, on 18/3/2021, a recognition agreement was signed between the association and the 1st Respondent. The said agreement which is still in force contained clauses to the effect that the 1st Respondent would facilitate public participation in the County Physical and Land Use Development Plan and allow the association to object to any development application falling within the neighbourhood and others including a special condition No. 3 of leases in the estate be used for the private dwelling house. Six, on 7/1/2022, the 3rd Respondent made a proposal to establish an early years education centre on the suit plots. The applicants communicated their objection vide a letter dated 14/2/2022. In addition to this they wrote a letter dated 28/2/2022 to the 1st Respondent in which they gave reasons for the objection. For ten (10) months, there was no response from the 1st Respondent. This prompted the applicants to write a letter dated 22/12/2022 to the 1st Respondent seeking an answer to the issues raised earlier. On 9/1/2023, during a meeting convened by the 1st Respondent it came to light that the 3rd Respondent's project had been approved despite the applicant's objection. When the applicants complained, the 1st Respondent promised to review if due process had been followed and asked the 3rd Respondent to submit the documents relating to change of user, amalgamation of the three parcels, approved and stamped plans, indemnity form duly executed by all relevant parties and other documents. The 3rd Respondent was also required to halt activities on the land. The 1st Respondent later regularized the development on the suit parcels. The applicants are aggrieved by this regularization as it contravenes *the constitution* and four statutes namely the PLUPA, EMCA, FAAA and the *County Governments Act*. They are further aggrieved because there was only partial supply of the requested documents. Only the EIA Study report and licence were supplied. Most of the documents were never supplied. It is for the above and other reasons that applicants pray for the orders in the motion.

3. The 1st Respondent filed seven (7) grounds of opposition dated 7/10/2024 which are as follows. Firstly, the application dated 29/8/2024 offends the mandatory provision of Section 9(2) of the Law Report Act (Cap 26) which stipulates the time limit for filing of Judicial review thus rendering prayer 2 of the application moot. Secondly, since prayer 2 is moot, then the Petitioners are not entitled to be heard as any purported exemption under Section 9(4) of the FAAA. Thirdly, this Court has no jurisdiction to adjudicate the application because of the doctrine of exhaustion of remedies which is stipulated under Article 159(2)(c) of *the Constitution*, and in particular the fora established by the PLUPA and the EMCA. Fourthly the application offends the decision of the Court of Appeal in Nairobi Civil Application No. 92 of 1992, speaker of National Assembly Vs Karume. Fifthly, the prayers sought in the application are overtaken by events because the 3rd Respondent's School is currently operational and hosting and tutoring several pupils. Sixthly, failure by the applicants to pursue available alternative remedies before filing this suit or seeking judicial review means that it fails to promote an efficient justice system, embrace alternative mechanisms of dispute resolution and autonomous administrative state. Finally, the application has no merit and is an abuse of the Court process and should be dismissed with costs.



4. The second Respondent in response to the application filed a replying affidavit dated 24/9/2024 sworn by its Director of Environment, Rift Valley, Josey Njoki Mukiri in which she replies as follows. One, in order to achieve its mandate of exercising general supervision and coordination over all matters relating to the environment, it has, in consultation with other lead agencies and relevant stakeholders prescribed rules and guidelines to enable it receive, review and approve EIA reports as per Section 58 of EMCA and the relevant regulations. Two, it is a requirement that a proponent of any project specified in the second schedule of EMCA undertakes an environment impact assessment and submits the report to the 2nd Respondent prior to being issued with an EIA license by the 2nd Respondent. In this case, the 3rd Respondent holds a lawfully obtained EIA license No. NEMA/EIA/PSL/21015 issued on 18/8/2022. Earlier on 20/7/2022 the 2nd Respondent had received an EIA project report done by Paul Muthugia License registration No. 1197 on behalf of the proponent in accordance to the law after the prescribed fee was paid. Three, the 2nd Respondent proceeded to contact the relevant agencies requesting for their views which would assist the authority to make an informed decision in reviewing the submitted report. As per the standard operating procedures, a site inspection was conducted on 22/7/2022 and it was observed that there was no fragile ecosystem within the vicinity and the site was in conformity with the surrounding land use. Vide a letter dated 17/8/2022, the 2nd Respondent asked the 3rd Respondent to provide land ownership documents which it did. Earlier on, the 3rd Respondent had obtained building plan approvals from the 1st Respondent. Finally, the proposed school fell under the category of medium risk projects hence a comprehensive project report was conducted. It did not require a study report that the Petitioners seek. It is the duty of the Petitioners to apply to the 2nd Respondent for the records on payment of the prescribed fee. The 2nd Respondent has at all times remained conscious of its mandate and obligations which it has not neglected as alleged in the application.
5. In opposing the motion, the 3rd Respondent filed a replying affidavit dated 9/10/2024 sworn by its managing director Walter Karanja Kahuki in which he states as follows. One, the process of establishing the school started in the year 2021 with the assistance of various experts and consultants to guide the 3rd Respondent on the procurement of the relevant licences and permits from the various institutions like the 1st and 2nd Respondents, National Construction Authority and the Ministry of Education. These documents have been filed by the Petitioners as their pleadings. Two, the Petitioners have admitted vide a paragraph 15 of the petition that the 3rd Respondent sent a proposal to the relevant interested parties about its intention to establish an education centre on the suit parcels. Three, the Petitioners admits that they had no objection to the establishment of the school on some public utility plots which would be tantamount to grabbing public land since the 3rd Respondent is a private entity. Four, all the necessary permits and approvals were lodged with the relevant statutory bodies and authorized. The documents filed by the Petitioners attest to the fact that the Petitioners and the 3rd Respondent have been in communication since early 2022. Five, the Petitioner admits that they were accorded the opportunity to participate in the provision of their views which they did in the letters dated 14/2/2022 and 28/2/2022. These issues were addressed by the 3rd Respondent in their undated letter to the 1st Respondent which is marked WKK 2. After the approvals and permits were issued, the 3rd Respondent commenced construction in early 2023 and the project was 70% complete as on 9/10/2024. Four, the Petitioners lodged their objection to the 1st Respondent belatedly and this prompted the 1st Respondent to require the 3rd Respondent to resubmit all the documents afresh which they did. Thereafter they re-engaged the stakeholders and the Petitioners participated fully as evidenced by their letter dated 16/2/2023. Thereafter stakeholders like Bender Estate, Bahati Ridge Estate and Samuru area community had no objection to the project. Five, the resubmitted documents encompassing all the issues raised by the Petitioners were received on 15/2/2023 by the 1st



Respondent. The project was cleared to continue and there was nothing more that was required of the 3rd Respondent as the licences had been issued earlier on. Six, the application lacks merit since the Petitioners have not demonstrated in what manner the various statutes have been breached and their perception that they are the approving agency has no basis in law and in fact. In addition to the above, they have been harassing the 3rd Respondent's contractor by sending one Augustine Were to inspect the project yet such powers are vested in the 1st and 2nd Respondent. This harassment has been escalated to the police where false reports of theft and forgery have been made vide OB10/12/06/2024. Finally, the law provides for sufficient dispute resolution mechanisms which the Petitioners have ignored or failed to invoke hence these proceedings are prematurely before the Court contrary to the doctrine of exhaustion. For the above and other reasons, the 3rd Respondent prays for the dismissal of the motion with costs.

6. The Petitioners filed supplementary affidavits dated 26/10/2024 which highlight the following, One, all the lease in the estate have special condition 3 which states thus

“The land and buildings shall always be used for one dwelling house (excluding a guest house”.

Two, the streets in the estate are narrow and cannot accommodate heavy traffic. Three, contrary to the deposition that the project is 70% complete, the attached pictorial evidence shows a project in its infancy with walls still being built. Finally, the Petitioners had given reasons for their objection to the project which included detrimental impact on residential amenities, noise pollution, loss of privacy and overlooking, over shading/loss of light when future growth requires storeyed buildings, compromised highway safety, traffic generation, road capacity, means of access visibility, car parking and effects on pedestrians and cyclists, pressure on public facilities such as drainage and water supply.

7. The 1st Respondent in its written submissions dated 25/2/2025 identified three issues for determination.

- i. Whether the suit should be exempted from the doctrine of exhaustion.
- ii. Whether the Petitioner delayed in seeking judicial review.
- iii. Whether the injunction should be granted.

8. The 2nd Respondent identified four issues in its submissions dated 19/2/2023. They include;

- i. Whether the Respondents have violated the Petitioners constitutional rights of public participation, equal protection of law, access to information, right to a clean and healthy environment and fair administrative action.
- ii. Whether an order of certiorari quashing the EIA licence issued by the 2nd Respondent should be issued.
- iii. Whether an order of Mandamus compelling the Respondents to undertake public participation should be issued.
- iv. Whether costs should be provided for.

9. The 3rd Respondent did not file any written submissions. Instead, its counsel filed the following five (5) grounds of opposition.



- i. That this Court has no jurisdiction to entertain the application as the same is an attempt to circumvent the provisions of the PLUPA and this Court should decline jurisdiction due to the doctrine of exhaustion of remedies.
 - ii. The application is an attempt to circumvent the provisions of the EMCA and therefore this Court should decline jurisdiction over the matter.
 - iii. These proceedings are frivolous, vexatious and an abuse of the Court process.
 - iv. That the application does not disclose a reasonable cause of action as the same is intended for ulterior motives.
 - v. That the applicant has not exhausted the appropriate dispute resolution mechanism provided by the other relevant statutes and therefore these proceedings are premature and this Court should decline jurisdiction.
10. In her submissions dated 16/12/2024 and 17/3/2025, the Petitioners' Counsel has clarified that it is not the petition but the application dated 29/8/2024 that is pending for ruling. The learned counsel has categorically stated that the Petitioners did not address the matters raised in the amended petition and the said petition has not yet come up for hearing and the Court has not yet given directions as to its disposal. I must confess at this earliest opportunity that I too was of the same view as the Respondents' Counsel but upon perusal of the record, I am in agreement with the Petitioner's counsel that directions are yet to be given on the hearing of the petition itself and what is for determination is the Notice of Motion dated 29/8/2024. I sincerely apologize for the wrong impression that I have created in the past that I am making a final judgment at this stage when the matter is actually coming up for a ruling on an interlocutory application. The Petitioners' Counsel has identified two issues for determination.
1. Doctrine of exhaustion
 2. Whether public participation was had in this case.
11. I have carefully considered the Motion dated 29/8/2024 in its entirety including the grounds, the supporting affidavit, the grounds of opposition by the 1st Respondent, the replying affidavits by the 2nd and 3rd Respondents, the supplementary affidavits by the Petitioners, the submissions by learned counsel for the Petitioners, the 1st and 2nd Respondent and grounds of opposition by learned counsel for the 3rd Respondent.
- I find that the motion dated 29/8/2024 has only five (5) residual prayers unlike the amended petition which contains a total of twelve (12) prayers. This ruling will therefore deal with those five prayers. The issues dealing with the amended petition will not be dealt with at this interlocutory stage. Out of the many issues identified by learned Counsel for the parties, I find that only the following concern the motion dated 29/8/2024.
- i. Whether the suit should be exempted from the doctrine of exhaustion.
 - ii. Whether the Petitioner delayed in seeking judicial review.
 - iii. Whether the threshold for the grant of an order of injunction has been met.
 - iv. Whether these proceeding are frivolous, vexatious and an abuse of the Court process.
 - v. Whether the application disclose a reasonable cause of action and if it is intended for ulterior motives.
 - vi. Whether there was public participation in this case.



12. Regarding the 1st issue, I find that the Petitioners should be exempted from the doctrine of exhaustion as regards to the compliance with the PLUPA and the EMCA for the following reasons.

Firstly, the 1st Respondent has not annexed evidence to show that it has an approved county physical and land use development plan for Murang'a County that is consistent with *the Constitution* and PLUPA principles. Secondly, there is no evidence of documented and meaningful public participation. Thirdly, it is not clear how the environmental concerns raised by the Petitioners in their letter of 28/2/2022 were addressed by the 1st and 2nd Respondents. Fourthly, no evidence has so far been adduced to show that the Petitioners were served with reasons for the approval of the 3rd Respondents' development application despite the Petitioners' objection. Fifthly, there is no evidence that the Petitioners were informed of their right of appeal to the County Physical and Land use Liaison Committee.

If such evidence exists, it was incumbent upon the 1st Respondent to file it. Without his evidence, the Petitioners have made a good case for exemption from the obligation to exhaust other remedies and more so because there is also no evidence that the Murang'a County Physical and Land use Liaison Committee is properly constituted and functional.

In their submissions dated 25/2/2025 at paragraph 4.5, the 1st Respondents' counsel had implied that the doctrine of exhaustion encompasses promotion of alternative dispute resolution mechanisms and traditional dispute resolution mechanisms as per Article 159(2)(c) of *the Constitution*. While the Courts are commanded to promote these mechanisms by *the Constitution*, I find that the mechanisms envisaged in this case are those under the PLUPA and the EMCA only and that Article 159(2)(c) does not fall in this realm.

13. As for the second issue, I find that the Petitioners are not time barred in seeking orders of Judicial review. Article 23(1)(3)(f) of *the Constitution* recognizes an order of judicial review as one of the orders that this Court may make in upholding the Bill of Rights. Section 11(1) of the *Fair Administrative Action Act* also provides for judicial review. These two provisions elevate judicial review from its low position of a common law remedy in the hierarchy of norms to the high position of a constitutional right thereby removing the shackles of limitation in terms of time set out in Order 53 of the Civil Procedure Rules.
14. I find that the threshold for the grant of an order of injunction has been met in this case for the following reasons. Firstly, there is sufficient prima facie evidence to prove that the project is being undertaken in a residential estate where the lease states as follows;

“The land and buildings shall be used for one dwelling house (excluding a guest house”).

Secondly, there is evidence which is uncontroverted that there are four (4) plots within the community purposely set aside for projects such as the one being undertaken by the 3rd Respondent. Thirdly, the Petitioners have adduced uncontroverted pictorial evidence to show that the project is far from complete, narrow roads and building close to the road. Fourthly, as already found in paragraph (12) above, it is not yet clear how the environmental safeguards were integrated and if the project will survive a well-documented and meaningful public participation, if it is eventually found that there was none. Fifthly, contrary to the submissions by the counsel for the 1st Respondent that there are several children attending kindergarten, the pictorial evidence of a building still at the walling stage proves otherwise. The Petitioners have established a prima facie case with a probability of success. They have also proved that they stand to suffer substantial loss that cannot be adequately compensated with an award of damages. Finally, the balance of convenience tilts in favour of not having a



building on the suit parcels that may in the fullness of time be pulled down. The principles in the case of *Giella Vs Cassman Brown* (1973) EA 358 have been met in this case.

15. Coming to the 4th issue, I find that these proceedings are not frivolous, vexatious or abuse of the Court process. Under *the Constitution*, every person has the right to a clean and health environment. The Petitioners are saying that this right has been violated and continues to be violated. Under the same constitution, the state has authority to regulate the use of any land in the interest of land use Planning. See Articles 42 and 66(1) of *the Constitution*. The Suit as presented is justiciable and discloses a reasonable cause of action. No ulterior motive has been demonstrated on the part of the Petitioners. Their correspondence to the 1st Respondent which is annexed to the supporting affidavit is proof of good faith. This finding covers the 5th issue.
16. Finally, on the final issue of whether there was public participation, I find that this is one of the issues that will have to be determined in the petition itself. The Petitioners have filed the highest number of documents in this case. The 1st and 2nd Respondent did not file any documents at all. The 2nd Respondent had said that they filed annexures to the affidavit but I did not see any. Yet the application dated 29/8/2024 seeks in prayers 5 and 6 that a total of sixteen (16) specific documents be produced or filed by the 1st and 2nd Respondents. In their wisdom, the two Respondents chose not to supply the said documents. These documents are essential for the just determination of this dispute. They must have been the ones that were used to issue the development approvals for change of user, structural, architectural and building plans granted by the 1st Respondent to the 3rd Respondent in this case. The documents sought by the Petitioners from the 2nd Respondent must have been the ones used by the 2nd Respondent to the 3rd Respondent to issue the EIA licence that enabled them to commence the project. These documents that have been requested for by the Petitioners will enable the Court make a fair determination of the dispute.
17. For the above stated reasons, I find merit in the motion dated 29/8/2024 and I allow it in terms of prayers 2, 4, 5 and 6.

Cost in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30TH DAY OF SEPTEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Petitioner's Counsel - Mrs Mangua

1st Respondent's Counsel -

2nd Respondent's Counsel - Mr. Karimu

3rd Respondent's Counsel - Mr. Guantai

