



REPUBLIC OF KENYA



**Law Society of Kenya v National Environmental Management Authority
(NEMA) & 4 others (Petition E257 of 2025) [2025] KEHC 13482 (KLR)
(Constitutional and Human Rights) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13482 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E257 OF 2025

B MWAMUYE, J

SEPTEMBER 10, 2025

**IN THE MATTER OF CONTRAVENTION OF ARTICLES 2(1) && (4), 3(1), 10, 19(1) &
(2), 20(1), 21(1), 22(2), 23, 27, 40, 42, 43, 46, 47, 69, 165, 209(2), 210 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 9 0.147(1) << (2)(B) OF THE ENVIRONMENTAL
MANAGEMENT AND CO-ORDINATION ACT**

AND

IN THE MATTER OF SECTION 9 OF THE COMPETITION ACT

AND

**IN THE MATTER OF SECTION 3(4)(A) (C), (F) && (H) OF THE CONSUMER
PROTECTION ACT**

AND

IN THE MATTER OF SECTION 5 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

**IN THE MATTER OF THE VIOLATION OF SECTIONS 23 AND 33(3)(C) OF THE
SUSTAINABLE WASTE MANAGEMENT ACT, 2022**

AND

**IN THE MATTER OF THE VIOLATION OF SECTIONS 6, 7, 8 & 9 OF THE STATUTORY
INSTRUMENTS ACT, 2013**



BETWEEN

LAW SOCIETY OF KENYA PETITIONER

AND

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY

(NEMA) 1ST RESPONDENT

**CABINET SECRETARY MINISTRY OF ENVIRONMENT , CLIMATE CHANGE
AND FORESTRY 2ND RESPONDENT**

NATIONAL ASSEMBLY 3RD RESPONDENT

COMPETITION AUTHORITY OF KENYA 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

Introduction

1. The application before me is a Notice of Preliminary Objection dated 21st May 2025, filed by the 5th Respondent. The objection challenges the jurisdiction of this Honourable Court to hear and determine the Constitutional Petition filed by the Petitioner on 7th May 2025. The Petition, instituted against the National Environmental Management Authority (NEMA) as the 1st Respondent, along with several other Respondents, seeks to impugn certain actions and decisions allegedly undertaken in the context of environmental management and enforcement of environmental laws. The Petitioner contends that these actions have resulted in violations of constitutionally guaranteed rights.
2. The 5th Respondent contends that the subject matter of the Petition falls squarely within the domain of environmental and land use issues and is, therefore, within the exclusive jurisdiction of the Environment and Land Court, as provided under Article 162(2)(b) of the *Constitution* of Kenya, 2010 and further codified in Section 13 of the *Environment and Land Court Act*, 2011. Accordingly, the 5th Respondent argues that by virtue of Article 165(5)(b) of the *Constitution*, this Court is divested of jurisdiction to entertain the Petition.
3. The Petitioner, however, opposes the Preliminary Objection and maintains that this Court is properly seized of the matter, asserting that the issues raised transcend mere environmental and land use concerns and involve substantial questions of constitutional interpretation and enforcement of fundamental rights.
4. The Preliminary Objection was canvassed through a combination of written submissions filed by the parties and oral arguments presented before the Court.

Applicant's/5th Respondent's case

5. Counsel for the 5th Respondent submitted that the Preliminary Objection satisfies the criteria for a proper preliminary objection in law, as it raises a pure point of law namely, the question of jurisdiction without inviting any factual inquiry. In support of this position, Counsel cited the classic authority of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696, emphasizing that an objection based on jurisdiction exemplifies the kind of legal issue that can be dispositive of a matter



at the threshold. It was argued that where a court lacks jurisdiction, it must not proceed to consider the merits, as any further step would amount to a nullity ab initio.

6. Turning to the substance of the objection, the 5th Respondent contended that the Petition as framed falls squarely within the jurisdiction of the Environment and Land Court, as contemplated under Article 162(2)(b) of the *Constitution*. Counsel submitted that the Petition challenges regulatory decisions by the 1st Respondent, NEMA and other governmental authorities in relation to environmental management and oversight, and therefore falls within the realm of environmental rights enforcement. It was argued that such matters constitute disputes “relating to the environment and the use and occupation of, and title to, land” within the meaning of Article 162(2)(b), thereby falling exclusively within the constitutional mandate of the Environment and Land Court.
7. To buttress this position, Counsel referred to Section 13 of the *Environment and Land Court Act*, highlighting that Section 13(1) vests the ELC with original and appellate jurisdiction over all disputes relating to land and the environment. Further, under Section 13(2), the ELC’s jurisdiction expressly encompasses matters concerning land planning, environmental protection, and land use regulation issues that lie at the heart of the present Petition. Counsel submitted that the Petitioner’s grievances, though framed as constitutional in nature, essentially relate to such environmental concerns and thus fall within the exclusive remit of the ELC.
8. In further support of the objection, Counsel relied on Article 165(5)(b) of the *Constitution*, which explicitly ousts the jurisdiction of the High Court in matters reserved for the courts established under Article 162(2). It was argued that this ouster is both express and categorical, leaving no interpretive room for the High Court to assume jurisdiction over matters that properly belong to the ELC or the Employment and Labour Relations Court. Reliance is placed in Supreme Court decision in *Republic v. Karisa Chengo & 2 Others* [2017] eKLR, where the Court affirmed that the specialized courts created under Article 162(2) of the *Constitution* are courts of equal status to the High Court, but with distinct and exclusive mandates. The Supreme Court observed that the three superior courts the High Court, the Environment and Land Court (ELC), and the Employment and Labour Relations Court (ELRC) are “different and autonomous courts which exercise different and distinct jurisdictions,” and that the High Court may not usurp a matter that properly falls within the jurisdiction of one of the specialized courts.
9. Additionally, the 5th Respondent invoked the landmark authority of the Court of Appeal in *Owners of the Motor Vessel “Lilian S” v. Caltex Oil (Kenya) Ltd* [1989] KLR 1, where it was famously held that jurisdiction is a foundational issue which must be addressed at the earliest opportunity. Counsel quoted the oft-cited dictum from the case that “jurisdiction is everything. Without it, a court has no power to make one more step.” It was submitted that, consistent with *Lilian S*, this Court is duty-bound to determine the jurisdictional issue in limine, and if found lacking in jurisdiction, to “down tools” immediately and refrain from proceeding further.
10. The Applicant further argued that the Petitioner is not without recourse, as the Environment and Land Court (hereinafter referred to as ELC) is fully competent to grant the reliefs sought, including those grounded in the *Constitution*. Reference was made to Section 13(3) of the *Environment and Land Court Act*, which expressly empowers the ELC to hear and determine applications for redress of a denial, violation, or infringement of rights or fundamental freedoms relating to land and the environment. In support of this proposition, Counsel cited the Court of Appeal decision in *Lemita Ole Lemein v. Attorney General & 2 Others* [2020] eKLR, where a constitutional petition raising questions of property and administrative justice was entertained and determined by the ELC. The Court of Appeal affirmed the ELC’s competence to adjudicate constitutional claims, provided they



arise within its specialized jurisdiction, and reiterated that the ELC, being a court of equal status to the High Court, is fully empowered to enforce constitutional rights in its area of specialization.

11. The 5th Respondent urges this Court to strike out the Petition in its entirety for want of jurisdiction. It was submitted that, both under the *Constitution* and statute, the jurisdictional competence to hear the dispute lies exclusively with the Environment and Land Court, and as such, this Court cannot proceed to entertain the matter. Counsel emphasized that striking out is the legally appropriate remedy where a suit is instituted before a court lacking jurisdiction.

Petitioner's/Respondent's Case

12. In response, the Petitioner opposed the Preliminary Objection and maintained that this Honourable Court has the requisite jurisdiction to hear and determine the Petition. Counsel began by questioning whether the objection met the legal threshold of a proper preliminary objection as articulated in *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696. It was submitted that while the objection was framed as jurisdictional, its resolution would necessitate a substantive inquiry into the nature and content of the Petition, thus departing from the definition of a preliminary objection as a “pure point of law.” Counsel argued that determining the true character of the dispute would require the Court to examine the pleadings in depth, a process that goes beyond the scope of a preliminary objection. In that regard, the Petitioner contended that the objection was improperly raised, contrary to the principle in *Mukisa Biscuit*, supra which cautions against using preliminary objections to advance factual or discretionary arguments.
13. On the substantive issue of jurisdiction, the Petitioner submitted that the claims presented though touching on environmental subject matter are fundamentally constitutional in nature, falling within the purview of the High Court's jurisdiction under Article 165(3)(b) of the *Constitution*. It was argued that the Petition alleges violations of a range of fundamental rights and freedoms, including the right to a clean and healthy environment under Article 42, the right to fair administrative action under Article 47, and the right to public participation and access to information. Counsel emphasized that these are matters involving constitutional enforcement and not merely disputes over environmental regulation or land use. Further reliance was placed on Article 165(3)(d), which vests the High Court with jurisdiction to interpret the *Constitution* and determine the legality of any law or action under it. The Petitioner contended that since the Petition raises questions regarding the constitutional and statutory mandates of NEMA and the interpretation of environmental rights under the *Constitution*, it is properly situated before the High Court.
14. While acknowledging the mandate of the Environment and Land Court, the Petitioner drew a distinction between conventional environmental or land-related disputes and the present Petition, which was described as a constitutional accountability suit raising issues of governance. Counsel submitted that the nature of the reliefs sought and the broader constitutional questions involved transcend the exclusive jurisdiction of the ELC. Reference was made to Article 48 of the *Constitution* on access to justice, and to Article 159, which enshrines the principles of substantive justice and procedural flexibility. The Petitioner warned against a rigid compartmentalization of judicial forums, arguing that such rigidity could frustrate justice. In this context, reliance was placed on the Court of Appeal decision in *Daniel N. Mugendi v. Kenyatta University & 3 Others* (2013) eKLR, where the Court held that in instances involving mixed issues, a court ought to transfer the matter to the appropriate specialist court rather than striking it out. Although the decision in *Mugendi* preceded the Supreme Court's pronouncement in *Karisa Chengo*, supra the Petitioner urged this Court to adopt a purposive approach that promotes access to justice and preserves public interest litigation.



15. On the issue of jurisdiction as framed in *Owners of the Motor Vessel “Lilian S” v. Caltex Oil (Kenya) Ltd* [1989] KLR 1, the Petitioner did not dispute the principle that jurisdiction is foundational. However, it was submitted that the determination of jurisdiction in the present matter is not a straightforward exercise but one that requires a careful consideration of the substance of the claims. Counsel argued that the Court should adopt a “substance over form” approach, and recognize that the constitutional issues raised are central not merely incidental to the Petition. Accordingly, it was submitted that this Court has jurisdiction to entertain and determine the Petition on its merits.
16. The Petitioner urged that should the Court find it lacks jurisdiction, it should not strike out the Petition but instead transfer it to the Environment and Land Court for hearing and determination. Counsel contended that no prejudice would be occasioned to the Respondents by such a transfer, whereas a striking out would unduly burden the Petitioner and undermine the timely resolution of weighty public interest issues. It was emphasized that such an approach would align with the objectives of substantive justice under the *Constitution* and promote judicial efficiency.
17. For these reasons, the Petitioner prayed that the Preliminary Objection be dismissed with costs, and that the matter be allowed to proceed to a substantive hearing whether before this Court or, if necessary, before the appropriate forum.

Analysis and Determination

18. I have carefully considered parties’ pleadings and submissions on the Preliminary Objection and find the following to be the issue commends itself for determination:
 - a. Whether the 5th Respondent’s Preliminary Objection raises a pure point of law on the question of jurisdiction, and whether jurisdiction over the Petition lies with this Court or exclusively with the Environment and Land Court under Article 162(2)(b) of the *Constitution* and section 13 of the *Environment and Land Court Act*, 2011.
19. The legal framework governing preliminary objections is firmly settled. In *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696, Law JA defined a preliminary objection as a point of law which arises from the pleadings and is argued on the assumption that all the facts pleaded by the other side are correct. Sir Charles Newbold P., in the same case, emphasized that a valid preliminary objection must raise a pure point of law and cannot involve contested facts or require the exercise of judicial discretion. Where determination of the objection requires inquiry into factual matters or assessment of evidence, it falls outside the scope of a proper preliminary objection as contemplated in *Mukisa Biscuit*.
20. Applying these principles, the 5th Respondent’s Preliminary Objection raises a jurisdictional issue, that is whether this Court has the legal authority to entertain the Petition in light of the subject matter. Jurisdiction is a pure point of law, capable of disposing of a matter at the threshold without reference to the merits. This principle was underscored by the Court of Appeal in *Owners of the Motor Vessel “Lilian S” v. Caltex Oil (Kenya) Ltd* [1989] KLR 1, where it was held that jurisdiction must be determined at the earliest opportunity, and that without it, a court must “down its tools” immediately.
21. In the present case, the objection turns on the interpretation of Articles 162(2)(b) and 165(5)(b) of the *Constitution*, and section 13 of the *Environment and Land Court Act*, 2011. While the Petitioner argued that some factual inquiry is necessary to determine the true nature of the dispute, the issues raised can be discerned from the face of the pleadings without recourse to extrinsic evidence. The Court is entitled, at this stage, to assume the facts pleaded are true and assess whether they disclose a dispute within the jurisdiction of this Court or that of the Environment and Land Court.



22. A proper reading of Article 165(3)(a) of the Constitution grants the High Court unlimited original jurisdiction in civil and criminal matters. However, this grant is expressly qualified by Article 165(5) (b), which divests the High Court of jurisdiction in matters falling within the domain of courts established under Article 162(2). The latter provision mandated Parliament to create courts of equal status to the High Court to adjudicate disputes relating to employment and labour relations, and those concerning the environment and the use and occupation of, and title to, land. Pursuant to this mandate, Parliament enacted the Environment and Land Court Act, 2011, which, under section 13, confers broad jurisdiction on the Environment and Land Court to hear all disputes relating to land and the environment, including those arising under constitutional provisions. Notably, section 13(3) confirms that the ELC may adjudicate constitutional claims connected to environmental rights, as protected under Articles 42, 69 and 70 of the Constitution.
23. Article 162(2)(b) of the Constitution confers upon Parliament the obligation to establish a court with the status of the High Court, specifically mandated to hear and determine disputes relating to the environment and the use, occupation, and title to land. In fulfilment of this constitutional directive, Parliament enacted the Environment and Land Court Act, No. 19 of 2011. Section 13(1) of that Act vests the Environment and Land Court with both original and appellate jurisdiction to hear and determine all disputes contemplated under Article 162(2)(b) of the Constitution, as well as under the Act itself or any other written law concerning environment and land. Additionally, Article 165(5)(b) of the Constitution expressly ousts the jurisdiction of the High Court in matters that fall within the remit of the courts established under Article 162(2), namely, the specialised courts. It is on the basis of this constitutional and statutory framework that the 5th Respondent asserts this Court lacks jurisdiction to entertain the present Petition.
24. The Supreme Court in *Republic v. Karisa Chengo & 2 Others* [2017] eKLR emphasized that the Environment and Land Court and Employment and Labour Relations Court are courts of equal status with the High Court but exercise distinct and autonomous jurisdiction. Article 165(5) operates as a clear ouster clause, precluding the High Court from adjudicating matters that fall within the exclusive domain of these specialized courts. This jurisdictional boundary must be strictly observed.
25. Turning to the Petition, it is evident that the core of the dispute concerns environmental governance specifically, actions and omissions by NEMA and other regulatory bodies regarding environmental management. Although framed as a constitutional challenge, the substantive complaints arise from alleged failures in environmental regulation and enforcement, and the reliefs sought pertain to compliance with environmental laws and protection of the right to a clean and healthy environment under Article 42. The involvement of NEMA and the legal framework under which it operates (EMCA) strongly suggests that the grievance lies within the realm of environmental law. The mere invocation of constitutional rights does not oust the jurisdiction of the ELC where the factual matrix remains environmental in nature.
26. This position is fortified by the Court of Appeal decision in *Lemita Ole Lemein v. Attorney General & 2 Others* [2020] eKLR, where a land-related dispute framed as a constitutional petition was properly determined by the Environment and Land Court. The Court held that the Environment and Land Court can exercise jurisdiction over constitutional claims as long as the subject matter relates to environment or land. Thus, constitutional characterization of a dispute does not divest the Environment and Land Court of jurisdiction where the underlying facts fall within its mandate.
27. The Petitioner's suggestion that the case involves broader constitutional interpretation does not alter the jurisdictional analysis. As held in *Karisa Chengo*,^{supra} the mere presence of constitutional questions does not bring a matter into the High Court's domain if the dispute squarely lies within the



subject-matter jurisdiction of a specialized court. Article 165(5)(b) is unequivocal: The High Court has no jurisdiction over such matters. Accordingly, the Petition should have been filed before the ELC, which is competent to interpret constitutional provisions and grant constitutional remedies in environment and land-related disputes.

28. With respect to the Petitioner's plea that the matter be transferred rather than struck out, it is imperative to underscore that jurisdiction is not a mere procedural formality but a substantive and foundational legal requirement. A court devoid of jurisdiction is bereft of any legal authority to entertain, consider, or make orders in the matter including an order of transfer. While the Court of Appeal in *Daniel N. Mugendi v. Kenyatta University & 3 Others* [2013] eKLR appeared to endorse a pragmatic approach that would permit transfer of proceedings to the appropriate specialized court where a matter had been filed in the wrong forum, this position has since been overtaken by subsequent and binding jurisprudence. In particular, the Supreme Court's decision in *Republic v. Karisa Chengo & 2 Others* [2017] eKLR reaffirmed the strict jurisdictional boundaries between the High Court and courts of equal status established under Article 162(2) of the *Constitution*, thereby casting significant doubt on the viability of transfer in cases commenced in a court lacking jurisdiction.
29. Subsequent decisions of the High Court have aligned with this position, holding that where a matter is a nullity ab initio for want of jurisdiction, the proper and lawful course is to strike it out. In *Owalla v. Siaya County Assembly & Others* (Siaya Petition E002 of 2022), the Court emphasized that the High Court cannot purport to exercise jurisdiction conferred exclusively on another court of equal status. The Court therein struck out a petition improperly brought before it, observing that jurisdiction is a matter of constitutional design and must be respected to preserve the institutional integrity of specialized courts.
30. In the present matter, the dispute falls squarely within the constitutional and statutory remit of the Environment and Land Court. The involvement of environmental authorities, the reliefs sought, and the nature of the alleged violations all point to a matter that Article 162(2)(b) reserves to the ELC. This Court, by virtue of Article 165(5)(b), lacks the jurisdiction to entertain the Petition. Jurisdiction is conferred by law and cannot be assumed, inferred, or expanded through party consent or creative pleadings. As was stated in *Lilian S*, a court must act only within the limits of jurisdiction conferred upon it. Any orders made without jurisdiction are null and void.
31. Accordingly, I find that the 5th Respondent's Preliminary Objection is meritorious. The Court, having found that the Petitions were instituted before a forum devoid of jurisdiction, holds that they are incapable of being sustained.
32. Consequently, and for the reasons set out above, this Court finds and concludes that it lacks the requisite jurisdiction to hear and determine Petition No. E257 of 2025 and Petition No. E231 of 2025 as filed by the Respondent/Petitioner.

Orders

- a. The Petitions filed on 7th May 2025 and 30th April 2025 are struck out in its entirety for want of jurisdiction.
- b. Each party shall bear its own costs of the proceedings on the Preliminary Objection and the Petition.

It is so ordered.

File closed Accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 10th DAY OF SEPTEMBER, 2025.



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BAHATI MWAMUYE
JUDGE

