



Nyongesa v Engineers Board of Kenya (Constitutional Petition E002 of 2025) [2025] KEHC 13882 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CONSTITUTIONAL PETITION E002 OF 2025**

REA OUGO, J

SEPTEMBER 30, 2025

**IN THE MATTER OF ARTICLES 1, 2 (1), 3(1), 10, 22, 23,
27, 35, 47, 159 (2), 165 (3) (D) AND 259 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF BREACH OF THE PROVISIONS OF THE
CONSTITUTION OF KENYA**

**AND IN THE MATTER OF SECTIONS 3, 6, 7, 18 AND 19 OF
THE ENGINEERS ACT, NO 43 OF 2011**

BETWEEN

FERDINAND CHIRURE NYONGESA PETITIONER

AND

ENGINEERS BOARD OF KENYA RESPONDENT

RULING

1. The petitioner herein filed an application seeking leave to file his petition out of time. He seeks to challenge the decision of the respondent that was rendered on 13th September 2022 pursuant to section 54 of the *Engineers Act*.
2. The respondent, in response to the application, raised a preliminary objection dated 7th April 2025. The preliminary objection is premised on the following grounds:
 1. This honourable court lacks jurisdiction to hear and determine the application as framed, as the application seeks an order that is not provided in law.



2. The proceedings commenced herein by way of a constitutional petition are not and cannot constitute an appeal under section 54 of the *Engineers Act*.
 3. The petition filed herein, within which the application has been made, offends the principle of exhaustion of other remedies and the principle of avoidance of constitutional issues.
 4. The application is incurably defective as it seeks orders for extension of time or leave to file a petition that has already been filed irregularly. See *Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR).
 5. The application is frivolous, vexatious and an abuse of the process of court.
3. The petitioner, in response to the objection, argues that he had a genuine reason for not observing the timelines in section 54 of the Act. He explained that he was dissatisfied with the respondent's verdict. Therefore, he wrote to the respondent to express his disappointment, but did not receive any response to the letter. The wait consumed the 30-day statutory period provided in the Act.
 4. The respondent avers that this court has jurisdiction to allow leave to commence proceedings out of time, and his application is anchored adequately in section 54 to allow leave to commence proceedings out of time.

Submissions By The Parties

5. It was submitted that the petition and application were filed on 30/1/2025, which is more than two and a half years after 7th September 2022, when the impugned decision was made. Section 54 of the *Engineers Act* sets a time limit of 30 days within which a decision of the Engineers Board of Kenya can be challenged by an appeal to the High Court. It cited the case of *Peter Gichuki Mwangi v Kenya Copyright Board & 3 Others* [2018] KEHC 4111 (KLR), where it was held that the court cannot act beyond the explicit statutory provisions and extend the period for filing a suit out of time, where the law does not permit or where the specific requirements have not been met.
6. The petition has been filed under Article 22, but the provisions therein provide for original proceedings to address violations of or threats to rights in the Bill of Rights. The procedure for appealing under section 54 of the Act cannot follow the procedure outlined in the Mutunga Rules. It was also argued that the application is defective, as it is widely accepted that the petitioner has come to court out of time. It was submitted an application for an extension of time to file a petition challenging the respondent's decision was submitted, yet he has already filed the petition; he now seeks an extension to file out of time.
7. It was submitted that the principle of exhaustion of other remedies states that one must first exhaust the possibility of ordinary legal relief before invoking the Bill of Rights or the *Constitution* directly. (See *Speaker of the National Assembly v Karume* [1992] KECA 42 (KLR) (29 May 1992) (Ruling). the petitioner is required to follow the prescribed procedure under section 54 of the Act in challenging the decision of the respondent. He is precluded from filing a petition under Article 22 of the *Constitution*.
8. The petitioner filed submissions seeking leave to commence proceedings out of time. He argued that the court has jurisdiction to commence proceedings out of time. Rule 4 of the Court of Appeal Rules 2022 empowers the court to exercise unfettered discretion in extending the time prescribed by the rules. See *Fakir Mohamed v Joseph Mugambi & 2 Others*, Civil Application No Nairobi 332 of 2004 (unreported).



Analysis and Determination

9. The issue raised by the preliminary objection is whether the doctrine of exhaustion applies, and if so, whether the petition is defective in form. The Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 stated:

Where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

10. The Court of Appeal in *Mutanga Coffee Company Limited v Shikara Limited & another* [2015] eKLR held that:

“However, we entertain no doubt in our minds that the reasoning of the court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the *Constitution* or Statute, to resort to that mechanism first...”

11. Section 54 of the *Engineers Act* provides that ‘a person aggrieved by a decision of the Board under this Act may, within thirty days from the date of the Board’s decision, appeal to the High Court and in any appeal the High court may annul or vary the decision as it may consider necessary’. The procedure set out by statute requires the petitioner to file an appeal challenging the respondent’s decision.
12. Therefore, the procedure prescribed by statute is an appeal to the High Court within 30 days of the decision being made. The petitioner herein, therefore, ought to have filed an appeal before this court at its appellate division, which would have had the jurisdiction to entertain the appeal. However, the petitioner is seeking to file a fresh suit as opposed to an appeal contemplated in section 54 of the *Engineers Act*.
13. Therefore, having found that the petitioner has approached the court in the wrong forum, the issue relating to the extension of time is moot.
14. Consequently, the preliminary objection is allowed and the petitioner’s application is hereby struck out with costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2025

R.E. OUGO

JUDGE

In the presence of:

Petitioner in person

Miss Wangongu For the Respondent

Wilkister -C/A

