



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wairimu v Murang'a South Water Supply & Sanitation Company & 3 others;  
Water Resources Authority (Interested Party) (Constitutional Petition  
E009 of 2023) [2025] KEHC 14206 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14206 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CONSTITUTIONAL PETITION E009 OF 2023**

**CW GITHUA, J**

**OCTOBER 9, 2025**

**IN THE MATTER OF ARTICLES 10, 19, 20, 22, 23, 47 (1). 43  
(1), 69, 73, 174 (C), 258 (2) & FOURTH SCHEDULE OF THE  
CONSTITUTION OF KENYA;**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 10 (1) (A), (B),  
(C) AND 2 (A), 43 (1) (D), 47 (1) AND 69 (D) OF THE  
CONSTITUTION OF KENYA, 2010;**

**AND**

**IN THE MATTER OF SECTION 139 OF THE WATER ACT, 2016;**

**AND**

**IN THE MATTER OF INCREMENT OF WATER TARIFFS BY  
MURANG'A SOUTH WATER SUPPLY AND SANITATION  
COMPANY**

**BETWEEN**

**MARTIN NJOROGE WAIRIMU ..... PETITIONER**

**AND**

**MURANG'A SOUTH WATER SUPPLY & SANITATION  
COMPANY ..... 1<sup>ST</sup> RESPONDENT**

**WATER SERVICES REGULATORY BOARD ..... 2<sup>ND</sup> RESPONDENT**



ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
CS WATER, SANITATION & IRRIGATION ..... 4<sup>TH</sup> RESPONDENT  
AND  
WATER RESOURCES AUTHORITY ..... INTERESTED PARTY

**RULING**

1. By its notice of preliminary objection filed on 11<sup>th</sup> December 2023, the 2<sup>nd</sup> Respondent, the Water Services Regulatory Board invited this court to dismiss the Petitioner's Petition and Notice of Motion both dated 8<sup>th</sup> November 2023 for want of jurisdiction and for being an abuse of the court process.
2. The preliminary objection is based on grounds that the Petition is bad in law and amounts to an abuse of the court process as its subject matter falls under the jurisdiction of the Water Tribunal (hereinafter referred to as the Tribunal) and ought to have been filed in the Tribunal and not this court pursuant to Section 121 of The Water Act.
3. It is the 2<sup>nd</sup> Respondent's contention that this court lacks jurisdiction to entertain the Petition at this stage given that the Petitioner failed to exhaust the dispute resolution mechanism provided for under The Water Act before seeking this court's intervention.
4. In order to understand the context in which the preliminary objection was filed, I think it is important to set out in brief the contents of the impugned Petition.
5. In the Petition, the Petitioner, Martin Njoroge Wairimu, a resident of Kigumo Constituency in Muranga County averred that he was a customer of the 1<sup>st</sup> Respondent, Murang'a South Water Supply & Sanitation Company which was mandated to supply water and sewerage services to all residents within its jurisdiction under The Water Act 2016 and relevant Regulations.
6. He stated that he was aggrieved by the 2<sup>nd</sup> Respondent's decision which was published in a Gazette Notice dated 11<sup>th</sup> August 2023 giving the 1<sup>st</sup> Respondent's customers one month's notice of its determination concerning an upward review of the 1<sup>st</sup> Respondents water tariffs which determination led to doubling of water charges; that the 2<sup>nd</sup> Respondent's decision was made without public participation as required under Section 139 of The Water Act and that it violated the 1<sup>st</sup> Respondent's customers rights to fair administrative action enshrined in Article 47 of the Constitution of Kenya.
7. In paragraph 54 of the Petition, the Petitioner prayed for the following reliefs:
  - a. That this Honourable Court be pleased to issue an order to quash the Notice issued by the 1<sup>st</sup> Respondent and the gazette notice dated 11<sup>th</sup> August, 2023 by the 2<sup>nd</sup> Respondent approving an upward tariff review for three financial years being 2023/2024, 2024/2025 and 2025/2026 by Muranga South Water Supply and Sanitation Company.
  - b. That this Honourable Court be pleased to issue an order prohibiting the Respondents from enforcing the notice and increasing the water tariff and/ or harassing the applicants or denying them access to clean water in adequate quantities.
  - c. The Honourable Court do issue such other orders and give such further directions as it may fit (Sic) to meet the ends of justice.
  - d. Costs of this application be paid by the Respondents in any event



8. The preliminary objection was prosecuted by way of written submissions which all parties except the Interested Party duly filed and which I have carefully considered together with the list of authorities filed by the parties. It is worth noting that in their submissions, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents supported the preliminary objection but as expected, it was opposed by the Petitioner.
9. Having considered the rival written submissions, I find that the key issue arising for my determination is whether the preliminary objection as filed is merited. It is however worth noting that although the preliminary objection challenged the court's jurisdiction to hear both the Petition and the Notice of motion dated 8<sup>th</sup> November 2023, the court record shows that on 13<sup>th</sup> December 2023, the Petitioner through his advocates on record withdrew the Notice of Motion with no orders as to costs. What is therefore left for this court's determination is whether the court had jurisdiction to hear and determine the Petition.
10. Jurisdiction, simply put, is the court's power or authority to hear and determine a dispute before it. A courts jurisdiction is conferred by either the Constitution or other written law. It is trite that jurisdiction cannot be assumed or inferred from pleadings filed by the parties neither can it be acquiesced or granted by consent of the parties.
11. The above position was succinctly captured by the Supreme Court in Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 others [2012] eKLR when it held as follows;
 

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....the court must operate within the Constitutional limits. It cannot expand jurisdiction through judicial craft or innovation .....
12. The "Locus classicus" on this subject is the celebrated case of The owners of the Motor Vessel "Lillians" V Caltex Oil Kenya Ltd [1989] KLR I in which Nyarangi J emphasized the centrality of jurisdiction as follows;
 

... jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds that it is without jurisdiction".
13. In this case, as stated earlier, the 2<sup>nd</sup> Respondent's preliminary objection was supported by all the other Respondents. In support of the objection, the Respondents submitted in a nutshell that by virtue of the doctrine of constitutional avoidance and the doctrine of exhaustion, this court lacked jurisdiction to hear the instant Petition in the first instance as the issues raised in the Petition fell under the jurisdiction of the Water Tribunal, a specialized body established under Section 119 of the Water Act.
14. In addition, the Respondents contended that given the dictates of Article 159 (2) (c) of the Constitution, the Petitioner ought to have utilized and exhausted the administrative remedies or alternative dispute resolution mechanisms provided for under The Water Act before initiating the court process.
15. On his part, the Petitioner maintained that this court had jurisdiction to determine the dispute between him and the Respondents as the same, besides raising issues touching of violation of human rights



questioned the constitutionality and legality of the decision made by the 2<sup>nd</sup> Respondent; that the Petition was not an appeal against a decision made under The Water Act (hereinafter the Act).

16. It was the Petitioner's contention that the Tribunal lacked jurisdiction to determine whether the procedures alleged to have been followed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in determining upward review of water tariffs complied with constitutional standards of administrative justice. He further averred that it is the High Court that had jurisdiction to adjudicate on the dispute pursuant to Article 165 of the Constitution. To support these submissions, the Petitioner relied on the persuasive authority of this court in *Murang'a County Government V Murang'a South Water & Sanitation Co. Ltd & Another* [2019] eKLR in which the court dismissed a preliminary objection similar to the one raised by the 2<sup>nd</sup> Respondent on grounds, inter alia, that the Petition before it was not in the nature of an appeal against the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or any person acting under their authority.
17. Citing the authority of *Fleur investments Ltd V Commissioner of Domestic Taxes & Another* [2018] eKLR, the Petitioner further submitted that while exhaustion was a constitutional and legal imperative under Article 159 (2) (c) of the Constitution, courts retained residual jurisdiction to intervene in exceptional circumstances.
18. The doctrine of constitutional avoidance requires that courts should not resolve disputes through determination of constitutional questions if the dispute could be resolved by using other remedies provided for in legislation which were available to the petitioner.

The doctrine was well articulated in the case of *Sports and Recreation Commission V Sagittarius Wrestling Club & Another* (2021) eKLR which was also cited by the 3<sup>rd</sup> & 4<sup>th</sup> Respondents. In that case, the court stated as follows;

..Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provisions or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been, in addition, a breach of the Declaration of Rights.....”

19. On the other hand, the doctrine of exhaustion is to the effect that a litigant ought to utilize and exhaust alternative dispute resolution mechanisms established by relevant legislation before seeking redress in a court of law. The doctrine was well espoused by the Court of Appeal in *Geoffrey Muthinja & Another V Samuel Muguna Henry & others* 1756 (2015) eKLR where the court expressed itself thus;

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and 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 of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution”.

20. The key question that this court must now answer is whether the Tribunal was seized of jurisdiction to determine the dispute subject matter of the Petition.

As indicated earlier, the Tribunal is established under Section 119 of The Water Act. The Tribunal's jurisdiction is set out under Section 121(1) and (2) as follows:



- 1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board. (Emphasis added)
  - 2) In addition to the powers set out in subsection (1), The Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism”
21. It is important to point out at this juncture that the Regulatory Board referred to in Section 121 (1) is defined in Section 2 of the [Water Act](#) as the Water Services Regulatory Board which is the 2<sup>nd</sup> Respondent in the petition.
  22. Under Section 123 of the Act, the Tribunal when determining an appeal is mandated to affirm, quash or vary the impugned decision or order.
  23. A close scrutiny of the Petition reveals that although the Petitioner has questioned the process used by the 2<sup>nd</sup> Respondent in reviewing the 1<sup>st</sup> Respondent’s water tariffs upwards, which process he claims infringed on his constitutional rights and those of other citizens in Murang’a County, it is clear from the reliefs sought that the Petition was basically a challenge on the nature or the merits of the 2<sup>nd</sup> Respondent’s decision regarding the rate of increase of the 1<sup>st</sup> Respondent’s water tariffs which in the petitioner’s view was exorbitant and unaffordable to the consumers of the 1<sup>st</sup> Respondent’s water services.
  24. It is evident that the Petitioner though alleging violation of his constitutional rights did not invite this court to make a determination on whether in arriving at its decision, the 2<sup>nd</sup> Respondent infringed or violated any of his constitutional rights or those of the 1<sup>st</sup> Respondent’s other customers. Infact, the Petitioner’s main prayer was to have the 2<sup>nd</sup> Respondent’s decision quashed, a remedy that is available before the Tribunal.
  25. From the material before me, it is obvious that this Petition amounts to a challenge on the validity of the 2<sup>nd</sup> Respondent’s decision to review the 1<sup>st</sup> Respondent’s water tariffs which is camouflaged as a constitutional Petition. The mere citing of constitutional provisions is in my view not sufficient reason to elevate the dispute herein to a constitutional Petition warranting invocation of this court’s jurisdiction under Article 165 (3) of the Constitution.
  26. Given the foregoing, I am in agreement with the Respondents submissions that the issues raised in the instant Petition fall squarely within the jurisdiction of the Water Tribunal. Under the doctrine of exhaustion, the Petitioner should have utilized the dispute resolution mechanism provided for under Section 121 of the [Water Act](#) before filing the instant Petition.
  27. Before I pen off, I wish to comment on the Petitioner’s submissions that even where an alternative remedy existed, courts retained residual jurisdiction to intervene in exceptional circumstances. Whereas I concur with that submission, I am not satisfied that the instant Petition meets the threshold of exception to the doctrine of exhaustion.

I say so because the petition does not raise issues touching on interpretation of constitutional rights and values. In my considered view, the appellate mechanism available in the [Water Act](#) is sufficient to address the grievances raised by the Petitioner given that the Water Tribunal has power to quash or vary the decision made by the 2<sup>nd</sup> Respondent.



See: William Odhiambo Ramogi & 3 others V Attorney General & 4 others, Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR.

28. For all the above reasons, I have come to the conclusion that the 2<sup>nd</sup> Respondent's Preliminary objection is merited and it is hereby upheld. In the result, the Petition dated 8<sup>th</sup> November 2023 is consequently struck out.
29. Costs follow the event and are at the court's discretion. As the Petition was filed in the public interest, I order that each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the presence of:

Kyeva for Mr. Musungu for the Petitioner

Ms. Chidzao for Mr. Muruka for 2<sup>nd</sup> Respondent

No appearance for the 1<sup>st</sup>, 3<sup>rd</sup> 4<sup>th</sup> Respondents and Interested Party

Ms Susan Waiganjo, Court Assistant

