



REPUBLIC OF KENYA



**Mbulia Community Land Defenders & 3 others v Mwaizinga  
& 16 others (Environment and Land Case E015 of 2025)  
[2025] KEELC 6749 (KLR) (Environment and Land) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6749 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE E015 OF 2025**

**EK WABWOTO, J**

**OCTOBER 8, 2025**

**BETWEEN**

**MBULIA COMMUNITY LAND DEFENDERS ..... 1<sup>ST</sup> PLAINTIFF  
JOHANA KATEMBO ..... 2<sup>ND</sup> PLAINTIFF  
GEORGE MWASIGHWA MAKAA ..... 3<sup>RD</sup> PLAINTIFF  
ADA CHAO MWASHUMBE ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**CHARLES M MWAIZINGA ..... 1<sup>ST</sup> DEFENDANT  
ESTHER N MWAMBEO ..... 2<sup>ND</sup> DEFENDANT  
GERALD M KISHUSHU ..... 3<sup>RD</sup> DEFENDANT  
MONICA M.MSITIRI ..... 4<sup>TH</sup> DEFENDANT  
COSMAS M MWANGOMBE ..... 5<sup>TH</sup> DEFENDANT  
MANUEL M KITOLOLO ..... 6<sup>TH</sup> DEFENDANT  
EMILY S MBUCHIA ..... 7<sup>TH</sup> DEFENDANT  
PETER M MANYASI ..... 8<sup>TH</sup> DEFENDANT  
PETER M MWACHONGO ..... 9<sup>TH</sup> DEFENDANT  
MERCY S JUMA ..... 10<sup>TH</sup> DEFENDANT  
HABEL K MVOI ..... 11<sup>TH</sup> DEFENDANT  
WILFRED I MALEMBA ..... 12<sup>TH</sup> DEFENDANT**



EVERLINE M MWATATE .....	13 <sup>TH</sup> DEFENDANT
AYUB S MWADALI .....	14 <sup>TH</sup> DEFENDANT
CHRISPUS M SHINGIRA .....	15 <sup>TH</sup> DEFENDANT
MBULIA COMMUNITY LAND .....	16 <sup>TH</sup> DEFENDANT
COMMUNITY LAND REGISTRAR, TAITA TAVETA COUNTY ....	17 <sup>TH</sup> DEFENDANT

## RULING

1. This ruling is in respect to the 1<sup>st</sup> to 16<sup>th</sup> Defendants Amended Notice of Preliminary Objection dated 26<sup>th</sup> August 2025. The objection was raised on the following grounds;
  - i. That the court lacks jurisdiction to hear and determine the dispute as framed, the same being a matter relating to the internal management and governance of the 16<sup>th</sup> Defendant which issues fall to be resolved strictly within the framework of the *Community Land Act, 2016* and the *Regulations* thereunder.
  - ii. That Article 162(2) (b) of the *Constitution of Kenya* and Section 13 of the *Environment and Land Court Act, 2011* vest jurisdiction in this Court only in relation to disputes on the environment, the use, occupation and title to land but not disputes concerning the internal management of registered community land, which are expressly governed by the *Community Land Act, 2016*.
  - iii. That by dint of Article 165 (3) (a) of the *Constitution*, the unlimited original jurisdiction in civil matters vests with the High Court and not this Court.
  - iv. That section 39 of the *Community Land Act, 2016* and Regulation 27 of the *Community Land Regulations, 2017* mandate the resolution of disputes concerning the management, leadership and administration of community land through the community's own structures and dispute resolution mechanisms prior to invocation of this Court's jurisdiction.
  - v. That the present suit offends the doctrine of exhaustion, the Plaintiffs having failed to exhaust the internal dispute resolution mechanisms provided under the *Community Land Act, 2016* rendering the suit incompetent and premature as was determined in ELCPET E007 of 2024 *George Mwasigbwa & 55 Others vs State Law Office and Mbulia Community & Others*
  - vi. That the suit is equally barred by the doctrine of ripeness as the dispute has not matured for adjudication before this court.
  - vii. That this court is divested of jurisdiction ab initio and without jurisdiction, this court cannot make any further step, jurisdiction being everything as stated in the case of *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* [1989] KLR 1
  - viii. That the entire suit is misconceived and fatally defective and ought to be struck out with costs.
  - ix. That the suit herein is incurable defective for want of locus standi since the 1<sup>st</sup> Plaintiff is not a body corporate capable in law of instituting proceedings in its own name and is therefore devoid of legal capacity to sue or be sued.



2. The Plaintiffs upon being served contested the objection vide filing “grounds of opposition” dated 4<sup>th</sup> September 2025. It was stated that;
  - i. The preliminary objection has failed to appreciate and take cognizance of the provisions of Order 1 Rule 8 of the Civil Procedure Rules which this matter has been brought and expressly allowed by the court and hence the issue of lack or want of *locus standi* against the plaintiffs can only be a subject of an appeal and not objection by reason of the orders of this court dated 4.8.2025
  - ii. That by virtue of Section 13 (e), (d) of Environment and Land Court Act No. 19, this Court is clothed with inherent and unquestionable power to hear and determine all disputes relating to public, private and community land and contracts and any other dispute relating to Environment and Land.
  - iii. That, the Section 13 (3) of the Environment and Land Court Act provides that, nothing in this Act precludes the court from hearing and determining any application for redress of, a denial, violation, infringement of rights which the 14-15 defendants herein are being accused of by closing out plaintiffs from participating in all the activities of the 16th defendant and as such the Court has the inherent powers to hear and determine the suit.
  - iv. That the Court has also been clothed with inherent and unquestionable powers to enforce specific performance and make declarations by reason of the provisions of Section 13 (4) (e) (h) of the Environment and Land Court Act
  - v. That Section 42 (1) of the Community Land Act No. 27 provides that, where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court which is being exercised by the plaintiffs after the 1-16th defendants have deliberately and intentionally become impediment, blockading, frustrating and standing on the way of every efforts by the plaintiffs to amicably resolve the dispute with as the 1-16 defendants while boasting on how the law will protect them as against any law suit by the plaintiffs
  - vi. That, the preliminary objection is a clear case of abuse of the office by the 1-16th defendants as well as an abuse of the court process where the 1-16th defendants who have made sure no alternative dispute resolution would be commenced while at the same time seeking to enjoy the provision of Section 39 of Community Land Act whenever a case has been brought before the court against them as is evident from the various correspondents by the plaintiffs to initiate mediation proceedings
  - vii. That the preliminary Objection has been brought in bad faith and for purposes of defeating objectives and purpose of Section 39 and 42 of the Community Land Act by denying the Court from ventilating and establishing the violations of the rights of the plaintiffs and illegalities meted against them by the 1-16 defendants who have been declared the plaintiffs dissidents and rebels and have been expelled them from membership of Mbulia Community Land and cannot attend any meeting in violation of Section 46 of the Act.
  - viii. That the provisions of Section 39 of the Community Land Act is not superior to section 42 (1) of the same Act which the 1-15th defendants have consistently been invoking whenever have been sued while at the same time frustrating and refusing all attempts to resolve the dispute through other set mechanisms provided by the law.
3. Pursuant to the directions issued by the Court, parties were directed to file written submissions and also highlight the same. The 1<sup>st</sup> to 16<sup>th</sup> Defendants filed submissions dated 9<sup>th</sup> September 2025 while



the Plaintiffs filed written submissions dated 22<sup>nd</sup> September 2025. Learned Counsel Mr. Mburu highlighted the written submissions on behalf of the 1<sup>st</sup> to 16<sup>th</sup> Defendants while Learned Counsel Mr. Mwinzi made submitted on behalf of the Plaintiffs.

4. The Court having considered the objection and oral and written submissions made by the parties is of the view that the main issue for consideration is whether the court has jurisdiction to hear and determine the suit.
5. The 1<sup>st</sup> to 16<sup>th</sup> Defendants objected to the jurisdiction of the court on various grounds as outlined in their objection.
6. As the contention revolves on the issue of jurisdiction, it is imperative to briefly interrogate the concept and its significance.
7. Jurisdiction is so central in judicial proceedings, is a well settled principle in law. A Court acting without jurisdiction is acting in vain. All it engages in is nullity. Nyarangi, JA, in *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* [1989] KLR 1 expressed himself as follows on the issue of jurisdiction:

“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 a continuation of proceedings...”
8. It is sufficiently settled that a Court’s jurisdiction is derived from the *Constitution*, an Act of Parliament or a settled judicial precedent.
9. The 1<sup>st</sup> to 16<sup>th</sup> Defendants sought to oust the jurisdiction of this Court at the first instance based on the arguments that Section 39 as read with Section 40 and 41 of the *Community Land Act* 2016, Regulation 25(1) of the *Community Land Regulations 2017* and Clause 27 of the Mbulia Community Constitution provided avenues that ought to first address the issues before this Court assumes jurisdiction.
10. In respect to the doctrine of exhaustion in Kenya, the same traces its origin from Article 159(2)(c) of the *Constitution* which recognizes and entrenches the use of alternative mechanisms of dispute resolution. In that constitutional spirit, laws have been developed to guide how such mechanisms are to be achieved. Likewise, Courts have developed jurisprudence in support of the position that Courts must be the final arbiter in instances where alternative dispute resolution avenues are provided for in law. As said earlier, one such avenue is the doctrine of exhaustion.
11. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* (2020) eKLR.
12. Section 39 of the *Community Land Act*, 2016 which deals with dispute resolution mechanisms under the said *Act* stipulates at its Section 39(2) as follows:

“Any dispute arising between members of a registered community and another registered community shall at first instance, be resolved using any of the internal dispute resolution mechanism set out in the respective community by-laws.”
13. Section 39 (3) also stipulates that where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative method of dispute resolution.



14. Section 42(1) stipulates as follows:

“Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to Court.”

15. Regulation 25(1) of the Community Land Regulations, 2017 and Clause 27 of the Mbulia Community Constitution equally provide that all disputes should be resolved through alternative dispute resolution mechanisms in the first instance.

16. Article 162(2)(b) of the Constitution states that this Court shall have jurisdiction over disputes relating to the environment and the use and occupation of and title to land. In addition, Section 13 of the Environment and Land Court Act expounds on the jurisdiction of this Court as follows:

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.”

17. While the court’s jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute, the exhaustion doctrine is only applicable where the alternative forum is accessible, affordable, timely and effective. Thus, in the case of Dawda K. Jawara vs Gambia ACmHPR 147/95-149/96 - A decision of the African Commission of Human and Peoples’ Rights it was held that:

“A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality]...the Governments assertion of non exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case.”

18. In the instant case, the court ought to consider whether the proposed mechanism was available to the Plaintiffs or alternatively whether the Plaintiffs have demonstrated that they made effort to comply with the applicable dispute resolution forum before moving to this court.



19. A perusal of the Plaintiffs' pleadings shows that Plaintiffs had pleaded at paragraph 15 of the Plaint as follows;
- “That the Plaintiffs have done all it could to have the defendants address these issues but it is apparent from the conduct of the committee that they are not ready to address these claims hence the suit herein”
20. The Court has also seen the letter dated 5<sup>th</sup> November 2024 by the 3<sup>rd</sup> Plaintiff requesting for an Alternative Dispute Resolution to the issues affecting the members therein. The court has equally seen various correspondences demonstrating the Plaintiffs' efforts in requesting for the convening of an Annual General Meeting which have all been unsuccessful. In view of the foregoing, it is evident that the Plaintiffs having made all the efforts in seeking to amicably address the dispute herein, the said suit cannot be defeated by the doctrine of exhaustion or ripeness. A party who has made an attempt to amicably resolve the dispute as provided for under statute cannot be dislodged from the seat of justice once he or she has approached the court seeking for justice.
21. While the court is also aware that the 1<sup>st</sup> to 16<sup>th</sup> Defendants had cited the case of *Mwasighwa & 55 Others vs Mbulia Community Land & 3 Others* [2024] eKLR, the same is distinguishable since in the said matter it was the finding of the Court that the parties had failed to demonstrate that they had made efforts in complying with the alternative dispute resolution forum provided for under statute.
22. On the other aspect as to whether the 1<sup>st</sup> Plaintiff has no locus to institute the suit, it is worth noting that the said issue is moot by dint of order granted by this court on 4<sup>th</sup> August 2025 which granted leave to the Plaintiffs to institute the suit herein.
23. In conclusion it is the finding of this court that the objection raised by the 1<sup>st</sup> to 16<sup>th</sup> Defendants is unmerited and the same is dismissed in its entirety with an order that each party do bear own costs of the same.

**SIGNED, DATED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 8<sup>TH</sup> OCTOBER, 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Mwinzi for the Plaintiffs.

Mr. Mburu for the 1<sup>st</sup> to 16<sup>th</sup> Defendants.

No Appearance for the other parties.

Court Assistant: Mary Ngoira.

