



Awino v Panari Resort; Kenya Forest Service (Interested Party) (Environment and Land Petition E009 of 2024) [2025] KEELC 7216 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7216 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND PETITION E009 OF 2024
LN MBUGUA, J
OCTOBER 1, 2025**

BETWEEN

FRANCIS AWINO PETITIONER

AND

THE PANARI RESORT RESPONDENT

AND

KENYA FOREST SERVICE INTERESTED PARTY

RULING

1. This ruling relates to the Preliminary Objection dated 5.2.2025 raised by the Respondent on the following grounds:
 - a. That pursuant to the provisions of Section 70 (2) of the *Forest Conservation and Management Act*, this Court does not have jurisdiction to hear and determine the Petition.
 - b. That the statutory mechanism for resolution of any disputes arising in relation to, inter alia, utilization of forest land should be exhausted in accordance with the doctrine of exhaustion as set out in Section 9 (2) of the Fair Administrative Actions Act.
 - c. The Petition lacks merit and should be dismissed with costs.
2. The Preliminary Objection was canvassed through written submissions. The Respondent avers that the Petition concerns the license issued to them to operate an ecotourism facility at Uaso Narok Forest Camp, thus the applicable law is the *Forest Conservation and Management Act* (FCMA) as well as the *Fair Administrative Action Act* (FAAA). The Petitioner contends that the issues in dispute are not rooted in the FCMA as constitutional issues have been raised including misuse of public forest land.



3. A Preliminary Objection is a serious matter. If it succeeds, it has the effect of dismissing the suit entirely. It is for this reason that a Preliminary Objection is prescribed to raise a pure point or pure points of law. See *Abdirahman Osman & 164 others (Suing on tier own behalf and on behalf of residents of Merti sub county, Chari ward and Cherab ward in Isiolo County) v Northern Rangelands Trust & 8 others* [2022] KEELC 871 (KLR)
4. The provisions of Section 70 (1) of the *Forest Conservation and Management Act* stipulate that;

“Any dispute that may arise in respect of forest conservation, management, utilization or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the *County Governments Act* (Cap. 265)”.
5. It is clear that the petition raises issues beyond the scope of the FCMA or even the FAAA as the same raises issues such as the illegal alienation of public land of reserved forest land.
6. I therefore come to the conclusion that the Preliminary Objection is unmerited, the same is hereby dismissed. Costs thereof shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 1ST DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Vanessa CA

Koko H/B for Odada for Respondent

