



**County Government of Kiambu & 3 others v Cabinet Secretary Ministry of Lands,
Public Works, Housing and Urban Development & 3 others (Environment and Land
Petition E003 of 2025) [2025] KEELC 7187 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7187 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND PETITION E003 OF 2025
JA MOGENI, J
OCTOBER 14, 2025**

BETWEEN

**THE COUNTY GOVERNMENT OF KIAMBU 1ST PETITIONER
JANE WAIRIMU KARIUKI 2ND PETITIONER
PAUL KOGI NDUNGU 3RD PETITIONER
HEZRON MUIRURI GITHUA 4TH PETITIONER**

AND

**THE CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT
THE PERMANENT SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING AND URBAN DEVELOPMENT 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT
THE INSPECTOR GENERAL OF POLICE 4TH RESPONDENT**

RULING

1. The County Government of Kiambu, the Petitioner herein has sued the Cabinet Secretary and Permanent Secretary of Ministry of Lands, Public Works, Housing and Urban Development, the 1st and 2nd Respondents respectively and the Attorney General of Kenya - the 3rd Respondent and Inspector General of Police as the 4th Respondent.
2. Together with the Petition the Petitioner filed a Notice of Motion dated 26/03/2025 seeking conservatory orders against the action of the 1st and 2nd Respondents from enforcing, implementing and applying the directive in the 1st Respondent's letter dated 20/03/2025 and restricting the



- Respondents from taking possession and dispossessing the 1st Petitioner of Ngoliba, Karuri, Gakoe and Maguguni markets among other prayers.
3. The Court on 09/04/2025 issued temporary conservatory orders pending the hearing of the Notice of Motion Application dated 26/03/2025.
 4. The basis of the Petition is an apparent dispute over the Ngoliba Market within the County Government of Kiambu which the Petitioner alleges that on 18/03/2025 the 1st, 2nd and 4th Respondents took possession of purportedly having awarded a tender for the construction of the said market to a new contractor, in direct contravention of the Constitutional and statutory framework governing devolved functions and in blatant disregard of the Petitioner's exclusive authority over market development as enshrined in the Fourth Schedule of *the Constitution*.
 5. That the actions of the Respondents are illegal and unlawful since market development is explicitly provided under paragraph 7, Part B of the Fourth Schedule to be a function of County Governments.
 6. It seeks amongst other reliefs a declaration that the actions of the 1st Respondent of taking over Ngoliba market is a violation of *the Constitution* and it contravenes Article 6, 10, 73 of *the Constitution* and the Fourth Schedule Part B and is a usurpation of the functions of the County Government. Thus, the directive issued is illegal.
 7. In response to the Notice of Motion and the Petition, the 3rd Respondent filed a Preliminary Objection to the application dated 26th March 2025, on the following grounds;
 - i. That on the strength of the express provisions of Article 189 of *the Constitution* and Section 30 of the *Intergovernmental Relations Act* No. 2 of 2012, this Honorable Court lacks jurisdiction to hear and determine this matter on its merit.
 - ii. That the Petitioner has not fully exhausted all available alternative Dispute Resolution Mechanism to resort to invoking the inherent jurisdiction of this Honorable Court and therefore the Jurisdiction of this Honorable Court has been invoked pre-maturely and this Court has no jurisdiction to hear and determine this Petition.
 - iii. That this Petition contravenes the well settled doctrines of Constitutional avoidance and exhaustion of statutorily provided dispute resolution mechanisms
 - iv. That this suit amounts to a total abuse of the Court process and the same is vexatious and frivolous
 - v. That the Application offends section 16 of the *Government Proceedings Act* in that there can never be an injunction instituted against the Government
 - vi. That the suit amounts to an abuse of the Court process and should not be entertained by this Honorable Court.
 8. The Petitioner filed a Replying Affidavit sworn by Paul Kogi Ndungu on 24/04/2025 and submissions dated 5/05/2025 and averred that the Petition involved usurpation of a devolved function by the 1st and 2nd Respondents specifically the function of Trade Development and Regulation including markets which is a County Government function. That it is not an intergovernmental dispute.
 9. That unilateral usurpation of a Constitutional function by one level of government does not constitute a dispute that is amenable to negotiation or mediation but an affront to principles of devolution whose adjudication falls squarely under Article 165 (3) (d) (ii) and (iii).



10. That what is before the Court is a Petition about the forceful takeover of County markets by the National Government, physical assault of traders and staff, destruction of property and wastage of public resources through double procurement of services. Which actions have led to deprivation of traders from earning their livelihoods and also undermined the County Government's function of revenue collection.
11. In the fact of the violations of constitutional rights including right to property Article 40, right to fair administrative action under Article 47, right to socio-economic and social rights under Article 43 among others would not be resolved using the existing intergovernmental mechanism since the mechanisms are ill-suited to arrest ongoing violations and neither are they adequate in addressing protection of fundamental rights.
12. That the Petitioner approached the Court having noted the inadequacies in the existing intergovernmental framework for dispute resolution. Further that since the dispute involves private citizens the *intergovernmental relations Act* would be inapplicable. That the invocation of the Act as a basis to challenge the admissibility of a composite / mixed Petition involving private citizens is legally untenable and amounts to an unjustifiable limitation of their Constitutional right of access to justice under Articles 22, 48 and 258 of *the Constitution*.
13. It is the contention of the Petitioner/Respondent that with respect to the allegation that this application offends Section 16 of the *Government Proceedings Act*, it trite that the Act cannot override the express provisions of *the Constitution* particularly Article 23(3) which expressly empowers the Court to grant appropriate relief, including injunctive and conservatory orders in proceedings alleging a violation or threat or infringement to Constitutional rights as is the case in the instant Petition.
14. That infact the Respondents only filed a Preliminary Objection without any denial or rejoinder therefore they have admitted the facts as set out in the Petition and thus there is no dispute prima facie on the Petitioner's allegations. Therefore, the Objection filed is nothing more than an attempt to shield unconstitutional conduct from scrutiny and to delay the vindication of the Petitioner's rights and so the Preliminary Objection should be dismissed.
15. Since the 3rd Respondent's Preliminary Objection to the Petition and the Notice of Motion is based on matters of law with the potential of disposing the Petition, the Court directed that the parties first canvass the Preliminary Objection vide written submissions.
16. In their written submissions through Snr State Counsel Motari, the 1st to 4th Respondents identified four issues for determination namely:
 - i. Whether the Petitioner dispute herein involves a dispute between the two levels of government
 - ii. Whether the Court has jurisdiction to hear the dispute
 - iii. Whether the Court can dismiss the entire Petition
17. It is the submission of the Objectors that *the Constitution* clearly prescribes a procedure for resolution of intergovernmental disputes between the two levels of governments. In the submissions they point out that Article 189(3) specially provides that;

“Governments shall make every reasonable effort to settle disputes including by means of procedures provided under National Legislation.”
18. They further submit that Section 33 (1) of *Intergovernmental Relations Act* No. 2 of 2012 under Section 33 (1) spells out the procedure of dealing with disagreements and disputes between both levels



- of government that the statute provides that every reasonable effort should be made to amicably resolve the matter through open negotiations with each other or through an intermediary.
19. The 1st to 4th Respondents has invoked Article 189 (3) & (4) of *the Constitution* as well as Section 31 of the Inter-Governmental Resolution Act which provide for resolution of inter-governmental disputes. They have placed reliance on the cases of County Government of Nyeri v Cabinet Secretary, Ministry of Education Science & Technology & Another (2014) eKLR, Council of Governors vs Lake Basin Development Authority & 6 Others (2017) eKLR, Owners of Motor Vessel Lillian ‘S’ vs Caltex Oil (Kenya) Ltd (1989) eKLR, County Government of Tana River Vs County Government of Kitui and 2 Others,(2022) eKLR, and Lydia Nyambura Mbugua v/s Diamond Trust Bank Kenya Ltd & Another (2018) eKLR among others where the Courts found that the matters involved dispute revolving around two levels of government relating to various functions.
 20. As such the disputes fell under the resolution mechanism provided for under the Inter-Governmental Resolution Act. It is the submission of the Respondents that the Petitioner did not exhaust the mechanism provided and that this Petition is premature. Thus, this Court has been moved prematurely and that this Court has no jurisdiction to hear and determine this Petition at this stage.
 21. On their part, the Petitioners identified five issues in their submissions namely:
 - i. Whether the Petitioners’ Petition is an intergovernmental dispute.
 - ii. Whether the intergovernmental dispute resolution mechanism applies to constitutional Petitions.
 - iii. Whether the Petitioners’ Petition is barred by the doctrine of exhaustion of remedies.
 - iv. Whether the doctrine of constitutional avoidance is applicable in the circumstances.
 - v. Whether injunctive orders can be issued against the government and or its entities.
 22. In their submissions, the Petitioners refute that the dispute is intergovernmental in nature as provided under Article 189 of *the Constitution* and Section 30 of the *Intergovernmental Relations Act* (IGA) since the violations highlighted involve private citizens. The Petitioner has relied on the case of County Government of Nyeri vs Cabinet Secretary, Ministry of Education Science & Technology & Another [2014] eKLR., where the Court held that a dispute involving allegations of Constitutional rights violations under Articles 22, 23 and 27 does not qualify as an intergovernmental dispute merely because it involves a County Government and a National Government entity, as doing so would lead to an absurd interpretation.
 23. The Petitioner has submitted that the proper test for determining the existence of an intergovernmental dispute is not based solely on the identity of the parties but rather on the nature and substance of the claim.
 24. According to the Petitioners, the Court of Appeal in Kenya Ports Authority v William Odhiambo Ramogi & 8 Others [2019] eKLR, the Judges emphasized that it is the character of the dispute and not merely the governmental status of the parties that determine its classification.
 25. In the above referenced decision, the Court of Appeal affirmed that the High Court correctly applied a dual-pronged test-focusing on the nature of the claim rather than the identity of the parties and recognizing that alleged Constitutional violations were substantive to conclude that the dispute did not fall within the scope of *Intergovernmental Relations Act* (IGRA).



26. Further the involvement of ordinary citizens takes this Petition outside the purview of Article 189 of *the Constitution* and Section 30 of IGRA as was stated in Republic vs Transition Authority & Another Ex Parte Kenya Medical Practitioners, Pharmacists & Dentists Union (KMPDU) & 2 Others [2013] eKLR, and the Board of Management, Frere Town Primary School vs County Government of Mombasa [2022]eKLR. Therefore, subjecting the 2nd to 4th Citizens to the IGRA would be a violation of their rights under Article 48.
27. It is therefore the submission of the Petitioner that this is not an intergovernmental dispute and reference was made to Council of County Governors vs Lake KHC 13195 (KLR) and the Supreme Court decision of Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties) [2023] KESC 113 (KLR) where the apex Court held that the existence and availability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. The reason being that the act of seeking constitutional relief is contingent upon the adequacy of an existing alternative means of redress. That if the alternative remedy is deemed inadequate in addressing the issue at hand, then the Court is not restrained from providing constitutional relief.
28. On the doctrine of Constitutional Avoidance the Petitioners relied on the cases of KKB vs SCM & 5 Others [2022] KEHC 289 (KLR), Leonard Otieno vs Airtel Kenya Limited (2018) KEHC 9063 (KLR) and William Odhiambo Ramogi & 2 Others vs Attorney General & 6 Others [2018] KEHC 9718 (KLR), where the Courts held that the Court is the final arbiter of legality and guardian of *the Constitution* and it is Constitutionally permitted to interrogate the decisions of the other branches of government where there is manifest violation of *the Constitution* and fundamental rights.
29. On the last issue as to whether injunctive orders can be issued against the government or its entities, the Petitioners relied on the cases of Royal Media Services Ltd vs Commissioner of Customs & Excise [2001] KEHC 47 (KLR), Maitha vs Cabinet Secretary Industry Trade and Enterprises Development & 2 Others (Environment & Land Petition 2 of 2021) [2023] KEELE 80 (KLR) (20 January 2023), Judicial Service Commission vs Speaker of the National Assembly & 4 Others; Commission on Administrative Justice (Amicus Curiae); Law Society of Kenya (Interested Party) (Petition 518 of 2013) [2014] KEHC 7493 (KLR) (Constitutional and Human Rights) (15 April 2014) (Judgment).
30. The position of the Courts in the above referenced cases is that Section 16 of the *Government Proceedings Act* cannot stand in the face of Article 23 of *the Constitution* which powers Court to issue appropriate reliefs to remedy Constitutional violations. Further that pursuant to Article 23 of *the Constitution*, injunctive orders can nowadays be issued against the government where threats to fundamental rights are alleged.
31. Justice Rawal (as she then was) in Royal Media Services Ltd vs Commissioner of Customs & Excise (Supra) rejected the idea that injunctive orders cannot be issued against the government. She held that statutory provisions such as Section 16 of the *Government Proceedings Act* cannot bar the Court from issuing appropriate interlocutory relief, including interim injunctions, where Constitutional rights are at stake. In her decision she affirmed that Courts have inherent Constitutional authority to grant effective remedies including interim relief, to prevent ongoing or threatened violations of fundamental rights and procedural barriers or the existence of alternative remedies cannot override the Constitutional mandate to uphold justice.
32. The Petitioners submitted that the Respondents' Preliminary Objection lacks in merit and should therefore be dismissed with costs.



33. Having considered all the pleadings and submissions filed in response to the Preliminary Objection, the main issues for determination are as follows:-
- a. Whether this Court has jurisdiction to try the matter.
 - b. Whether the Preliminary Objection is merited?

Analysis and Determination

Whether this Court has jurisdiction to hear and determine the dispute herein?

34. The jurisdiction of this Court has been called into question, I will therefore address myself to the issue from the onset because without it, this Court can take no further step. The Supreme Court In The Matter Of Interim Independent Electoral Commission [2011]eKLR, Constitutional Application No. 2 of 2011 held that jurisdiction of Courts in Kenya is regulated by *the Constitution*, Statute and principles laid out in judicial precedent. At paragraph 30 of its decision, the Court held in part as follows:

“... A Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.”

35. The often referred to classical colossus Court of Appeal case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR where it was stated as follows on the question of jurisdiction of a Court of law:-

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

36. In yet another case of Samuel Kamau Macharia & Another –Vs- Kenya Commercial Bank Limited & 2 Others [2012] eKLR, the Supreme Court stated the following on jurisdiction:-

“(68) 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. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

37. The Respondents in their objections have averred that this Court lacks jurisdiction to deal with this Petition because the Petitioners have not exhausted the remedies under the *Intergovernmental Relations Act*. This is a jurisdictional issue, and the Court finds and holds that the notice of Preliminary Objection as raised by the Respondents meets the test of what amounts to a Preliminary Objection. It raises pure points of law and can be determined without ascertainment of facts from elsewhere.

38. The gist of the Preliminary Objection is that the Petitioners have not exhausted the available alternative dispute resolution mechanisms and therefore the jurisdiction of the Court has been



invoked prematurely. Further that the Petition contravenes the well settled doctrines of Constitutional avoidance and exhaustion of statutory provided dispute resolution mechanisms. That also the Application offends Section 16 of the Government Proceedings Act in that there can never be an injunction against the Government.

39. In summary, the Petitioners' case, on the other hand, is that the instant Petition does not constitute an Intergovernmental Dispute pursuant to Article 189 of the Constitution as read together with Section 30 of the IGRA and instead asserts that the Respondents misinterpreted both facts and the law and maintains that the Petition strictly raises an issue of Constitutional violations with no elements of intergovernmental dispute.

40. The broad jurisdiction of this Court is donated by Article 162 (2) (b) of the Constitution which obligated Parliament to establish the Court in the following terms:

“

2. Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to—
 - (a); and
 - (b) the environment and the use and occupation of, and title to, land.
3. Parliament shall determine the jurisdiction and functions of the Courts contemplated in Clause (2).”

41. The Environment and Land Court's jurisdiction is elaborated further in the Environment and Land Act Section 13 as follows:-

“ 13(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.”

42. The question as to whether the Environment and Land Court can exercise primary jurisdiction in disputes where Parliament has, through Statute, established alternative remedies or alternative dispute resolution mechanisms has been the subject of pronouncements by our Superior Courts in a number of decisions.



43. In *Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties)* (Petition E007 of 2023) [supra] the Supreme Court of Kenya held as follows:-

“Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under articles 22, 23(3) and 162(2)(b) of *the Constitution* as read with Section 4(1) of the Environment and *Land Act*. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of *the Constitution*. That right to access the Court for redress of alleged Constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in *William Odhiambo Ramogi & 3 Others v Attorney General & 6 Others; Muslims for Human Rights & 2 Others (Interested Parties)* [2020] eKLR where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated.”

44. In the case of *East Africa Wildlife Society & 3 Others v Kenya National Highways Authority & 3 Others; Law Society of Kenya & 5 Others (Supra)* it was observed that

“52 In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.” [Emphasis ours]

45. It is my view that the dispute herein falls squarely within the provisions of Section 13(2) of the Act. The reliefs sought herein arise out of a determination of the issues falling within the said provision which basically deal with interests in land. In my view the Petitioners’ contended right to be heard stem from their yet to be determined interest in the suit land.
46. The Intergovernmental Relations Committee (IGRTC) cannot adjudicate Constitutional matters related to land and the violation of rights; that jurisdiction belongs exclusively to the Environment and Land Court (ELC). While the IGRTC coordinates intergovernmental relations, the ELC has the Constitutional and legal authority to handle all disputes involving environment and land, as well as violations of fundamental rights connected to those matters.
47. A Petitioner can approach the Environment and Land Court (ELC) even if intergovernmental dispute resolution mechanisms exist, especially if the alternative remedies are inadequate or do not address the specific Constitutional rights being violated. While Courts generally prefer the exhaustion of alternative dispute resolution methods, from the Supreme Court case referenced above it has clarified that the existence of other remedies does not automatically bar a party from filing a Constitutional Petition if those remedies are insufficient.
48. And whereas the doctrine of Constitutional avoidance and exhaustion of statutory remedies as pleaded by the Respondents generally prevent a litigant from immediately seeking an injunction in Court when an intergovernmental mechanism is provided. However, this is not absolute; a Court may intervene if the litigant can show that the prescribed mechanism is inadequate, that it would be futile to pursue it, or that a Constitutional issue is a strict necessity that cannot be avoided.



49. In the instant case, the doctrines of Constitutional avoidance and exhaustion of statutory remedies are generally not applicable since there are individual fundamental rights which are alleged to have been violated involving the 2nd to 4th Petitioners. Particularly because alternative dispute mechanisms, like those under the *Intergovernmental Relations Act*, are not equipped to handle cases of individuals. In the circumstances, I will not apply these doctrines of alternative forum to address the full scope of the grievances, which have been highlighted as falling under Article 23, 40, 48 and 258 of *the Constitution* where individual rights violations are alleged.
50. Thus, the issues raised in the Petition cannot be decided without recourse to *the Constitution* hence are Constitutional questions. The doctrine of *the Constitution* avoidance cannot thus be raised to frustrate the instant Petition. This ground of attack must therefore inevitably fail. Thus, this Court has jurisdiction to determine Petition.

Whether the Preliminary Objection is merited?

51. Having considered the notice of Preliminary Objection, and the rival written submissions together with the various case law cited before us, it is my finding that the Petition raises various Constitutional issues. The issues raised in the Petition touch on violation of various constitutional rights such as the rights to own property by individuals and violation of right to socio-economic livelihood. Those issues cannot be adjudicated by Intergovernmental Relations Technical Committee. It is the Environment and Land Court which is conferred with jurisdiction to deal with the same.
52. Since I already found that the Court has jurisdiction, then this Preliminary Objection is not merited. The Objection is dismissed with costs being in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 14TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

1st, 2nd, 3rd and 4th Petitioners – Absent

Mr. Motari for the Respondents

Melita – Court Assistant

