



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Regional Centre for Business Ethics & Research v Vallem Construction Limited & 2 others;  
National Environment Management Authority & another (Interested Parties) (Environment  
and Land Petition E002 of 2025) [2025] KEELC 7181 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7181 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ENVIRONMENT AND LAND PETITION E002 OF 2025**

**JA MOGENI, J**

**OCTOBER 15, 2025**

**IN THE MATTER OF ARTICLES 2, 3, 10, 22, 27(1), 35, 42, 47, 60, 61, 62, 66,  
69, 70, 71, 73, 174, 232 AND 258 OF THE CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF VIOLATION, INFRINGEMENT OF AND/OR  
THREAT TO THE RIGHT TO INCLUSION AND PUBLIC PARTICIPATION**

**AND**

**IN THE MATTER OF VIOLATION, INFRINGEMENT AND/OR  
THREAT TO THE RIGHT TO CLEAN AND HEALTHY ENVIRONMENT**

**AND**

**IN THE MATTER OF THE ACCESS OF INFORMATION ACT, NO. 31 OF 2016**

**AND**

**IN THE MATTER OF THE ENVIRONMENTAL  
MANAGEMENT AND COORDINATION ACT (EMCA) OF 1999**

**AND**

**IN THE MATTER OF THE LAND ACT, 2021 NO. 6 OF 2012**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2021**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012**

**AND**

**IN THE MATTER OF THE KIAMBU COUNTY CITIZEN  
PETITION AND PUBLIC PARTICIPATION ACT 9 OF 2017**



**BETWEEN**

**REGIONAL CENTRE FOR BUSINESS ETHICS & RESEARCH ..... PETITIONER**

**AND**

**VALLEM CONSTRUCTION LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SINOHYDRO CORPORATION LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**KIAMBU COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... INTERESTED PARTY**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**RULING**

1. This Ruling is in respect of a Notice of Motion dated 31/01/2025 and a Preliminary Objection filed before the hearing of the Notice of Motion dated 5/02/2025. The Notice of Motion is brought under Article 22 of *the Constitution* Rules 3 (2), (3), (4), (8) and 4 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and all Enabling Provisions of the Law seeking the following:
  - a. Spent
  - b. That this Honourable Court do hereby issue a temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, through themselves, assignees, transferees, representatives and or workers/agents, restricting them from undertaking quarrying activities, excavating, cutting stones, blasting, crushing ballast or in any manner operating the quarries located at Kilimambogo, pending the hearing and determination of this application.
  - c. That this Honourable Court do hereby issue a temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through themselves, assignees, transferees, representatives and or workers/agents, restricting them from undertaking quarrying activities, excavating, cutting stones, blasting, crushing ballast or in any manner operating the quarries located at Kilimambogo, pending the hearing and determination of the Petition.
  - d. That this Honourable Court be pleased to declare that issuance of quarrying permits without public participation and the conducting and publishing of an Environmental Impact Assessment report is unlawful and a nullity.
  - e. That costs of this application be borne by the Respondents.
2. In support of the application Peter Kihiko Kuria the coordinator of the Petitioner swore an Affidavit on 31/01/2025 in which he averred that the issuance of mining permits by the 3<sup>rd</sup> Respondent to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to mine the quarries located at Kilimambogo was not subjected to any and or sufficient public participation.



3. He further averred that the Environmental Impact Assessment report in respect to the quarry operations has not been carried out by the 1<sup>st</sup> Interested Party and that if it has been carried out the same, then the public was not privy to the investigations and results were not provided to the public for any kind of discourse nor was it subjected to public participation.
4. It is the Petitioner's averment that the mining operations have led to environmental pollution in the area and further become a health hazard to the residents of Kilimambogo living in the vicinity of the quarries. In addition, that there has been no demonstrable efforts, policy or tender requirements that have set out guidelines on the Licensee's adherence to the laws that govern waste disposal and there has been no specified area for dumping of soil and other material.
5. The Petitioner avers that the kind of mining machinery and or explosives used in the mining operations has led to noise pollution to the detriment of the residents of Kilimambogo. Additionally, that the 3<sup>rd</sup> Respondent failed to procure an advisory opinion and or the input of the 2<sup>nd</sup> Interested Party on the use of the land. That the 3<sup>rd</sup> Respondent opted against and failed to procure the advisory opinion and or the input of the National Land Commission in respect to the exploitation and or use of natural resources by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
6. Further that failure to conduct public participation in respect to the sustainability of waste disposal is a violation of the provisions of the Sustainable Waste Management Act No. 31 of 2022, which provides that County Governments shall develop, manage, and maintain designated disposal sites and landfills and that further public participation shall be carried out.
7. In response to the application, the 1st Respondent filed a Preliminary Objection dated 5/02/2025. In the Preliminary Objection the 1<sup>st</sup> Respondent raised the following two issues touching on jurisdiction of the Court:
  - a. This Honorable Court is ousted of jurisdiction to hear and determine the Petition and the application by dint of the mandatory provisions of Section 129 (1) of the Environmental Management & Coordination Act, 1999 as read together with Regulation 46 (1) (f) of the Environmental (Impact Assessment and Audit) Regulations, 2003.
  - b. This Honorable Court jurisdiction to hear and determine the Petition and the application is further divested by dint of the mandatory provision of Section 78 (b) of the Physical & Land Use Planning Act, 2019.
8. Following directions issued by the Court on 06/03/2025 the parties were directed to file their submissions in respect of the Notice of Motion Application and the Preliminary Objection. The Court has accordingly carefully perused and considered the respective rival submissions and authorities placed before me by the Learned Advocates representing the parties. I will start by considering the Preliminary Objection first.

### **Analysis and Determination**

9. The Court must first determine whether what has been raised by the 1<sup>st</sup> Respondent/Objector amount to what a Preliminary Objection is as per the definition of a Preliminary Objection in the case of *Mukisa Biscuit Manufacturer Ltd ...Vs... Westend Distributers Ltd (1969) E.A 696* where the Court held that;
 

“... so far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a Preliminary Objection may dispose of the suit.



Sir Charles Newbold P in that case stated:-

"... A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."

10. A Preliminary Objection must be raised on a pure point of law and the same must not be raised if the facts have to be ascertained by the Court as to call for rebuttal.
11. The 1<sup>st</sup> Respondent in its Preliminary Objection has called into question the jurisdiction of this Court. Jurisdiction is everything and without it, a Court has no option but to down its tools. The Court finds and holds that the issues as to whether or not a Court is clothed with the requisite jurisdiction is a pure point of law and therefore the Preliminary Objection is properly raised.
12. The Petitioner's/Applicant's case is premised on the decision by the 3<sup>rd</sup> Respondent to grant a mining license to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to mine the quarries located at Kilimambogo without subjecting the decision to any and or sufficient public participation. Further that the Environmental Impact Assessment report in respect to the quarry operations has not been carried out by the 1<sup>st</sup> Interested Party and if it has been carried out then the public was not privy to the investigation and results were not provided to the public for any kind of discourse nor was it subjected to public participation.
13. That the mining operations have led to environmental pollution in the area and become a health hazard to residents of Kilimambogo and that there has been no demonstrable efforts, policy or tender requirement that have set out guidelines on the Licensee's adherence to the laws that govern waste disposal and there has been no specified area for dumping of soil and other material.
14. Section 9(2) and (3) of the *Fair Administrative Action Act*, implores Courts to take up matters only if it is shown that the alternative mechanisms have been exhausted.
15. Section 129 of the *Environmental Management and Co-ordination Act* provides that:-

“Appeals to the Tribunal

- (1) Any person who is aggrieved by—
  - a. a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
  - b. the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder
  - c. the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
  - d. the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
  - e. the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.



- (2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.
- (3) Upon any appeal, the Tribunal may—
  - a. confirm, set aside or vary the order or decision in question;
  - b. exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
  - c. make such other order, including an order for costs, as it may deem just.
- (4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.”

- 16. Vide the present Objection, the 1<sup>st</sup> Respondent has averred that this Court lacks jurisdiction to deal with this Petition because the Petitioners have not exhausted the remedies under National Environmental Tribunal (NET). Indeed, this is a jurisdictional issue, as the Court has already observed that it raises pure points of law.
- 17. The 1<sup>st</sup> Respondent’s submissions on the single issue in the Preliminary Objection focused on Sections 129 and 130 of the Environmental Management and Coordination Act (EMCA). The 1st Respondent did not submit extensively on Section 78 (b) of Physical and Land Use Planning Committee 2019. The gist of the Preliminary Objection is that the Petitioners have not exhausted the remedies provided under Sections 129 and 130 of the EMCA, hence the Petition should be dismissed.
- 18. They contend that this Petition challenges the EIA licence issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by the 3<sup>rd</sup> Respondent. It is their case that under Section 129 of the EMCA, the body vested with primary jurisdiction to adjudicate disputes relating to grant of licenses under the EMCA is the NET. They argue that the Petitioners were obligated to file an appeal at the NET to challenge the 3<sup>rd</sup> Respondent’s decision to grant the 1<sup>st</sup> and 2<sup>nd</sup> Respondent the EIA licence.
- 19. In summary, the Petitioners’ case, on the other hand, is that the instant Petition raises Constitutional issues that go beyond the ambit of Sections 129 and 130 of the EMCA. They contend that the issues raised in this Petition include the right to a clean and healthy environment, noise pollution, exploitation and use of natural resources. It is their case that the Petition raises questions relating to violation of Articles 2, 3, 10, 21, 22, 23, 27 (1), 35, 42, 47, 60, 61, 62, 66, 69, 71, 73, 174, 232 and 258 of *the Constitution*. They contend that under Section 13 of the *Environment and Land Court Act* and Section 3 of the EMCA, this Court is the adjudicatory body vested with primary jurisdiction to hear and determine questions relating to violation of *the Constitution* in relation to the right to a clean and healthy environment.
- 20. Section 125 of the EMCA establishes the NET. It sets out the jurisdiction of NET limited to matters as set out under Sections 129 (1) and (2) which provides:-

“(1) Any person who is aggrieved by—



- a. a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
- b. the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder;
- c. the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
- d. the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
- e. The imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.”

21. Section 130 of the said Act provides as follows:-

“Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the Environment and Land Court.”

22. 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).”

23. The above broad jurisdiction is elaborated in details in Section 13 of the *Environment and Land Court Act* 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.



- a. 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.”

24. Besides the *Environment and Land Court Act*, there are other Statutes that confer jurisdiction upon this Court. One such Statute is the EMCA. Section 3(3) of the said Act confers jurisdiction upon the Environment and Land Court in the following terms:-

“3(3) If a person alleges that the entitlement conferred under subsection (1) has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Environment and Land Court for redress and the Environment and Land Court may make such orders, issue such writs or give such directions as it may deem appropriate to—

- a. prevent, stop or discontinue any act or omission deleterious to the environment;
- b. compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment;
- c. require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;
- d. compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and
- e. provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.”

25. In addition, by virtue of the Bill of Rights; Article 70 and Article 165 (5) of *the Constitution*, this Court is vested with jurisdiction to adjudicate questions relating to whether a right or fundamental freedom in the Bill of Rights has been infringed or is threatened with infringement in relation to the environment; and use, occupation, and title to land. In this regard Article 70(1) provides as follows:

“70(1) If a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a Court for redress in addition to any other legal remedies that are available in respect to the same matter.”



26. This Article 70(1) is on enforcement of environmental rights, and as provided by Article 162(2)(b), the Court with jurisdiction to adjudicate environmental disputes is the one established as under Article 162(3), which is the Environment and Land Court. 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.
27. In *Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties)* (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment) 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 stilled 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:

“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.”

28. 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. The Court stated as follows:-

“52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine 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 the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in *R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:

42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in



Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:

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.”

29. At the same time, the Court of Appeal reiterated the legal position on the doctrine of exhaustion in the case of Speaker of National Assembly v Karume [1992] KLR 21 and stated as follows:

“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.”

30. As I already stated above, Courts have on several occasions reiterated the position that where there are alternative avenues legally provided for in dispute resolutions, there should be postponement of judicial consideration of such disputes until after the available avenues are fully adhered to or unless it is adequately demonstrated that the matter under consideration falls within the exception to the doctrine of exhaustion.

31. The Petition seeks the following prayers:-

- a. A Declaration does hereby issue, declaring that the issuance of quarrying permits without conducting public participation is a violation of Article 35 of *the Constitution* as read with Section 87 of the *County Governments Act* No. 17 of 2012.
- b. A Declaration does hereby issue, declaring that the failure to carry out an Environmental Impact Assessment Report in respect to the quarry/mining operations is a violation of Article 42 of *the Constitution* of Kenya as read with Section 59(1) d of the Environmental Management and Coordination Act No. 8 of 199.
- c. An order of certiorari does issue quashing the decision of the Respondents to issue quarrying permits to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
- d. An order of prohibition does issue against the Respondents, prohibiting them from carrying out mining activities on the subject land within Kiambu County without the conduct of a public participation exercise and the conducting, publishing of the Environmental Impact Assessment Report and conducting the subsequent public participation exercise.
- e. An order awarding costs of the Petition to the Petitioner.

32. Now from *the Constitution* of the NET both the Chair and Vice-Chairpersons are capable of determining whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened given their qualifications. However, the Tribunal lacks the jurisdiction to interpret *the Constitution* which is a preserve of the High Court and Courts of Equal Status. (See the Supreme Court in In the Matter of Interim Independent Electoral Commission [2011] eKLR.



33. It follows therefore that Tribunals and other quasi-judicial bodies do not make the law. They can, however, apply themselves to a given set of facts and determine denial, violation, infringement or threat to a right or fundamental freedom in the Bill of Rights.
34. A distinction therefore exists between determining the denial, violation, infringement or threat to a right or fundamental freedom in the Bill of Rights and interpreting *the Constitution*. Whereas the former is not exclusively a judicial function, the latter is.
35. In the instant matter, the Tribunal has the jurisdiction to determine whether the Petitioner's rights or fundamental freedoms in the Bill of Rights were denied, violated, infringed or threatened. However, the Petition seeks an interpretation of *the Constitution* in respect to Articles 2, 3, 10, 22, 27(1), 35, 42, 47, 60, 61, 62, 66, 69, 70, 71, 73, 174, 232 and 258. In other words, the Petitioner is asking this Court to determine whether the above provisions of *the Constitution* can be given meaning to include the impugned acts of the 1<sup>st</sup> Respondent and if so, to what extent. That is different from a simple determination of whether the Petitioner's rights or fundamental freedoms in the Bill of Rights were denied, violated, infringed or threatened.
36. The Supreme Court in the Nicholus Abidha [supra] was emphatic that jurisdiction granted to the NET under the EMCA does not include adjudication of disputes relating to alleged violations of *the Constitution*. The Supreme Court stated thus:-

“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.”

37. Having considered the Petition, the Notice of Preliminary Objection, and the rival written submissions together with the various case law cited before us, we come to the conclusion that apart from the issue of the EIA licence herein the Petition raises various Constitutional issues. The issues raised in the Petition touch on violation of various Constitutional rights such as the rights to a clean and healthy environment, among others. Those issues cannot be adjudicated by NET. It is the Environment and Land Court which is conferred with jurisdiction to deal with the same.
38. I therefore make the finding that the Tribunal and the Authority established under the Act do not possess the jurisdiction to interpret *the Constitution* but the Environment and Land Court has and to that extent therefore, the Objection is misplaced and cannot stand.
39. I will now examine the Notice of Motion Application dated 31/01/2025. The single issue for determination is whether the application meets the threshold for grant of a temporary injunction.
40. The principles for granting an injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, where the Court expressed itself on the conditions that a party must satisfy for the Court to grant an interlocutory injunction as follows: -

“Firstly, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of



damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

41. The first hurdle for an Applicant is to establish that he/she has a prima facie case before an order of injunction can be issued.
42. In the case of Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another [2015] eKLR the Court of Appeal stated that:-

“With reference to the establishment of a prima facie case, Lord Diplock in the case of American Cyanamid vs Ethicon Limited [1975] AC 396 stated thus, “If there is no prima facie case on the point essential to entitle the Plaintiff to complain of the Defendant’s proposed activities that is the end of any claim to interlocutory relief.”
43. Further in the case of Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 Others [2015] eKLR, the Court further expounded and stated that:

“In Habib Bank Ag Zurich V. Eugene Marion Yakub, CA NO. 43 OF 1982 this Court considered the role of the Court when determining whether or not a prima facie case has been made out. The Court expressed itself thus: “Probability of success means the Court is only to gauge the strength of the Plaintiff’s case and not to adjudge the main suit at the stage since proof is only required at the hearing stage.”
44. In this instant application, the Applicants have given an elaborate background in the Supporting Affidavit and all documents annexed thereto elaborating the mining activities by the 1<sup>st</sup> Respondent which was not subjected to public participation. The 1<sup>st</sup> Respondent has not denied the facts set out by the Applicant save that they claim that this Court has no jurisdiction over the matter due to the doctrine of exhaustion having obtained approval from the 3<sup>rd</sup> Respondent to carry out the activities.
45. However, the Applicants have demonstrated clearly that the public participation process and the approval by the 3<sup>rd</sup> Respondents were processes that were not carried out therefore there was no public participation on utilization of a natural resource which belongs to all and not just the 1<sup>st</sup> Respondent.
46. Given the elaborate and uncontroverted averments by the Respondents, it goes without saying that the Applicants have established a prima facie case with a probability of success.
47. The second hurdle is whether the Applicants established that they will suffer irreparable loss if an order of injunction is not issued. The fact that the 1<sup>st</sup> Respondent has obtained the mining license without public participation from the 3<sup>rd</sup> Respondent and further that the Environmental Impact Assessment report in respect of the quarry operations has not been carried out by the 1<sup>st</sup> interested party, this goes to show that the Applicants have all reasons to fear that the 1<sup>st</sup> Respondent will proceed with quarrying activities if an injunction is not granted by this Court.
48. Further, it is logical to conclude the 1<sup>st</sup> Respondent has all intentions of continuing to carry out the quarrying process during the pendency of this case, an exercise that would render this suit nugatory and cause irreparable damage to the Petitioners.
49. The Applicants also sought for a declaratory order on the issuance of quarrying permits which I decline to grant at this interlocutory stage since in so doing I will have issued final orders without examining the evidence to be presented by both parties.



50. I have considered the application, the submissions and relevant authorities and find that the Applicant has met the threshold for grant of temporary injunction.
51. In view of the foregoing, I make the following disposal orders:
- a. This Court has the jurisdiction to hear and determine the Petition.
  - b. The Notice of Preliminary Objection dated 5/02/2025 is dismissed with costs.
  - c. A temporary injunction is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through themselves, assignees, transferees, representatives and or workers/agents, restricting them from undertaking quarrying activities, excavating, cutting stones, blasting, crushing ballast or in any manner operating the quarries located at Kilimambogo, pending the hearing and determination of the Petition.
  - d. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**MOGENI J**

**JUDGE**

In the presence of:-

Petitioner – Absent

Ms. Njoroge for the 1<sup>st</sup> Respondent

2<sup>nd</sup> and 3<sup>rd</sup> Respondents – Absent

1<sup>st</sup> and 2<sup>nd</sup> Interested Party – Absent

Mr. Maroa for the 3<sup>rd</sup> Interested Party

Melita – Court Assistant

