



**Spirit Mining Kenya Limited v Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs & another (Environment and Land Petition E006 of 2025) [2025] KEELC 7274 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7274 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**  
**ENVIRONMENT AND LAND PETITION E006 OF 2025**  
**FO NYAGAKA, J**  
**OCTOBER 22, 2025**  
**IN THE MATTER OF ARTICLES 10, 22, 23, 40(1) (3), 47(1),**  
**209 AND 210(1) OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**SPIRIT MINING KENYA LIMITED ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a Petition dated 7<sup>th</sup> May, 2025, the Petitioner brought made a claim against the Respondents which are government entities. It prayed for the following reliefs:
  - a. A declaration do issue that the First Respondent’s rejection of the Petitioner’s application for a mining license is a violation of Article 47 of *the Constitution* of Kenya.
  - b. A declaration do issue that the First Respondent’s failure to communicate its rejection of the Petitioner’s application for a mining license is a violation of Article 47 of *the Constitution* of Kenya.
  - c. A declaration do issue that institution of Migori Criminal Case E162 of 2025 Republic v Dennis Mayieka before the Chief Magistrate’s Court at Migori is a contravention of Articles 47(1) and 157 of *the Constitution*.
  - d. A declaration do issue that the Respondents have violated the Petitioner’s rights;



- e. an order of mandamus do issue to compel the First Respondent to grant the Petitioner's application number ML/2025/2027 for a mining license;
  - f. an order of mandamus do issue to compel the First Respondent and its agents to return the Petitioner's equipment;
  - g. General damages for breach of Constitutional Rights;
  - h. Costs of this petition;
  - i. Such other or further orders as this Honourable Court shall deem just.
2. The Petition was based on the grounds outlined on the face of it and supported by the depositions in the Petitioner's Supporting Affidavit sworn by one Dennis Ndemo Mayieka on 7<sup>th</sup> May, 2025.
  3. In response thereto, the 1<sup>st</sup> Respondent filed its Replying Affidavit to which he annexed copies of a number of documents. The Affidavit was sworn by Thomas Mutwiwa the secretary Mines, in the Ministry of Mining, blue Economy and Maritime Affairs on 4<sup>th</sup> June 2025 and the Grounds of Opposition dated 3<sup>rd</sup> June 2025.

### **The Petitioner's case**

4. The Petitioner contended that it is a limited liability company committed to the responsible and sustainable extraction of mineral resources within Kenya. It averred that it identified a possible mining area in Atili within Homabay County wherein a company named as Pinsapo Kenya Limited had obtained a prospecting license for over 20 years.
5. It averred further that Pinsapo Limited carried out the exploration works and defined the resource the Petitioner intended to mine. In 2023, the Petitioner entered into an agreement with Pinsapo Limited to buy its rights and apply for a Mining license within the area.
6. The Petitioner contended further that vide a letter dated 20<sup>th</sup> November, 2023, Pinsapo Limited confirmed that it did not wish to renew its special license No. 209 but would instead relinquish it.
7. It added that on 6<sup>th</sup> December, 2023 the Petitioner applied for a Mining License vide application ML/2024/0159 to the 1<sup>st</sup> Respondent via the Kenya Mining Cadastre Portal.
8. It was the Petitioner's further contention that in 2024 due to the fact that the Cadastre Portal was not fully operational, there were delays in processing of licenses due to the lifting of a moratorium on issuance of licenses.
9. It was the Petitioner's contention that it learnt that its application had been recommended for approval by the Mineral Rights Board on 19<sup>th</sup> November, 2024. It contends that it withdrew its previous application. Subsequent to that it submitted a new one ML/2025/2027 which the 1<sup>st</sup> Respondent never considered. Further, that the failure was in contravention of Section 103 of the *Mining Act*.
10. The Petitioner contends that in February 2025, the officials from the Ministry of Mining invaded its premises and took away its equipment on the allegation that it had conducted illegal mining. It denied that it had been conducting mining operations. It contended that, on the contrary, had only set up a plant in anticipation of a mining license. It added that on 5<sup>th</sup> May, 2025 it received a letter from the Director of Mines that its application had been recommended for grant but the 1<sup>st</sup> Respondent rejected it on 19<sup>th</sup> March, 2025.



11. The Petitioner contends that the rejection of its license was arbitrary and in violation of the law. It also contended that it was yet to receive any communication from the 1<sup>st</sup> Respondent that his application had been rejected.
12. It argued that it had since incurred substantial expenses in preparation, and the making of the application, and was currently incurring approximately Kshs. 1,729,500 per month while its application remained in limbo. It added that it had invested a cumulative of over Kshs. 50,000,000 in the project which investment stood wasted if the license was not granted.

### **Respondent's case**

13. The Respondents filed their Ground of Opposition dated 3<sup>rd</sup> June, 2025 on the following grounds:
  1. That this Honourable court is currently bereft of jurisdiction to hear and determine the matter herein by virtue of the express provisions of Section 33(4) (7) and Section 34(2) of the *Mining Act*, 2016, the Petitioner having filed this application/petition prematurely before formal communication of the decision by the 1<sup>st</sup> Respondent to accept or reject the petitioner's application.
  2. That this petition/application offends the Doctrine of Ripeness/ Exhaustion as it violates the express provisions of Section 33(4), (7) and 34(2) of the *Mining Act*, 2016. These provisions provide that the 1<sup>st</sup> Respondent shall issue formal communication to an applicant seeking a mineral right on his decision to either reject or approve an applicant and where an applicant is aggrieved by the decision of the 1<sup>st</sup> Respondent, they may appeal to the High Court. As at the date of filing this replying affidavit, the 1<sup>st</sup> Respondent is yet to make a decision on the applicant/petitioner's application for a mining license and no communication has been made to the applicant/petitioner on the same.
  3. That the order of mandamus is employed to enforce the performance of a public duty which is imperative, not optional or discretionary, as per section 31(a) and (e) of the *Mining Act* the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights agreements and the cessation, suspension, or curtailment of production in respect of mining licenses is not automatic but made at the discretion of the cabinet secretary upon the recommendations of the Mining board.
  4. That the institution of Migori criminal case no E162 of 2025 was done after consideration by the office of the director of public prosecutions who are constitutionally required to carry out their mandate without interference thus this court has no jurisdiction to interfere with criminal proceedings. The law provides an avenue for those aggrieved with prosecutions in criminal cases.
14. The 1<sup>st</sup> Respondent filed its Replying Affidavit sworn by its Secretary (of) Mines, one Thomas Mutwiwa, on 4<sup>th</sup> June, 2025. He averred that in line with Section 51(1) of the *Mining Act*, 2016, a holder of a mineral right was not to assign, transfer, mortgage or trade such right or part thereof without the consent of the 1<sup>st</sup> Respondent to be given on recommendation of the Mineral Rights Board. He averred that Pinsapo Mining Limited was forbidden from doing any acts under Section 51(1) of the Act without the 1<sup>st</sup> Respondent's consent.
15. He averred that there was no evidence the Pinsapo Limited had obtained the said consent from the 1<sup>st</sup> Respondent. He added that the agreement between the Petitioner and Pinsapo to purchase its rights was illegal.



16. He further averred that vide Gazette Notice 5720 of 11<sup>th</sup> June, 2021, the 1<sup>st</sup> Respondent had revoked Special License No. 209 on the grounds that it had expired and that Pinsapo Limited had failed to renew it.
17. He went on in his deposition that the Petitioner's application No. ML/2024/0159 had been evaluated by the Mineral Rights Board and the Board discovered that the Petitioner had not attached to it the mandatory documents it should have. He added that the Petitioner was given a chance to upload the missing documents within the stipulated timelines but it failed to do so.
18. He averred that the Petitioner, instead, withdrew the application and submitted a new application ML/2025/0227 over the same area which was still pending review by the Directorate of Mines.
19. He averred that the Petition had been filed prematurely as the 1<sup>st</sup> Respondent was yet to make a decision on whether to reject or approve the application. He added that no letter of rejection had been issued to the Petitioner, and the Online Mining Cadastre for the Petitioner was still intact in its favour.
20. He went on to aver that the court lacked the jurisdiction to hear and determine the Petition by virtue of the provisions under Section 33(4) (7) and Section 34(2) of the *Mining Act*, 2016. He added that the Petition offended the doctrine of exhaustion since the 1<sup>st</sup> Respondent was yet to issue a formal communication.
21. He averred that the 1<sup>st</sup> Respondent had issued directions to the Directorate of Mines on curbing illegal mining whereby it discovered that the Petitioner was conducting illegal mining activities. Thereafter, it issued a stop order to operate until when the Petitioner had acquired a license. He also averred that the institution of Migori Criminal Case E162 of 2025 was done after consideration by the ODPP.
22. In conclusion, he averred that the Petitioner had not met the threshold required to be granted the orders sought and urged the court to dismiss the Petition with costs.

### **Submissions**

23. The Petitioner argued vide its written submissions dated 9th October 2025 by first setting out the Introduction and Factual Background. Then it gave the constitutionality of the denial of the licence. It began by outlining the provisions of Article 47 of *the Constitution* of Kenya on the guarantee on the right to fair administrative action. It relied on the case of Communications Commission of Kenya & 5 others v. Royal Media Services Limited & 5 others, SC Petitions No 14, 14A, 14B and 14C of 2014; [2014] eKLR where the Supreme Court of Kenya discussed the right to fair administrative action as provided for under Article 47. It also summarized Sections 101, 103, 104 and 105 of the *Mining Act*. It then argued that it was not in dispute that the Petitioner applied for a mining licence and satisfied all the conditions of the Act. Further, that its application was considered and approved by the Mining Rights Board.
24. It then stated that the Director of Mines stated that the application was recommended for grant in the 94th meeting of the Mineral Rights Board on 14th March 2025 but the Cabinet Secretary rejected it on 19th March 2025. It reproduced Section 105 of the *Mining Act* which is to the effect that the Cabinet Secretary ought not to reject an application for a mining licence unless he gives the applicant a notice of the intention to reject the application stating the grounds for rejecting the application; specifies in the notice a period within which the applicant may make appropriate proposals to remedy the grounds stated in the notice of intention to reject the application; and the applicant fails, within the specified period, to make appropriate proposals.



25. It was its submission that the Cabinet Secretary did not even attempt to comply with the above section hence the attempted denial of the license expressly contravened the law. It relied on *Mbiriri v Cabinet Secretary Ministry of Petroleum and Mining (Environment and Land Appeal 2 of 2021)* [2024] KEELC 1176 (KLR) (4 March 2024) (Judgment). It also relied on the decision in *Okoiti v The Board, Export Processing Zones Authority & 3 others; Otieno (Interested Party) (Petition E133 of 2021)* [2022] KEELRC 3771 (KLR) (29 July 2022) (Judgment) which considered a similar provision in Section 6(1) of the Export Processing Zone (EPZ) Act. It closed its arguments by stating that the 1st Respondent could not ignore the recommendations of the Mineral Rights Board without reasons, and the Petition should be allowed.
26. As for the Respondents, learned counsel for the Respondents filed her submissions dated 23<sup>rd</sup> June, 2025. In them she identified one issue for determination, being, whether this Honourable court had jurisdiction to hear and determine the matter. While submitting in the negative, she relied on Section 33(7) of the *Mining Act*, 2016 which provides that an Applicant being aggrieved by the 1<sup>st</sup> Respondent's decision ought to appeal to the court within 30 days.
27. It was her submission that the Petitioner was attempting to circumvent the statute which had clear and definite procedures for grievances. She submitted that the instant Petition violated the doctrine of exhaustion. She relied on the case of *The Speaker of National Assembly v James Njenga Karume (1992) eKLR*.
28. She further submitted that the Petition was premature and that there existed no cause of action against the Respondents. She argued that it was evident from the pleadings that the 1<sup>st</sup> Respondent was yet to make a decision on the Petitioner's application for a mining license and that no official communication to that effect had been made.
29. It was her submission that Section 33(2) of the Act gives the Cabinet Secretary 90 days to accept and reject prospecting license and 120 days for a mining license, upon recommendation by the Board. She added that the application had not yet reached the said stage.
30. Learned counsel went on to submit that the Petitioner filed the instant Petition before any formal communication from the 1<sup>st</sup> Respondent about its decision to accept or reject the application was made. She adds that the Petition was speculative and that there was no constitutional violation.
31. She submitted that an order of mandamus was employed to enforce performance of a public duty which was imperative and not optional. She cited a number of cases including *Republic v Jomo Kenyatta University of Agriculture and Technology Ex parte Elijah Kamau Mwangi* [2021] eKLR and *Republic v The Commissioner of Lands & Another Ex parte Kithinji Murugu M'agere*, Nairobi High Court Misc Application No. 395 of 2012.
32. It was her submission that the Petitioner admitted that they had set up a mining plant in anticipation of approvals. She added that it was discovered that the Petitioner was among the persons conducting illegal mining activities in contravention of Section 202(1) of the *Mining Act*, 2016. She cited the case of *Republic v Chief Magistrate Milimani & another Ex parte Tusker mattresses Ltd & 3 Others* [2013] KEHC 6807 (KLR).
33. She relied on Section 51(1) of the *Mining Act*, 2016 and submits that Pinsapo Mining Limited had not obtained the 1<sup>st</sup> Respondent's consent and that vide Gazette Notice 5720, the special license had been revoked. She adds that in 2023, it had no legal standing to enter into any agreement with the Petitioner.
34. It was her submission that the Petition was an abuse of the court process and filed with the intention to arm-twist the 1<sup>st</sup> Respondent into giving it a license despite its illegal activities.



35. On the final issue of costs, he submitted that the Respondents should be directed to bear costs of the suit.

### **Analysis and Determination**

36. This Court has carefully considered the Petition and analysed the law applicable, examined the evidence together with the submissions. It opines that the issues that arise for determination are as follows:

- a. Whether the Petition is merited
- b. Who should bear the costs of the Petition

37. It will determine the issues sequentially.

### **A. Whether the Petition is merited**

38. The issue in this petition is discernible from the summary of the reliefs sought. The Petitioner seeks a declaration that the rejection by the 1<sup>st</sup> of the Petitioner's application for a mining license violated Article 47 of *the Constitution*; a declaration that the 1<sup>st</sup> Respondent's failure to communicate its rejection of the Petitioner's application for a mining license violated of Article 47; another declaration that institution of Migori Criminal Case E162 of 2025 Republic V Dennis Mayieka contravened Articles 47(1) and 157 of *the Constitution*; an order of mandamus against the 1<sup>st</sup> Respondent to grant the Petitioner's application number ML/2025/2027 for a mining license and another to return the Petitioner's equipment, and General damages for breach of Constitutional Rights.

39. This cocktail of the Petitioner's reliefs is based on facts pleaded, and which this court must analyse to find out their import in relation to the evidence adduced.

40. Section 160 of the *Mining Act*, Kenya provides as follows:

- “(1) An application for a mineral dealer's licence shall be made to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.
- (2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, either sufficient knowledge, experience, or working capital to ensure that the applicant can carry on the business that would be permitted under the licence.”

41. Section 33 of the Act provides as follows:

- (1) A person shall make an application for a mineral right in the prescribed manner to the Cabinet Secretary.
- (2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application—
  - (a) within ninety days in the case of an application for prospecting licence or reconnaissance licence; or
  - (b) within one hundred and twenty days in the case of an application for a mining licence.



- (3) Subject to subsection (2), the Cabinet Secretary shall notify the Mineral Rights Board of the decision to approve or reject an application before notifying the applicant.
- (4) Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected.
- (5) Where the application is approved, the applicant shall by notice in writing accept or reject the offer for grant of the mineral right within twenty-one days from the date of receipt of notification of the approval.
- (6) Where the applicant does not notify the Cabinet Secretary of the acceptance of the offer, the approval of the application shall lapse after twenty-one days.
- (7) An applicant who is aggrieved by the decision of the Cabinet Secretary may appeal to the High Court within thirty days.”

42. Section 34 of the Act goes on to state that:

1. The Cabinet Secretary shall, on receipt of the application, give notice in writing of the pending application for the grant of a mineral right to—
  - (a) the land owner or lawful occupier of the land where the mineral is located;
  - (b) the community; and
  - (c) the relevant County Government.
- 2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation at the applicant's expense.
- 3) A notice given under subsection (1) shall—
  - (a) state the proposed boundaries of the land in relation to which an application for a mineral right is made; and
  - (b) be published, for twenty one days in the Gazette and in the offices of the County Government within which county the land is situated.
- 4) Subject to subsection (3), a person or community may object to the grant of a licence—
  - (a) within twenty-one days in the case of an application for a prospecting licence; and
  - (b) within forty-two days in the case of an applications for a mining licence.
- (5) The Cabinet Secretary shall hear and determine any objection to an application under subsection (4) through the Minerals Rights Board.”

43. It is not in dispute that in 2023, the Petitioner applied for a Mining License ML/2024/0159 after having entered into an agreement with Pinsapo Kenya Limited to buy off its rights of mining within Atili area. Further, it is not disputed too that the Petitioner withdrew the said application for licence before applying for another one which forms the basis for the instant Petition.

44. The question that follows is, when the Petitioner entered into the mining agreement for the assignment of the licence, was it in line with the law or not? Put differently, did the Petitioner follow the law in the process of acquiring the rights under the licence by Pinsapo Kenya Limited?



45. Section 51(1) of the Act provides as follows:

“ 1) The holder of a mineral right shall not assign, transfer, mortgage or trade such right or part thereof without the consent of the Cabinet Secretary on recommendation of the Mineral Rights Board.”

46. It is clear from the above provision that for a person to assign or transfer, mortgage or trade a right that had been assigned to them by the government he/she/ it could only do so with the consent of the Cabinet Secretary upon recommendation by the Mineral Rights Board. There is no evidence by the Petitioner that the seller or vendor of the rights it acquired were consented to by the Cabinet Secretary. It follows that Pinsapo could not assign or transfer its mining rights to the Petitioner without the 1<sup>st</sup> Respondent’s consent. It is not in contention that there was no evidence of the 1<sup>st</sup> Respondent’s consent in the instant case. It, therefore, goes without saying that the said agreement between the Petitioner and Pinsapo was irregular or rather void or against the law.

47. It is also not in dispute that on 12<sup>th</sup> February, 2025, the Petitioner withdrew the earlier application for a license after having been requested to submit key documents in support of the application. It instead made another fresh application being ML/2025/0227 in relation to on the same area.

48. This court has carefully perused the pleadings and it is not in dispute that the said application is still under evaluation or yet to be determined, and that the 1<sup>st</sup> Respondent was yet to communicate to the Petitioner on its decision regarding application of the license. Notably also, this is a fact the Petitioner admits under paragraph 42 of the Petition where it pleads, “the Petitioner is yet to receive any communication from the First Respondent rejecting its application.” How then did the Petitioner arrive at the conclusion that its application had been rejected? Why would it conclude that the rejection was “extremely detrimental” yet it had not been made? Was this not a Petition made hastily and prematurely to preempt the outcome of the decision on the application or purposely to coerce the determination to be to the Petitioner’s favour? To me, in my humble opinion, it means that this Petition has been presented before a determination on its application is made. It means further that there is no basis for or a cause of action against the Respondents, as was contended by the respondents and submitted by them. This court cannot at this stage then be seized of jurisdiction to determine the alleged dispute between the Petitioner and the Respondents. The issue, if any, has not crystallized. The Petitioner has not exhausted all the procedures regarding the application and grant of a licence as stipulated under the Mining Act. As such there is nothing to ground the Petition on.

49. Put differently, the Respondents contend that the Petition has been filed prematurely. This court, while in agreement with the Respondents, is of the view that entertaining the instant Petition would surmount to pre-empting an administrative mandate expressly vested with the 1<sup>st</sup> Respondent and the Minerals Rights Board. Consequently, the court, sitting as a Constitutional one, does not have the jurisdiction to hear and determine the Petition.

50. The upshot of the foregoing is that the Petition lacks merit and is hereby dismissed with costs to the Respondents.

51. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 22<sup>ND</sup> DAY OF OCTOBER, 2025.**

**HON. DR.(IUR) FRED NYAGAKA**

**JUDGE**



In the presence of,

Court Assistant: Ms. Fiona Mutiva

Mr. V. Njenga Advocate for the Petitioner

Ms. Sarah Juma, State Counsel for the Respondents

