Mwangi v National Environmental Management Authority (NEMA) & 3 others (Environment and Land Petition E003 of 2025) [2025] KEELC 8017 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8017 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND PETITION E003 OF 2025

CK YANO, J

NOVEMBER 20, 2025

IN THE MATTER OF CONTRAVENTION OF ARTICLES 2(1) & (4), 3(1), 10, 19(1) & (2), 20(1), 21(1), 22(2), 23, 209, 210 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE VIOLATION OF SECTIONS 23 AND 33 OF THE SUSTAINABLE WASTE MANAGEMENT ACT, 2022

AND

IN THE MATTER OF THE VIOLATION OF SECTIONS 6, 7, 8 & 9 OF THE STATUTORY INSTRUMENTS ACT, 2013

BETWEEN

MAUREEN WANJUGU MWANGI ..... PETITIONER

AND

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) ..... 1ST RESPONDENT

CABINET SECRETARY - MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY ..... 2ND RESPONDENT

NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA ..... 3RD RESPONDENT

ATTORNEY GENERAL ..... 4TH RESPONDENT

RULING

1. The Petitioner herein filed a Notice of Motion dated 4th July, 2025 seeking for orders staying the implementation of "The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024" contained in Legal Notice No. 176 in Kenya Gazette Supplement No. 196 pending

the hearing and determination of that application and eventually the main Petition. When the matter came up for hearing of the Application on 15th July, 2024 the court issued interim conservatory orders pending the hearing and determination of the Application.

2. Out of that ruling, 2 Applications for consideration have arisen seeking to have the orders issued by this court set aside/discharged.

A. Application dated 31st July, 2025;

3. The first is a Notice of Motion Application by the 1st Respondent dated 31st July, 2025 asking for orders that:-

   a. Spent

   b. The conservatory orders granted by this Honourable Court on 15th July, 2025 be set aside/ discharged.

   c. Any other orders the court considers necessary to ensure that the ends of justice are served.

4. The application is based on the grounds set out in the Motion as well as a Supporting Affidavit sworn by its Director General, Dr. Mamo B. Mamo EBS on the same date. He deponed that the impugned regulations were promulgated in accordance with the procedural requirements of *the Constitution*, the *Statutory Instruments Act* and the Environmental Management and Coordination Act. That sufficient public participation was conducted that included regional visits after notices were published and reasonable opportunity for the public and stakeholders to comment on the draft regulations, which were made available at all its regional offices.

5. He deponed that upon close of the public participation window, the 2nd Respondent constituted a technical team to collate all the comments, which were captured in a report and incorporated into the draft regulations. He claimed, therefore, that these changes needed not be subjected to further public participation. He averred that prior to the making of the Regulations, the 2nd Respondent prepared a Regulatory Impact Assessment (RIA) about the instrument. That the Regulations were then gazetted on 4th November, 2024 as alleged by the Petitioner and were to become effective on 5th May, 2025. He further deponed that the regulations were tabled before the 3rd Respondent and were approved by its relevant committee.

6. Dr. Mamo deponed that on 15th July, 2025, the court issued conservatory orders staying the operation and implementation of the impugned regulations. The 1st Respondent is aggrieved by the interim orders and seeks to have them set aside for reasons that there are 2 parallel petitions being HCCHR PET E257 of 2025 Law Society of Kenya vs NEMA and HCCHR PET E231 of 2025 Sollo Nzuki vs NEMA & Others, concerning the same subject matter. Dr. Mamo deponed that there is a real danger of conflicting decisions, and that public interest tilts in favour of setting aside the interim orders and having the matter fast tracked for hearing and determination of the Petition on merit. He accused the Petitioner of forum shopping and mischief in waiting over 6 months and filing the petition post the effective date.

7. Dr. Mamo claimed that conservatory orders are meant to preserve the status quo and not to undo a situation or the subject matter. In addition, he claimed that the orders were obtained through material non-disclosure thus caught by the doctrine of illegality. He further averred that this court has no jurisdiction under Article 162(2)(b) of *the Constitution* to entertain the petition and all incidental applications. He urged that public interest outweighs individual commercial interests. He claimed that there is need to set aside the conservatory orders to apprehend the risks and harm that may be caused

and the regulations, that already became effective, be allowed to obtain. He urged that the Petition ought to be consolidated with the Nairobi one. Further, that setting aside of the orders will arrest the unconstitutional and anti-public interest trajectory.

8. In response to this Application, the Petitioner filed a Replying Affidavit dated 8th September, 2025. She termed the application unmerited, misconceived and an abuse of the process of court. She adopted her Replying Affidavit dated 25th August, 2025 filed in response to the Application dated 8th August, 2025 (summarised herein below). She asked that the 1st Respondent's Application be dismissed with costs and the conservatory orders issued on 15th July, 2025 be maintained pending hearing and determination of the Petition.

B. Application dated 8th August, 2025

9. Secondly, there is the Attorney General's Application dated 8th August, 2025 which seeks for orders that:-

    i. Spent.

    ii. That the Petition herein be struck out.

    iii. That in the alternative, the conservatory orders granted by this Honourable Court without affording the 2nd and 4th Respondents a proper hearing on 15th July, 2025 be set aside/ discharged.

    iv. That any other orders the Court considers necessary to ensure that the ends of justice are served.

10. The facts pleaded in support of the application are set out on the face of the Motion and the Supporting Affidavit sworn by the Principal Secretary of the 2nd Respondent, Dr. Engineer Festus K. Ng'eno, MIEK CBS on 7th August, 2025. He deponed that this Petition was filed notwithstanding the fact that the issue herein is directly and substantially in issue in previously filed suits which are still pending before the High Court. These are Nairobi HCPT No. E257 of 2025, Law Society of Kenya vs NEMA & Others and Nairobi HCPT E231 of 2025, Solo Nzuki vs Council of Governors and Senate & 8 Others) all filed in public interest.

11. He deponed HCPT No. E257 of 2025 is challenging the Regulations for alleged lack of meaningful public participation, and the court similarly issued conservatory orders on 15th July, 2025 but the same were vacated on Application by the 1st Respondent. That the matter is fixed for delivery of rulings on pending applications on 10th September, 2025 before Hon. Justice Bahati Mwamuye, MBS. Further, that Nairobi HCPT No. E231 of 2025 is also pending ruling but was transferred to Hon. Justice Bahati Mwamuye since he has conduct of HCPT No. E257 of 2025.

12. He deponed that the High Court and this court are of equal status and thus this suit is sub judice. Further, that if a final decision is reached in the previous suits, it will render this suit res judicata and an academic exercise, with the potential to reach conflicting orders. He called on the need to avoid abuse of court process and stop multiplicity of suits. He added that the interim orders were obtained due to material non-disclosure of material facts. He reiterated that public participation was done, as well as constitutional, statutory and procedural compliance in formation of the regulations, and asked that the interim conservative orders be set aside.

13. In response, the Petitioner filed a Replying Affidavit dated 25th August, 2025. She claimed that she was unaware of the suits in Nairobi when she filed this suit. She averred that this court has jurisdiction under Articles 42, 69, 70 and 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. She denied the claim that the Petition is sub judice, claiming that the parties and the

issues are materially distinct, in particular, on fiscal powers and legality of taxation under Articles 209 and 210.

14. She alleged that her constitutional rights cannot lawfully be curtailed on the basis of proceedings initiated by other parties in a different court. She further alleged that Nairobi Petitions are themselves challenged on jurisdictional grounds, and in view of these uncertainties in the previous suits, it would be unjust to set aside the conservatory orders issued herein. That to punish her for errors of unrelated litigants would be contrary to her right to fair hearing guaranteed at Articles 27, 48 and 50 of *the Constitution*.

15. The Petitioner deponed that under Article 23, conservation orders are at the court's discretion and not dependent on the decision of another court. She termed the allegation of material non-disclosure unfounded and a diversion from the failure to comply with legal requirements. With regard to public participation, she deponed that amendments raised during public participation need to go through a repeat process. She reiterated that her Petition challenges the introduction of a levy under Regulation 6 and the First Schedule thereto. She deponed that the conservatory orders are meant to maintain the status quo as well as preservation to ensure the petition is not rendered nugatory, thus they may be used to suspend legislation or executive action if it will prejudice the substratum of a suit.

16. She urged that the presumption of Constitutionality claimed by the AG is rebuttable. She alleged that her Petition was filed timeously just 2 months after the regulations came into force. She deponed that public interest favours maintaining the interim conservatory orders as there is no time limit for filing Constitutional Petitions. She termed the application frivolous, misconceived and asked that it be dismissed with costs and the interim conservatory orders be maintained pending hearing and determination of the petition.

Submissions:

17. The court directed that the applications be canvassed by way of written submissions. In compliance, the Petitioner filed her Submissions dated 14th September, 2025 while Counsel appearing for the Attorney General (A.G) filed her submissions dated 22nd September, 2025.

Analysis and Determination:

18. I have considered the two Applications herein, the Petitioner's responses and the submissions made by counsel. The issues that arise for determination:-

    i. Whether this court has jurisdiction to entertain the Petition and applications filed thereunder;

    ii. Whether the Petition should be struck out for being sub-judice;

    iii. Whether the interim conservative order issued on 15th July, 2025 ought to be set aside or vacated

a. Whether this court has jurisdiction to entertain the Petition and applications filed thereunder;

19. Jurisdiction is the power that a court has to hear and determine an issue or a suit placed before it. It is a well-established principle that jurisdiction is everything, following the decision of the Court of Appeal

in the now celebrated case of The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited (1989) KLR 1, which held that:-

> "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."

20. In the case of Kakuta Maimai Hamisi vs Peris Pesi Tobiko & 2 Others (2013) eKLR the Court of Appeal emphasized on the centrality of the issue of jurisdiction and stated thus:-

> "So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception."

21. The issue of jurisdiction was raised in the Supporting affidavit to the 1st Respondent's Application dated 31st July, 2025 wherein it was deponed that this court has no jurisdiction under Article 162(2)(b) of *the Constitution* to entertain the petition and all incidental applications. The Petitioner in response asserted that this court has the requisite jurisdiction to entertain the matter. The Petitioner pleaded that the previous suits herein filed in the High Court at Nairobi being HCPT No. E257 of 2025 as well as HCPT No. E231 of 2025 were being challenged on the very grounds of jurisdiction in the High Court.

22. It therefore behoves this Court to determine whether it has the jurisdiction to entertain the main Petition before proceeding to determine the application herein which were filed under the Petition.

23. The Supreme Court in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd and 2 Others (2012) eKLR held that:-

> "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..."

24. That being the case, it is important to note that the jurisdiction of this court flows from Article 162(2)(b) of *the Constitution* of Kenya, 2010 which empowered parliament to establish a court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Pursuant to this provisions, Parliament enacted the *Environment and Land Court Act*, establishing this court. The jurisdiction of the Court under its parent Act is set out at Section 13 thereof which states that:-

13. Jurisdiction of the Court

(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.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

25. The instant Petition challenges the, The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024 enacted by the 1st Respondent, the National Environmental Management Act (NEMA), alongside other governmental organisations. There is no doubt that the issue of waste management and oversight thereof is a matter that falls within environmental planning and protection set out at Section 13(2) above. For that matter, the Petition falls squarely within the realm of enforcement and protection of environmental rights, which are within the purview of this court.

26. To reinforce this, I note that as submitted by the Petitioner, the Nairobi Petitions had been struck out for want of jurisdiction. While dismissing the Petitions in his twin rulings delivered on 10th September, 2025 in both Nzuki vs Ministry of Environment & 3 others; Alcohol Beverages Association of Kenya & 5 others (Interested Parties) (Petition E231 of 2025) (2025) KEHC 13418 (KLR) and Law Society of Kenya vs National Environmental Management Authority (NEMA) & 4 others (Petition E257 of 2025) (2025) KEHC 13482 (KLR), Justice Bahati Mwamuye held that:-

> " 25. Turning to the Petition, it is evident that the core of the dispute concerns environmental governance specifically, actions and omissions by NEMA and other regulatory bodies regarding environmental management. Although framed as a constitutional challenge, the substantive complaints arise from alleged failures in environmental regulation and enforcement, and the reliefs sought pertain to compliance with environmental laws and protection of the right to a clean and healthy environment under Article 42. The involvement of NEMA and the legal framework under which it operates (EMCA) strongly suggests that the grievance lies within the realm of environmental law. The mere invocation of constitutional rights does not oust the jurisdiction of the ELC where the factual matrix remains environmental in nature.
>
> 30. In the present matter, the dispute falls squarely within the constitutional and statutory remit of the Environment and Land Court. The involvement of environmental authorities, the reliefs sought, and the nature of the alleged

violations all point to a matter that Article 162(2)(b) reserves to the ELC. This Court, by virtue of Article 165(5)(b), lacks the jurisdiction to entertain the Petition. Jurisdiction is conferred by law and cannot be assumed, inferred, or expanded through party consent or creative pleadings. As was stated in Lilian S, a court must act only within the limits of jurisdiction conferred upon it. Any orders made without jurisdiction are null and void. ...

31. Accordingly, I find that the 5th Respondent's Preliminary Objection is meritorious. The Court, having found that the Petitions were instituted before a forum devoid of jurisdiction, holds that they are incapable of being sustained."

27. Owing to the laws cited above, it is clear that the objection raised on the issue of jurisdiction therefore fails.

b. Whether the Petition should be struck out for being sub-judice;

28. The 1st Respondent's Application dated 31st July, 2025 and the AG's Application dated 8th August, 2025 both raised the issue that the instant suit is sub-judice the two Petitions filed in the High Court at Nairobi, being HCPT No. E257 of 2025 as well as HCPT No. E231 of 2025. Pursuant to this, the AG asked that the Petition herein be struck out.

29. The Petitioner on the other hand asserts that the issues in the Petition are not sub judice. According to the Petitioner, the parties in the three suits are different and the issues raised therein are fundamentally distinct. As a result, this court is obliged to determine whether the instant Petition offends the sub judice rule and is an abuse of court process, and what should befall it in such an event.

30. The doctrine of sub judice which is captured in Section 6 of the *Civil Procedure Act* which is to the effect that:-

6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

31. The doctrine denotes that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. Ordinarily, in such a situation, the court handling the subsequent case ought to stay the proceedings before it to pave way for hearing and determination of the earlier suit. The Supreme Court of Kenya in Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR), aptly captured the purpose of the sub judice doctrine in the following words:-

"67. The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This

means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives."

32. From the above decision of the Supreme Court, for the doctrine to apply, the previous case and the subsequent case must both/all be pending before courts of competent jurisdiction. However, as earlier indicated the Nairobi Petitions were struck out on grounds that the High Court lacks jurisdiction to hear and determine them, see Nzuki vs Ministry of Environment & 3 others (Supra) and Law Society of Kenya vs National Environmental Management Authority (NEMA) (Supra).

33. Apart from these two Petitions filed in the High Court at Nairobi, the Respondents did not mention that there are any other suits pending before any other court or tribunal with competent jurisdiction. Indeed, as the Petitioner has admitted, as matters stand this is the only suit currently pending in court dealing with the issues raised in the Petition. For this reason, the claim that the Petition herein is sub-judice must equally fail.

c. Whether the interim conservative order issued on 15th July, 2025 ought to be set aside or vacated

34. With regard to Constitutional Petitions, the authority of the court to grant conservatory orders flows from Article 23 (3), which provides as follows:-

> 23. Authority of courts to uphold and enforce the Bill of Rights
>
> (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including ... (c) a conservatory order;

35. Additionally, Rule 23 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (more commonly referred to as Mutunga Rules), provides that: -

> 23. Conservatory or interim orders
>
> (1) Despite any provision to the contrary, a Judge before whom a petition under rule 4 is presented shall hear and determine an application for conservatory or interim orders.
>
> (2) Service of the application in sub rule (1) may be dispensed with, with leave of the Court.
>
> (3) The orders issued in sub-rule (1) shall be personally served on the respondent or the advocate on record or with leave of the Court, by substituted service within such time as may be limited by the Court.

36. Rule 25 of the said Rules however authorises a court to discharge, vary or set aside any order issued by the Court either of its own motion or on application by a party dissatisfied with the orders. However, the setting aside is dependent on the Court's discretion upon considering the circumstances of each case and the injury which would be occasioned to a party seeking such order. This is affirmed by

Bloggers Association of Kenya (Bake) vs Attorney General & 5 others (2018) eKLR, where the Court held:

> " Even though Rule 25 of the Mutunga Rules provides that courts may vary, set aside or discharge orders issued under Rule 23 of the said Rules, courts have held that this power must be exercised with great caution and is ordinarily only exercised to correct an error or oversight or to effect a review of the proposed order so that the orders may be able to deal more appropriately with the issues as litigated by the parties. See Benjoh Amalgamated case (supra)."

37. The Applications by the 1st and 2nd Respondent seek to have the orders set aside or discharged. It is contended by the Respondents that the orders were made without affording them an opportunity to be heard, and also issued on the mistaken belief that public participation had not been done. On 15th July, 2025 when the interim orders were issued, Counsel appearing for the AG acknowledged service of the Petition but sought 15 days to file a response. She explained in court on that date that she did not have instructions yet. However, the court went ahead and issued the orders. It appears that they have now received instructions and filed a response, as well as this application claiming that public participation was in fact done.

38. From the ruling of this court delivered on 15th July, 2025, it is indeed true that the orders were issued based on the claim that no public participation was undertaken. There is no doubt that the issue of public participation is not only central to the maintenance of the interim orders, it is also one of the main grounds upon which the Petitioner's Application dated 4th July, 2025 is premised. I note however, that the orders were issued temporarily, pending hearing and determination of the application, so this ground cannot stand. Since the Application seeking the conservatory orders is yet to be heard, to deal with that issue at this stage will most likely result in determining the said Application on merit without allowing the parties to be heard.

39. Nevertheless, the Respondents have accused the Petitioner of forum shopping and of concealment of material facts to obtain the interim orders by failing to inform the court of the two Petitions filed in Nairobi on the same EPR Regulations. The Petitioner denied the allegation of concealing the existence of the Nairobi Petitions from this court. She also claimed that she was unaware of them when she filed this suit.

40. Non-disclosure of facts was discussed in Bahadurali Ebrahim Shamji vs Al Noor Jamal & 2 Others (1998) KECA 255 (KLR), where the Court of Appeal making reference to the case of The King v. The General Commissioners for the Purposes of Income Tax Acts for the District of Kensington: Ex parte Princess Edmond De Polignac [1917] All E. R. 486, stated as follows: -

> " Warrington L. J. at page 509, said:
>
> > "It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in the absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by him. That is perfectly plain and requires no authority to justify it."

Scrutton L. J. at pages 513 - 514 said:

> "Now that rule giving a day to the Commissioners to show cause was obtained upon an ex parte application; and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

41. Non-disclosure of material facts is therefore abhorred for reason that it undermines justice, and where a party is found to have concealed material facts, they are stripped of any advantage gained from their omissions.

42. While I would like to believe the Petitioner's allegation that she was unaware of the Nairobi petitions, I have noted certain glaring factors that lead me to question her intentions in filing this Petition in the Eldoret ELC.

43. First and foremost, having read the decision of Justice Bahati Mwamuye in the Nairobi petitions, I note that both Petitions were apparently filed on 7th May, 2025. The notice of preliminary objection challenging the jurisdiction of the court to hear the two suits was filed on 25th May, 2025. It does not escape my mind that the Petition herein was filed in July, 2025 after the Respondents in the Nairobi petition had raised the objection in that court.

44. It is interesting to note that at paragraph 3 at section A of the Petitioner's Affidavit in Reply to the AG's Application, she deponed that from the AG's annexures, jurisdictional objections had already been raised in the Nairobi petitions. However, a perusal of the said annexures only reveals that the Petitions were pending rulings on Applications, without specifying the nature of the rulings. It is unclear how the Petitioner came by knowledge of the jurisdictional challenges if indeed she was unaware of the two petitions filed in Nairobi.

45. Secondly, with regards to the matter of place of filing of a constitutional petition, the Mutunga Rules Provide at Rule 8 that:-

    8. Place of filing

        (1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.

        (2) Despite sub rule(1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party.

46. Regard must be construed here, that the reference to the High Court in this instance refers to the Environment & Land Court as a court of equal status. That being said, as per the above provision, the Rules require that every case is to be instituted at the court within whose jurisdiction the alleged violation took place.

47. The EPR regulations were passed by the 3rd Respondent at its seat in Nairobi, therefore this is the place where the alleged violation arose. Moreover, all the parties sued as Respondents herein have their headquarters in Nairobi where the previous petitions, though struck out, were filed.

48. In addition, I noticed that in the Petition dated 4th July, 2025 the Petitioner claimed that she is a Kenyan citizen with a physical home address in Eldoret. She never claimed to be a resident of Eldoret. In contrast, her supporting affidavits to both the Petition and her aforementioned Application indicate that her address is in Nairobi. From that, there is a presumption that she is living or operating from Nairobi. To compound on this, I note that the Advocate representing the Petitioner in this suit is also based in Nairobi.

49. Being that the alleged violation took place in Nairobi, and all the Parties including the Petitioner, clearly reside within Nairobi, it is unclear why she opted to approach the court at Eldoret. I am constrained to believe the Respondents in their contention that the Petition is guilty of forum shopping and non-disclosure of facts.

50. The direct consequence of her omissions therefore is that she must be divested of the advantages gained so far in this suit. Consequently, the interim orders granted to her on 15th July, 2025 must be set aside/vacated. Despite this, her right to be heard on the alleged violations cannot be taken away. She will have a her day in court to prosecute her case. However, it will not be done at the ELC court in Eldoret.

51. Rule 8(2) of the Mutunga Rules allows the court to order that a Petition be transferred to another court of competent jurisdiction for hearing and determination. The court can do so either on application by a party or of its own Motion. It is for this reason that this court will direct that the matter be transferred for hearing and determination in the ELC at Nairobi where it ought to have been filed in the first place.

52. This transfer of the suit is ordered bearing in mind the overriding objectives set out at Rule 3(2) of the Mutunga Rules. It must also be appreciated that Rule 3(4) & (5) thereof further place a duty on this court to facilitate the just, expeditious, proportionate and affordable resolution of all cases. Furthermore, pursuant to Rule 3(6) thereof, a party to proceedings commenced under these rules, or an advocate for such party is under a duty to assist the Court to further the overriding objective of these rules.

53. In filing this suit in the ELC at Eldoret instead of Nairobi where the cause of action arose and where all the parties are domiciled, the Petitioner in my view failed in her duty to further the overriding objectives of the said rules. Rule 3(8) of the Mutunga Rules provides that:-

> "Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

54. It is for these reasons that this court has invoked its inherent power to transfer the suit. This move is aimed at ensuring that the Petition is heard and determined not only justly, but efficiently, expeditiously and in a manner that is proportionate and affordable to all the parties.

Orders:

55. Accordingly, I allow the 1st and 2nd Respondents' applications dated 31st July, 2025 and 8th August, 2025 respectively, and issue the following orders in respect thereto:-

    a. The conservatory orders granted by this Honourable Court on 15th July, 2025 are hereby set aside/discharged.

b. This Petition shall be and is hereby transferred for hearing and determination at the Environment and Land Court at Nairobi, and the same placed before the Presiding Judge, Environment and Planning Division of the ELC thereat for directions on the hearing of the Application dated 4th July, 2025 as well as the main Petition.

c. Given the nature of this Petition, each party shall bear their own costs of the applications herein.

56. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 20TH DAY OF NOVEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered virtually in the presence of;

Mr. Omondi for the Petitioner.

Mr. Emacar for 3rd Respondent.

No appearance for 1st Respondent.

Mr. Kwame holding brief for Ms. Cheruiyot for 2nd & 4th Respondents.

Court Assistant - Laban.