



REPUBLIC OF KENYA



**Magut & 29 others v Roptech Building & Construction Company  
Limited & another (Environment and Land Case E049 of 2025)  
[2025] KEELC 8185 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8185 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE E049 OF 2025  
EM WASHE, J  
NOVEMBER 26, 2025**

**BETWEEN**

**WILSON MAGUT & 29 OTHERS ..... PLAINTIFF**

**AND**

**ROPTech BUILDING & CONSTRUCTION COMPANY LIMITED .... 1<sup>ST</sup>  
DEFENDANT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 2<sup>ND</sup>  
DEFENDANT**

**RULING**

1. The Plaintiff did file the present suit through a Plaint dated 10.06.2025 Against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.
2. Based on the Plaint dated 10.06.2025 the Plaintiff similarly filed a Notice of Motion dated 10.06.2025 and an Amended Notice of Motion dated 11.07.2025.
3. The 1<sup>st</sup> Respondent upon service of the Plaint dated 10.06.2025 did file a Preliminary Objection dated 19.06.2025.
4. In an effort to expedient the hearing of both the Notice of Motion dated 11.07.2025 and the Preliminary Objection dated 19.06.2025, the Court was of the view that this Ruling would deal with both of them.
5. However, the Preliminary Objection dated 19.06.2025 filed by the 1<sup>st</sup> Respondent challenges the jurisdiction of the Court to hear and determine the dispute filed by the Plaintiff.
6. It therefore goes without saying that the Preliminary Objection dated 19.06.2025 should be heard and determined first so that in the event the Court has no jurisdiction, then it should down its tools.



7. In the event the Court finds that the Preliminary Objection dated 19.06.2025 is not merited, then the Court will proceed and determine the merit and/or demerits of the Notice of Motion dated 11.07.2025.
8. Having said so, the Court will now proceed to determine the Preliminary Objection dated 19.06.2025 first.
9. The Preliminary Objection dated 19.06.2025 is premised on the following grounds; -
  - i. The 1<sup>st</sup> Defendant challenged Plaintiffs Locus Standing to institute the present suit against the 1<sup>st</sup> Defendant herein.
  - ii. The 1<sup>st</sup> Defendant did plead that the present suit offends the provisions of Section 125 and 129 of the Environment Management & Co-ordination Act, Cap No. 8 of 1999 (hereinafter referred to as “EMCA”).
  - iii. The Plaintiffs had failed to exhaust the internal dispute resolution mechanisms under EMCA and therefore this Court was devoid of jurisdiction to hear and determine the suit before it.
  - iv. The issues in the Plaint filed by the Plaintiffs should be filed before the Environmental Tribunal established Section 125 of the EMCA.
  - v. In essence, the 1<sup>st</sup> Defendant was of the view that the Plaint filed herein was pre-mature and an abuse of the Court process.
10. The Court directed the parties to canvass the Preliminary Objection by way of written submissions.
11. The issues for determination in the Preliminary Objection are principally two in nature and can be outlined as follows; -
  - Issue No.1- Is The Does The Plaint Dated 10.06.2025 Offend The Provisions Of Section 125 Of The Emca?
  - Issue No. 2- Is The Preliminary Objection Dated 19.06.2025 Merited?
  - Issue No. 3- Is The Notice Of Motion Dated 11.07.2025 Merited?
  - Issue No.4- Who Bears The Costs Of The Preliminary Objection Dated 19.06.2025 & Notice Of Motion Dated 11.07.2025?
12. The Court having duly identified the above-mentioned issues for determination against the Preliminary Objection dated 19.06.2025, the same will now be discussed as provided below.

**Issue No.1- Is The Does The Plaint Dated 10.06.2025 Offend The Provisions Of Section 125 Of The Emca?**

13. The first and main issue for determination in the preliminary Objection dated 19.06.2025 is whether the Plaint dated 10.06.2025 offends the provisions of Section 125 and 129 of EMCA.
14. The 1<sup>st</sup> Defendant’s contention is that the Plaintiffs are seeking to challenge the manner and process in which the 1<sup>st</sup> Defendant obtained the Environmental Impact Assessment License Number NEMA/EIA/PSL/30432 without their participation and/or any proper participation.
15. Based on this grievance, the 1<sup>st</sup> Defendant pleaded that the Plaintiffs should have invoked the internal dispute resolution mechanisms under Section 125 and 129 of EMCA which is the Tribunal of original jurisdiction on issues of issuance of the Environmental Impact Assessment Licenses.



16. In essence, the 1<sup>st</sup> Defendant submitted that the Complaint dated 19.06.2025 was filed pre-mature and in the wrong forum.
17. Consequently, this Court is devoid of jurisdiction and both the Complaint dated 19.06.2025 as well as the Notice of Motion dated 11.07.2025 should be dismissed.
18. Section 125 of the EMCA provides for the establishment of the National Environment Tribunal and its membership whereas Section 129 on the other hand provides for appeals to the Tribunal.
19. Section 126 of the Act provides for the proceedings before the National Environment Tribunal and states as follows: -
  - (1) The Tribunal shall not be bound by the rules of evidence as set out in *Evidence Act* (Cap. 80).
  - (2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.
20. From the above section, it is clear that any party may institute proceedings before the National Environment Tribunal over any matter relating to the EMCA, whereupon the Tribunal will hear the matter and issue an award or make appropriate orders thereto
21. Section 126 to 130 of the EMCA provides an elaborate mechanism to be followed by any aggrieved and/or affected party in the resolution of disputes over matters arising and relating to the Act.
22. From a critical look at the Amended Complaint dated 11.06.2025, the Plaintiffs Cause of Action is primarily centered on the issue of the Environmental Impact Assessment (EIA) License issued to the 1<sup>st</sup> Respondent's to carry out a quarry project on the property known as LR.NO.Turbo East/leseru Block7/330.
23. The Plaintiffs claim is that the 1<sup>st</sup> Respondent did not abide and/or follow the prescribed regulations and/or procedures in obtaining the Environmental Impact Assessment License from the 2<sup>nd</sup> Respondent before commencing on the quarry works.
24. Part VI of EMCA provides for procedure and/or manner in which an Environmental Impact Assessment should be undertaken.
25. Section 58 to 67 of EMCA similarly addresses various issues pertaining to the issuance of the Environmental Impact Assessment License, suspension and even revocation thereof.
26. All these processes are to be evaluated and/or verified by the Environmental Tribunal under Section 125 of EMCA in the event of any dispute thereof.
27. The Doctrine of Exhaustion is defined in Black's Law Dictionary 10th Edition as follows –

“Exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary”



28. The Court of Appeal on the issue of exhaustion theory in Geoffrey Muthinja Kabiru & 2 Others - versus- Samuel Munga Henry & 1756 Others (2015) eKLR stated as follows; -

“the exhaustion doctrine is a sound one and 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 mechanism in place for resolution outside courts.”

29. It is clear therefore in the mind of this Court that the issues raised in the Complaint dated 10.06.2025 by the Plaintiffs fall within the provisions of EMCA and the forum for their determination is the Environmental Tribunal Established under Section 125 of EMCA.

**Issue No. 2- Is The Preliminary Objection Dated 19.06.2025 Merited?**

30. Based on the finding in Issue No. 1 hereinabove, this Court is of the finding that the Preliminary Objection dated 19.06.2025 is merited.

31. Consequently, this Court does not have the original jurisdiction to entertain the Complaint dated 10.06.2025 as such jurisdiction is vested in the Environmental Tribunal established under Section 125 of EMCA.

**Issue No. 3- Is The Notice Of Motion Dated 11.07.2025 Merited?**

32. The Court having made a finding under Issue no. 2 hereinabove that it does not have the original jurisdiction to hear and determine the matters pleaded by the Plaintiffs herein in their Complaint dated 10.06.2025, the only option is to down its tool.

**Issue No.4- Who Bears The Costs Of The Preliminary Objection Dated 19.06.2025 & Notice Of Motion Dated 11.07.2025?**

33. Costs follow the event.

34. As such, the 1<sup>st</sup> Defendant is awarded costs of the Preliminary Objection dated 19.06.2025 payable by the Plaintiffs herein.

35. Similarly, the 1<sup>st</sup> Defendant is awarded costs of the Notice of Motion dated 11.07.2025 as well as the Complaint dated 10.06.2025 payable by the Plaintiffs herein.

**Conclusion**

36. In conclusion, the Court hereby makes the following Orders in determination of the Preliminary Objection dated 19.06.2025 as well as the Notice of Motion dated 11.07.2025; -

- A. The Notice Of Preliminary Objection Dated 19.06.2025 Is Merited And Allowed.
- B. The Complaint Dated 10.06.2025 And The Notice Of Motion Dated 11.07.2025 Be And Are Hereby Struck Out.
- C. That 1<sup>st</sup> Defendant Is Awarded Costs Of The Preliminary Objection, The Notice Of Motion Application And The Main Suit All Payable By The Plaintiffs Herein.

**DATED, SIGNED AND DELIVERED IN ELDORET THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**EMMANUEL.M. WASHE**



## **JUDGE**

In The Presence Of:

Court Assistant: Mr. Brian

Counsel For The Plaintiff: Mr. Kigen (N/A)

Counsel For The Defendants: Mr.rop H/B FOR MR.OYARO For 1<sup>st</sup> Defendant

N/a For The 2<sup>nd</sup> Defendant.

