



**Mathiu v National Land Commission & another (Environment and Land
Petition E002 of 2025) [2025] KEELC 8128 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8128 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND PETITION E002 OF 2025
LC KOMINGOI, J
NOVEMBER 20, 2025
IN THE MATTER OF ENFORCEMENT OF RIGHTS UNDER
ARTICLE 10(2)(B), 20, 21, 22, 23, 25, 27, 28, 31, 35, 40,
43, 47, 50, 64, 67 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE
RULES, 2013
AND
IN THE MATTER OF CONTRAVENTION OF THE RIGHT TO
ACCESS OF INFORMATION, PROMPT PAYMENT AND
RIGHT TO FAIR ADMINISTRATIVE ACTION UNDER THE
FAIR ADMINISTRATIVE ACTIONS ACT
AND
IN THE MATTER OF PART VIII SECTIONS 107 TO 133 OF
THE LAND ACT

BETWEEN

JULIUS KIANGI MATHIU PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

KENYA RAILWAYS CORPORATION 2ND RESPONDENT



RULING

1. This Ruling is in respect of the Notice of Motion dated 24th February 2025 and the Preliminary Objection dated 21st March 2025.
2. The Petitioner Applicant in the Notice of Motion seeks orders that:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. Pending the hearing and determination of this Petition, the Hon. Court be pleased to issue a conservatory order against the 1st and 2nd Respondents, their servants, employees, assignees, agents, and or any person acting on their behalf or authority from recalling, seeking refund, obtaining or in any manner whatsoever interfering with the sum of Kshs. 21,970,180 paid to the Petitioner's account held at Middle East Bank Kenya Limited.
 - v. Any other orders that this Hon. Court will deem fit and just to issue.
 - vi. Costs of this application be provided for.
3. The grounds are on the face of the application as set out in paragraphs a to x. It is supported by the sworn Affidavit of Julius Kiangi Mathu, the Petitioner herein.
4. The Petitioner's case as that he is the registered owner of parcel Numbers Kajiado Kitengela 4494 and 4495 having acquired title on 10th June 1993.
5. It is his case that the construction of the Standard Gauge Railway line from Mombasa to Nairobi, the project cut across the Petitioner's land Kajiado Kitengela 4494
6. The Petitioner was therefore entitled to compensation and the 1st Respondent commenced the process through Gazette Notice No. 6373 and 6374 dated 21st June 2021 for acquisition of additional parcels of land in Kajiado, Narok and Nakuru Counties. In the Gazette Notice No. 6995 published on 17th June 2022, the 1st Respondent issued a deletion, corrigendum and addendum giving notice for supplementary acquisition of land in Kajiado, Narok and Nakuru Counties for approximate area of 1.4131.hectares. In the Gazette Notice No. 6996 also published on 17th June 2022, the Chairman of the 1st Respondent issued a notice of inquiry for hearing of claims to compensation from interested parties on the land.
7. The Petitioner wrote several letters for compensation between the year 2021 and October 2024 and in a Notice of Award File No. NLC VAL. 1451 dated 27th November 2023 by the 1st Respondent it was indicated that the Petitioner would be compensated to the tune of Kshs. 21,970,180 for 0.643 Ha portion of land. The Petitioner was then paid the said amount on 6th November 2024.
8. On 19th February 2025, the 1st Respondent through the National Bank of Kenya Limited, issued a Swift message to the Petitioner's Bank recalling the said settlement. He claims that this recall was issued without notice or reason for the decision to recall the compensation and without following the due process in breach of Section 4 of the *akn ke act 2015 4 Fair Administrative Action Act*. The Petitioner also claimed that the 1st and 2nd Respondents did not make full and prompt payment for the compensation as provided under Section 111 and 115 of the *akn ke act 2012 6 Land Act*.



9. The 2nd Respondents by the Replying Affidavit sworn by Philip J. Mainga, the Managing Director admitted that the Petitioner's land had been compulsorily acquired as stated. However, in Gazette Notice No. 6995 of 17th June 2022, the affected area was indicated as 1.4131 Ha, but this acreage was corrected by the Gazette Notice No. 2076 of 23rd February 2024 to 0.1413 Ha. He deponed that documents relating to this correction were public documents which were accessible to the Petitioner. He contested the Petition on grounds that the Petitioner had not exhausted dispute resolution mechanisms espoused under Section 112 of the *akn ke act 2012 6 Land Act* where disputes relating to compensation would be referred to the National Land Commission and if this was not resolved, then the same would be escalated to the Land Acquisition Tribunal under Section 133C of the *akn ke act 2012 6 Land Act*. It is further deponed that this Court has jurisdiction as an Appellate Court arising out of the Tribunal's decision under Section 133D of the *akn ke act 2012 6 Land Act*. The 2nd Respondent also averred that it was diligent in undertaking its duties and in responding to the Petitioner's letters addressed to it and once the compensation was remitted to the 1st Respondent, it had no further role in the compensation process or the disbursement of funds to the Project Affected Persons (PAPs). That the decision to recall the compensation was the 1st respondent's. It is further deponed that the prayers sought against the 2nd Respondent, were misdirected.
10. They also averred that any documents in relation to the compensation process, assessment or any other determination were equally held by the 1st respondent adding that the petitioner did not follow the statutory procedures in requesting for information from the 2nd Respondent as outlined under Section 8, 9 and 14 of the *akn ke act 2016 31 Access to Information Act, 2016*.
11. The 2nd Respondent urged that the Petition to be dismissed with costs as it was premature.
12. The 2nd Respondent, subsequently filed a Preliminary Objection seeking that the application be dismissed for being an abuse to the court process on grounds that:
 - i. This Hon Court lacks jurisdiction to entertain the application and the petition at this stage as the Petitioner Applicant has not exhausted the statutory dispute resolution mechanisms Section 112 and 133C of the *akn ke act 2012 6 Land Act*.
 - ii. That the application and Petition were contrary to the doctrine of exhaustion under Section 9 (2) and (3) of the *akn ke act 2015 4 Fair Administrative Action Act*.
 - iii. The Petitioner Applicant had failed to follow the procedure under Section 14 and 22 of the *akn ke act 2016 31 Access to Information Act* which stipulated dispute resolution mechanisms regarding a decision by a public entity or private entity with regard to access to information which ought to be first submitted to the Commission on Administrative Justice (CAJ).
13. The 1st Respondent did not file any response.
14. These Applications were canvassed by way of written submissions.
Submissions of the Petitioner Applicant
15. The following three issues were outlined for determination as summarised.
16. On whether this Court has the requisite jurisdiction to hear and determine the Application and Petition filed, it was submitted that this Court was clothed with jurisdiction by virtue of Article 162(2) and (3) of *akn ke act 2010 constitution the Constitution* and Section 13 of the *akn ke act 2011 19 Environment and Land Court Act* on matters relating to compulsory acquisition of land and had the powers to issue orders such as damages, compensation and declarations. As such, this Court had jurisdiction to determine the petition and the Preliminary Objection was misconceived.



17. On the argument that the dispute should be determined by the Land Acquisition Tribunal under Section 133A and 133C of the *akn ke act 2012 6 Land Act*, it was submitted that the jurisdiction of the Tribunal was to hear appeals emanating from the decision of the 1st Respondent relating to compulsory acquisition within 30 days of the decision being made; Application to award compensation greater than the sum which the commission awarded, quash and vary the Commission's decision and hear determine complaints arising under Article 23(2) and 47(3) of *akn ke act 2010 constitution the Constitution* using the framework set out under the *akn ke act 2015 4 Fair Administrative Action Act*. Counsel argued that under Article 20 and 23(2) of *akn ke act 2010 constitution the Constitution* there was distinction in how Courts and Tribunals would apply the Bill of Rights and the Tribunal's scope was limited, adding that the prayers sought in the Petition was outside the scope of the Tribunal.
 18. It was also argued that it was within the Court's jurisdiction to enforce the right to access to information under Article 35 of *akn ke act 2010 constitution the Constitution* as held by Angote J. in *Peter Karung'o Njoroge v Hijaz Development Limited & 4 others* [2018] KEELC 3475 (KLR).
 19. On the doctrine of exhaustion, it was submitted that it was improperly invoked and it was not an absolute rule. Reference was made to the Supreme Court in *Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties)* [2023] KESC 113 (KLR) where it was held that this Court had unlimited jurisdiction to determine the question of whether a right to fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened and that National Environment Tribunal (NET) did not have jurisdiction to deal with Constitutional violations. The same case held that availability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. Reference was also made to *Jovet (Kenya) Limited v Bavaria NV* [2025] KESC 27 (KLR).
 20. On whether the Petitioner had met the legal threshold for the granting of Conservatory Orders, it was submitted that as per the correspondences, the 1st Respondent failed or neglected to respond to the Petitioner and the 2nd Respondent's argument that the Statutes were above *akn ke act 2010 constitution the Constitution* should not stand. It was therefore imperative for the Petitioner to be informed of the reason for the reversal of the compensation as provided under Section 116 of the *akn ke act 2012 6 Land Act*. As such, the Court ought to intervene and issue conservatory orders since the Petitioner had a prima facie case, denial of the conservatory relief would not enhance the Constitutional value, it was in the public interest and that denial would render the Petition nugatory as held in *Law Society of Kenya v Officer of the Attorney General & another; Judicial Service Commission (Interested Party)* [2020] KEELRC 569 (KLR). Reference was also made to Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, where it was held that conservatory orders should be granted on the inherent merit if the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
 21. As such, the objection should be dismissed and the Application be allowed with costs.
 22. The 1st Respondent did not file any submissions.
- Submissions of the 2nd Respondent
23. On whether the Preliminary Objection was merited, it was submitted that the Court lacked jurisdiction to determine the application and Petition since the Petitioner had not exhausted the mechanisms espoused under Section 133A, C of the *akn ke act 2012 6 Land Act* and that only Appeals from the Tribunal as per Section 133D of the *akn ke act 2012 6 Land Act* fell within this Court's jurisdiction. It was also argued that Article 23(2) and 169 of *akn ke act 2010 constitution the Constitution* conferred jurisdiction to Subordinate Courts and Tribunals to determine issues of



violation of Bill of Rights as per enacted legislation. Reference was made to Giciri Thuo, Wanjiku Mungai, John Kariuki Kimani, Peter Ng'ang'a Njonjo, Annah Wanjiku Ngugi and Mercy Wambui Njuru –vs- National Land Commission & 4 others; Kenya Human Rights Commission (Interested Party) and Dorcas Wairimi Kamau & 154 others (Intended Interested Parties) which held that where Parliament has, through statute, provided a clear procedure for seeking redress, that procedure must be followed. Reference was also made to Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR) and Speaker of the National Assembly vs Njenga Karume [1992] KECA 42 (KLR) on following the dispute resolution procedures provided in Acts of Parliament. It was also submitted that original jurisdiction was not a reason to oust jurisdiction of another competent organ as held in Kibos Distillers Limited & 4 others v Benson Ambuti Adegwa & 3 others [2020] eKLR and Albert Chaurembo Mimba & 7 others vs Marice Munyao & 148 others [2019] eKLR. Therefore, this Application Petition was improper.

24. On whether the application petition offended the doctrine of avoidance and exhaustion, it was submitted that the matter at hand ought to be determined by the Land Acquisition Tribunal and the Supreme Court in Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 Others [2014] eKLR, held that the principle of avoidance means that a court will not determine a constitutional issue when a matter may properly be decided on another basis. Reference was also made to Section 9(2) of the Fair Administrative Actions Act and R v National Environmental Management Authority, [2011] eKLR. Therefore, the Petitioner ought to exhaust dispute resolution mechanisms provided before moving to this Court.
25. On the issue of access to information, it was submitted that the *akn ke act 2016 31 Access to Information Act* provided for procedures of obtaining information from public offices and the Petitioner had not applied for documents pertaining to the acquisition of the land as outlined under Section 8 of the Act. Citing Njonjo Mue & Another vs Chairperson of Independent Electoral and Boundaries Commission & 3 others [2017] eKLR where the Supreme Court held that a duty had been imposed to citizens to follow prescribed procedure whenever they required access to information. Counsel also argued that the Petitioner had not articulated why he required the documents and how they related to the 1st Respondent's decision to recall the disbursed funds, but that notwithstanding, the set procedure had not been followed and the suit should be struck out.
26. On whether orders sought against the 2nd Respondent were merited, it was argued that a conservatory order was a remedy in rem as opposed to a remedy in persona as held by Odunga J. (as he then was) in Judicial Service Commission v Speaker of the National Assembly & another.
27. While making reference to Makau J.s principles for granting conservatory orders espoused in Law Society of Kenya vs Office of the Attorney General & Another; Judicial Service Commission (Interested Party) [2020] eKLR, it was submitted that the Petitioner did not have a prima facie case against the 2nd Respondent and there was no evidence how the 2nd Respondent had violated the Petitioner's Constitutional Rights. It was also submitted that there was no evidence that if the conservatory order is not granted the public would be prejudiced. As such, the objection should be sustained and the application petition dismissed with costs to the 2nd Respondent.

Analysis and determination

28. I have considered the Notice of Motion, Affidavit in support, the response thereto, the Preliminary Objection, the rival submissions and the authorities. I find that the issues for determination are:
 - i. Whether the Preliminary Objection dated 21st March 2025 is merited;



- ii. Whether the Notice of Motion dated 24th February 2025 is merited and if so whether the Petitioner Applicant should be granted the reliefs sought ;
 - iii. Who should bear costs?
29. The Petitioner Applicant's case is that on 6th November 2024 he received compensation of Kshs. 21,279,180 from the 1st Respondent through National Bank of Kenya Limited, for his parcel of land which had been compulsorily acquired to pave way for the construction of the Standard Gauge Railway. This payment was made to his account held by Middle East Bank Kenya Limited. However 19th February 2025, the 1st Respondent's bank National Bank of Kenya, recalled the money. He claims that he did not receive any communication from the Respondents on the reasons for the recall or how the decision to recall the compensation was arrived at. He also claims that he was not granted an opportunity to be heard before reaching the said decision. He therefore sought that Respondents be restrained from seeking the recall of the funds and that he be provided with all documents used to acquire his property; *Kajiado Kitengela 4494*.
 30. The 2nd Respondent contested the Application and the Petition on grounds that the mandate to acquire land bestowed upon the 1st Respondent and once the 2nd Respondent disbursed the monies, it had no further role or dealings with the matter. It also argued that any information relating to the acquisition of the property was in the public domain which the Petitioner could access. Finally it contested that the Petitioner had not exhausted the stipulated dispute resolution mechanisms before moving this Court and that the Petition Application ought to be dismissed with costs.
 31. I will address the Preliminary Objection first.
 32. It has well settled that a Preliminary Objection should be raised on a pure question of law, which can be determined prima facie on the face of the pleadings without looking at evidence to ascertain facts. This was held in the locus classicus case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors [1969] EA 696* and bolstered by the Supreme Court in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)*.
 33. The 2nd Respondent relied on Section 112 and 113c of the *akn ke act 2012 6 Land Act*, Section 9(2) and (3) of the Fair Administrative Act, and Section 14 and 22 of the *akn ke act 2016 31 Access to Information Act*.
 34. It is clear that, once an inquiry to the compensation and hearing of persons who ought to be compensated as outlined under Section 112 of the *akn ke act 2012 6 Land Act* has been undertaken, an award of compensation in writing is therefore issued as per Section 113 of the *akn ke act 2012 6 Land Act* and the compensation paid as per Section 115 of the Act. The Petitioner has confirmed that payment was undertaken, albeit late. Section 116 goes on to provide that if the compensation was received in error, then the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission. The Petitioner however claims that he was not issued with any written notice of the recall of the amount paid.
 35. Section 128 of the *akn ke act 2012 6 Land Act* provides that: "Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination. However, Section 133C(6) provides that: Despite the provisions of sections 127, 128, 148 (5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal".
 36. The questions therefore are;



- i. Whether this Petition is properly before this Court.
 - ii. Has the Petitioner Applicant exhausted the dispute resolution mechanisms?
37. The Supreme Court in *Adega & 2 others v Kibos Distillers Limited & 5 others* [2020] KESC 36 (KLR) held thus;

“44. ... The Court as was stated by the Court of Appeal contradicted itself by determining that some of the issues that were before it could be properly ventilated before the other legislatively mandated tribunals under the Environmental Management & Coordination Act, but chose to rather strangely arrogate upon itself the mandate to hear and determine those same issues.

45. On its part, the appellate Court made a categorical finding that the Court did not have the jurisdiction to hear and determine the Petition, not pursuant to constitutional conferment of jurisdiction, but that the Court did not have the mandate to determine issues that could have been adjudicated in other appropriate forums.

49. As was also noted by the Petitioners, the issue of jurisdiction and discretion are distinct. Be as it may, the two are nonetheless inextricably intertwined; it would seem incongruous to discuss one without referring to or including the other. Such is the extent that these two quite seemingly innocuous terms are referred to quite often, and rather mistakenly, interchangeably. But for purposes of this present issue, jurisdiction, as referred to by the Petitioners, would denote whether the adjudicatory body has the power to entertain the proceedings and, discretion, to be whether such, upon determination that it has such powers, chose to exercise such powers or not.

50. It would therefore seem that the Superior Court, determined, quite incorrectly, that it had the power or jurisdiction to hear and determine the Petition, which although raised issues that were clearly within its purview, were also intertwined with other issues which were rather obviously not within its jurisdiction, and which could have been effectively determined by another legislatively established tribunal, in this instance two bodies, the National Environmental Tribunal and the National Environmental Complaints Committee.

51. The trial Court, as did the appellate Court, correctly determined that the Petition was multifaceted, and presented issues in an omnibus manner. The point of divergence between the two Superior Courts was where the trial Court then went further to determine that these multifaceted issues could be determined by the Court “in the interests of justice.” It would seem that the ELC had failed to appreciate that there were properly constituted institutions that were mandated to hear and determine the issues, but instead chose to arrogate to itself the jurisdiction to hear and determine all the issues raised in the Petition. The Petitioners stated that the Superior Court correctly relied on the doctrine of judicial abstention, and exercised its discretion to hear and determine the Petition.



52. Judicial abstention, as with judicial restraint, is a doctrine not founded in constitutional or statutory provisions, but one that has been established through common law practice. It provides that a Court, though it may be vested with the requisite and sweeping jurisdiction to hear and determine certain issues as may be presented before it for adjudication, should nonetheless exercise restraint or refrain itself from making such determination, if there would be other appropriate legislatively mandated institutions and mechanism.

54. Applying these principles to the instant Petition, the more favourable relief that the Superior Court should have issued was to reserve the constitutional issues on the rights to a clean and healthy environment, pending the determination of the issue with regards to the issuance of EIA licenses by the 4th Respondent to the 1st, 2nd and 3rd Respondents. The Court should have reserved the issues pending the outcome of the decision of the Tribunal, thereby affording any aggrieved party the opportunity to appeal to the Court. It would then have determined the reserved issues, alongside any of the appealed matter, if at all, thus ensuring the parties right to a fair hearing under Article 50 of *akn ke act 2010 constitution the Constitution* was protected.”

38. This Court, guided by the foregoing decision of the Apex Court reserves the Constitutional questions raised in the Petition such as the right to fair hearing pending the hearing and determination of the issue of compensation at the right forum which is the Land Acquisition Tribunal.

39. I find merit in the Preliminary Objection and the same is upheld.

40. Consequently the Notice of Motion and the Petition are hereby struck out.

41. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF NOVEMBER 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Kithinji for the Petitioner.

N A for the 1st Respondent.

Ms. Mwangi for Mr. Bake for the 2nd Respondent.

Court Assistant – Peter.

