

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT IN NAIROBI

ENVIRONMENT AND PLANNING DIVISION

ELC E&P PET NO. E035 OF 2025

FRIENDS OF KARURA COMMUNITY

FOREST ASSOCIATION PETITIONER

= AND =

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

C.S MINISTRY OF ENVIRONMENT,

FORESTRY & CLIMATE CHANGE 2ND RESPONDENT

KENYA FOREST SERVICE 3RD RESPONDENT

CHIEF CONSERVATOR OF FORESTS 4TH

RESPONDENT

= AND =

LAW SOCIETY OF KENYA 1ST INTERESTED

PARTY

GREEN BELT MOVEMENT 2ND INTERESTED PARTY

NATURAL JUSTICE KENYA 3RD INTERESTED

PARTY

KATIBA INSITUTE 4TH INTERESTED PARTY

RULING

1. The 3rd and 4th Respondents filed a Preliminary Objection dated 16th September, 2025 seeking to have this Petition struck out in limine on the following GROUNDS: -
 - a) The Petition is incompetent and bad in law for failing to exhaust the available remedies under Clause 18 of the Forest Management Agreement and Section f the Forest Conservation and Management Act (Cap. 385).
 - b) The Petitioner, being a Society that is registered under the Societies Act (Cap 108), is not a body corporate and therefore lacks the legal capacity to institute both the Notice of Motion Application and Petition dated 27th August 2025 or seek any relief in its own name 2025 or seek any relief in its own name.
 - c) The Court does not have jurisdiction to hear and determine both the Application and petition dated 27th August 2025 for lack of a proper and competent Applicant/ Petitioner.
2. Directions were taken for prosecuting the Preliminary Objection by way of written submissions. The owners of the Preliminary Objection filed their submissions dated 29th September, 2025, while the Petitioner's submissions are dated 31st October 2025.
3. The 3rd and 4th Respondents submit that Court only has Appellate Jurisdiction in disputes arising from the application of the Forest Management and Conservation Act. It is their submission, that the

dispute herein, the lack of consultation of the Petitioner prior to the upgrading of established roads to tarmac bitumen, can effectively be addressed by the bodies provided for under Section 70 of the Forest Conservation and Management Act.

4. Section 70 provides thus;

(1) “Any dispute that may arise in respect of forest conservation, management, utilization or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the County Governments Act (Cap. 265).

(2) Any matter that may remain un-resolved in the manner prescribed above, shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act (Cap. 8D).”

5. In the alternative, they argue that the Petitioner would have lodged an Appeal to the Board of the Service under Clause 18 of the Forest Management Agreement.

6. On the second point, the 3rd and 4th Respondents submit that this Honourable court should be persuaded by the ruling of this Honourable court, differently constituted, in Kipiwiso Self Help Group -vs- the Hon. Attorney General & 6 others [Eldoret E&L Petition 9 of 2013], where the court interpreted Article 22 of the Constitution together with Article 260 of the Constitution regarding persons capable of instituting constitutional petitions.
7. They concluded their submissions by stating that the Petitioner lacks the capacity to invoke the jurisdiction of this court to grant orders.
8. On its part, the Petitioner contends that the Preliminary Objection does not meet the principles as set out in the case of **Mukisa Biscuits Ltd versus West End Distributors Ltd**. This submission is made on the basis that the nature of registration of the Petitioner requires that parties adduce evidence and rebuttals be made as to the facts. Second, that the reference to the agreement between the parties is also a question of facts and evidence, they urge the Court not to descend into it and thus save rather precious judicial time.

Analysis and Determination:

9. The first question is whether the Petitioner can bring a case on its own name or through the officials. The Petitioner defended itself by citing the provisions of article 22(d) of the Constitution which states that, “**an association acting in the interest of one or more of its members**”

10. The reading of this article does not exclude the statutory provision that relates to suits began in the name of an Association. Section 2 of Cap 108 defines a society as:

“society” includes any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society, but does not, except in paragraphs (i) and (ii) of [section 11\(2\)\(f\)](#) of this Act, include -

- (a) a company or foreign company registered under the Companies Act (Cap. 486);**
- (b) any corporation incorporated by or under any other written law;**
- (c) a registered trade union within the meaning of the Labour Relations Act (Cap. 233), including a branch of a trade union registered under that Act, a probationary trade union within the meaning of that Act and a trade union or a branch of a trade union whose application for registration has been made and not determined;**

- (d) a company, firm, association or partnership consisting of not more than twenty persons, formed and maintained with a view to carrying on business for profit;**
- (e) a co-operative society registered as such under any written law;**
- (f) a school registered under the Basic Education Act (Cap. 211), Advisory Council, Board of Governors, District Education Board, School Committee or similar organization established under and in accordance with the provisions of any written law relating to education;**
- (g) a building society as defined by the Building Societies Act ([Cap. 489](#));**
- (h) a bank licensed under the Banking Act ([Cap. 488](#));**
- (i) any international organization of which Kenya is a member, or any branch, section or organ of any such organization;**

11. On the face of the petition, the Petitioner is described as a community Forest Association. It is not discernible which type of Society the Petitioner is by reading the pleadings. Therefore, going by the definition of what a society is, it would require evidence to ascertain who the Petitioner is and whether it cannot sustain a suit in its own name.

12. The second point raised is that the petition offends the doctrine of exhaustion as the Petitioner ought to have adopted the dispute mechanism provided under section 70 of the Forest Act and clause 18 of the Forest Management Agreement.
13. Section 70 does not prescribe the statutory body under which a dispute arising thereunder should be referred to. It makes mention that the same be dealt with in accordance with the County Government Act. The 3rd and 4th Respondents have not identified through the Preliminary Objection and the submissions which body the Petitioner ought to have approached. As stated in the Mukisa Biscuits case, a Preliminary Objection should not require explanatory notes/evidence.
14. Clause 18 provides for appeals against any decision to be lodged with the Board of the Service. The Petition before this court raises allegations of constitutional violations. This court doubts that the Board of Service would have jurisdiction to hear disputes on constitutional violations as powers to protect the bill of rights is delegated to the High Court and the Courts of equal status, in this case, the Environment and Land Court.
15. As submitted rightly by the Petitioner, the Supreme Court of Kenya revised the position taken by themselves and the Court of Appeal in the decision of *Kibos Distillers Ltd & 4 Others vs Benson Ambuthi Atega & 3 Others* (2020) EKL.R. The Supreme Court held in the case of *Abidha*

Nicholas versus the Attorney General & 7 Others [2024] eKLR in paragraphs 104- 107 and in particular 104 that;

“Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution as read with Section 4(1) of the Environment and Land Act. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of the Constitution. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms.”

16. In light of the foregoing analysis, I find that the preliminary objection raised by the 3rd and 4th Respondents is unmerited. It is dismissed with costs in the cause.

Dated, Signed and Delivered at Nairobi this 11th December, 2025

A. OMOLLO

JUDGE