



THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**PETITION NO. E008(7) OF 2025**

**JIMMY PARNYUMBE LUKA..... PETITIONER/APPLICANT**

**VERSUS**

**SAMUEL KUNTAI TUNAI.....1<sup>ST</sup>**

**RESPONDENT/OBJECTOR**

**PINECREST HOLDINGS LIMITE..... 2<sup>ND</sup>**

**RESPONDENT**

**NAROK COUNTY GOVERNMENT.....3<sup>RD</sup>**

**RESPONDENT**

**THE LAND REGISTRAR, NAROK COUNTY..... 4<sup>TH</sup>**

**RESPONDENT**

**THE ETHICS & ANTI CORRUPTION COMM....5<sup>TH</sup>**

**RESPONDENT**

**THE DCI..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL..... 7<sup>TH</sup> RESPONDENT**

**AND**

**MARA TRIANGLE NATIONAL**

**RESERVE.....1<sup>ST</sup> INTERESTED PARTY**

**THE NATIONAL LAND**

**COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The Petitioner herein **Jimmy Parnyumbé Luka** filed this Petition dated **11<sup>th</sup> April 2025**, and sought for various prayers; Among the prayers sought is a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have contravened **Articles 10 and 62(4) and 232** of the Constitution in the **National Values and Principles of Governance** set out therein, and have not been observed; that the decision to **illegally, alienate** the 1<sup>st</sup> Interested Party's parcel of land, being a public land is in contravention of the Constitution; further a declaration that the transfer of the public land from the 1<sup>st</sup> Interested Party to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is **illegal, null and void** due to among other grounds violating the provisions of the Constitution.
2. Simultaneously, the Petitioner filed a **Notice of Motion Application** under certificate of urgency even dated and sought for various injunctive orders pending the hearing and determination of the Petition. Further, he sought for an order that the court do direct the **District Land Registrar** and **Surveyor** to visit **Mara Triangle Game Reserve** and **furnish** the court with comprehensive reports detailing the acreage on the ground, copies of title deeds/ lease certificates, searches and green cards of the Reserve including the registered subdivision of land known as **LR 212713/1**.
3. The Petitioner also sought for an order directed to **5<sup>th</sup> and 6<sup>th</sup> Respondents** to forthwith carry out their constitutional and

statutory mandate and in particular investigate the circumstances under which approximately **1000 acres** of land within **Mara Triangle** was **illegally alienated** and **registered** in the name of **Pinecrest holdings Limited**, and further investigate the **culpability** of the 1<sup>st</sup> Respondent as the former Governor of Narok County Government in the **illegal alienation** of the said public land to private entities, among other prayers.

4. The Petition and Application are opposed by the Respondents herein. The **2<sup>nd</sup> Respondent** filed its **Replying Affidavit** which was sworn by **Shadrack Kasy Seiyo**, the Director of the 2<sup>nd</sup> Respondent, who denied all the allegations made by the Petitioner herein, and also averred that the facts stated by the Petitioner are **false** and **misleading**. It was his averments that the 2<sup>nd</sup> Respondent leased the suit property from the 3<sup>rd</sup> Respondent; the County Government of Narok, and the said lease was properly registered by the 4<sup>th</sup> Respondent.
  
5. He denied that the 2<sup>nd</sup> Respondent acquired the said lease **unlawfully** or **illegally**, and the said land being a public property is vested and held by the 3<sup>rd</sup> Respondent which also manages the Game Reserve. Therefore, the land in question cannot be disposed of or otherwise used except in accordance with the terms of the Act of Parliament specifying the nature and terms of its disposal or use.

6. He further averred that he has been advised by his advocates on record that the 3<sup>rd</sup> Respondent has developed a Management Plan for said area, which regulates the management of the Land, its use and disposal. Further, that the lease in issue was duly registered under the provisions of **Section 43(2)**, of the **Land Act**, and therefore, the 2<sup>nd</sup> Respondent acquired land rights as the proprietor of the lease, and the said land rights are protected under **Sections 24 and 25** of the **Land Registration Act**, and **Article 40** of the Constitution.
  
7. The deponent also swore a **Replying Affidavit** in opposition to the Notice of Motion Application, which was sworn on **9<sup>th</sup> May 2025**. He annexed the lease agreement between **PINECREST Holdings** and **NAROK County Government** dated **25<sup>th</sup> November 2019**.
  
8. The 1<sup>st</sup> Respondent opposed the Petition and Application through a Notice of Preliminary Objection dated **19<sup>th</sup> May 2025**, wherein he challenged the jurisdiction of this court on the following grounds;
  - i) **The court lacks jurisdiction to entertain the Petition and Notice of Motion Application dated 11<sup>th</sup> April 2025 as no proper constitutional issues arise for determination;**
  - ii) **By operations of Article 79 and 80 of the constitution as read with Section 4(2) of the**

**Leadership and Integrity Act No 19 of 2012, the court is divested of jurisdiction to venture into investigation of integrity issues alleged against the 1<sup>st</sup> Respondent. The sole mandate of such investigations is vested on the Ethics and ant-corruption commission;**

- iii) Pursuant to Articles 243, 244 and 247 of the Constitution as read with Sections 28 and 35 of the National Police Service Act, this court lacks jurisdiction to rove into investigation of allegations of purported criminal offenses supposedly perpetrated by the 1<sup>st</sup> to 4<sup>th</sup> Respondents herein as such mandate is solely vested on the National Police Service and in particular Director of Criminal investigations);**
- iv) That this court does not have supervisory jurisdiction over agencies of criminal justice system;**
- v) That the Petition and the Notice of Motion Application dated 11<sup>th</sup> April 2025, are otherwise an abuse of the Court mandate as circumscribed in article 162(2)(b), of the Constitution as read with section 13 of the ELC Act.**

9. The 1<sup>st</sup> Respondent urged the court to dismiss the Petition and the Notice of Motion Application with costs *in limine*.

10. On **20<sup>th</sup> May 2025**, the court directed that since the **Preliminary Objection** challenges the jurisdiction of this court, the same should be heard first, and be canvassed through written submissions.
11. In compliance thereto, the parties through their respective advocates and Petitioner in person filed and exchanged their written submissions. **Kemboy Law Advocates** for the 1<sup>st</sup> Respondent filed their submissions dated **24<sup>th</sup> June 2025**, and urged the court to allow the Preliminary Objection as filed.
12. The 1<sup>st</sup> Respondent relied on the case of **Mukisa Biscuits Manufacturing co Ltd vs West end distributors (1969)EA 696**, to define a Preliminary Objection. He also relied on the case of **Dismas Wambola vs Cabinet Secretary Treasury & 5 Others(2017) eKlr**, where the court held that a Preliminary Objection may only be raised on a pure point of law.
13. It was the 1<sup>st</sup> Respondent's submissions that its objection stems from the pleadings filed by the Petitioner herein and the said Preliminary Objection is well grounded.
14. On the jurisdiction, the 1<sup>st</sup> Respondent relied on the Supreme Court decision in the case of **Mary Wambui Munene vs Peter Gichuki Kingara & 6 others(2014) eKlr**, where the

court stated that jurisdiction is a pure point of law, and should be resolved on priority basis. He also relied on the classicus case of **Owners of Motor Vessel Lillian S vs Caltex oil (Kenya) Ltd(1989)klr**, where the court held:

**“.... 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 pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

15. It was his submissions that the jurisdiction of this court is set out in **Article 162(2)(b)** of the Constitution and **Section 13** of **Environment and Land Court Act**, and in exercise of this jurisdiction, the court is guided by the principles set out in **Section 18 of Environment and Land Court Act** and the principles of judicial authority under **Article 159** of the **Constitution**.
16. Further, it was submitted that the jurisdiction of this court is derived from the law, as was held by the **Supreme Court** in the case of **Samuel Kamau Macharia & Another vs Kenya Commercial Bank and 2 others, Application no. 2 of 2011**.

17. He also submitted that a party seeking constitutional reliefs on the alleged breach of constitutional rights and freedoms is required to comply with **Articles 20, 21, 22, 23, 258, 259** and **260** of the **Constitution** as read with **Rules 4, 5, 8, 9, 10, 11 & 14** of the **Mutunga Rules**, by disclosing the **facts relied** upon **rights violated, nature of injury caused**, capacity the Petition is filed and the reliefs sought.
18. It was his submissions that the jurisdiction of this court is invoked only when a Petition fully complies with the above Articles of the **Constitution** and the **Mutunga Rules**, and **Section 13** of **ELC Act** only to the extent the Petitioner seek 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.
19. The court was asked to reject the instant Petition which fails to meet the criteria for a Constitutional Petition. Reliance was sought in the cases of **Anarita Karimi Njeru vs R (1979)klr; Mumo Matemu vs Trusted Society of Human Rights Alliance (2013)eklr, Communication Commission of Kenya & 5 others vs Royal Media Services Ltd & Others (2014)eklr**, where the court held; -
- “Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated**

***or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”***

20. He submitted that the instant Petition fails to meet the threshold for a Constitution Petition, as the jurisdiction of Environment and Land Court to hear and address constitutional disputes does not extend to hearing and determining ***criminal matters*** and others matters concerning violation of Leadership and integrity Act.
21. Further, that the allegations made by the Petitioner are a raft of criminal complaints, which are allegedly corruption in nature, and he even alleged that he has complained to ***Ethics and Ant-Corruption Commission (EACC)***, and ***DCI***, who are mandated to investigate such complaints but not this court.

22. The Petitioner is asking the Court to look into the conduct of 1<sup>st</sup> Respondent while he was in office as a **Governor of Narok County** and ascertain whether there was abuse of office, with respect to lease granted to 2<sup>nd</sup> Respondent by the 3<sup>rd</sup> Respondent, and that falls outside the mandate of this court.
23. The 1<sup>st</sup> Respondent relied on various cases being **William Kabogo Gitau vs Ferdinand Ndungu Waititu(2016)eklr**, which discussed the relevance of **Leadership** and **Integrity Act** in enforcing **Chapter Six** as follows; -
- “51. The Leadership and Integrity Act specifically empowers the Ethics and Anti-Corruption Commission the role to oversee the implementation and enforcement thereof. It is thus incumbent that any person, who feels that the Act has been contravened, ought to move the relevant bodies charged with the mandate under the Act.”**
24. Reliance was also sought in the case of **Awino vs Macharia; Ethics and Ant-corruption commission (Interested party) Petition No. E330 of 2023[2024] Judgment**, and submitted that the legal framework creates institutions dedicated to upholding the interests of public officers and also defines procedure for addressing individuals who fails to

meet the standards. It was the 1<sup>st</sup> Respondent submissions that this court does not possess the requisite jurisdiction to investigate integrity issues alleged against the 1<sup>st</sup> Respondent.

25. Further reliance was sought in the case of ***Michael Wichira Nderitu & others vs Mary Wambui Munene aka Mary Wambui and 4 others (2013)eklr; Pevan East Africa Ltd vs Chairman ,Betting Control & Licencing Board & 7 Others (2018) KECA 332(KLR);,Jemima vs Ngetich & 6 others ; Ethics and Ant-corruption commission ( Interested party) E205 of 2024)(2025) KEHC 3444(KLR).***
26. Further, it was submitted that the Petition did not exhaust all the available avenues for dealing with the allegations he has made against the 1<sup>st</sup> Respondent because he filed this Petition two weeks after writing to 5<sup>th</sup> and 6<sup>th</sup> Respondents. Reliance was sought in the case of ***William Odhiambo Ramogi & 3 others vs Attorney General & 4 Others; Muslims for Human Rights & 2 others (Interested parties) (2020) KEHC 10266(klr); Vincent Mwanthi Kickoff vs Edward Sigei & others (2021)eklr.***
27. The 1<sup>st</sup> Respondent urged the court to down its tools and dismiss the instant petition by allowing the ***Preliminary Objection***, since even if the 5<sup>th</sup> Respondent was to find the Petitioner's allegations valid, recourse would not be to this

court, but criminal justice system, which has mandate to hear and determine such issues. Reliance was sought in the case of ***R vs Chengo & 2 others (Petition 5 of 2015) (2017)KESC 15(KLR)***.

28. Ultimately, the 1<sup>st</sup> Respondent submitted that the court does not have jurisdiction to hear and determine the issues raised in this Petition. He urged the court to uphold the ***Preliminary Objection*** and dismiss this matter *in limine*.

29. The 2<sup>nd</sup> Respondent filed its submissions through ***Wainaina Ireri Advocates LLP*** dated ***29<sup>th</sup> July 2025***, and submitted in support of the Preliminary Objection. The 2<sup>nd</sup> Respondent raised two issues being;

- i) Whether the court has jurisdiction to entertain the Petition and application herein;***
- ii) Whether the Petition offends the doctrines of exhaustion as it relates to purported criminal offenses.***

30. On the first issue, the 2<sup>nd</sup> Respondent relied on the case of ***Donald vs National Assembly of Kenya (constitutional Petition E004 of 2023(2024) KEHC(175(KLR); Hakizimana Abdoul Abdulkarim vs Arrow Motors (EA) Ltd & Another (2017) KEHC 9674(KLR)***; which isolated matters which amount to constitutional issues within the jurisdiction of the court, wherein the court held;

***“A constitutional question is an issue whose resolutions requires the interpretation of a constitution rather than that of a statute.”***

31. It was its submissions that the matter herein requires an interpretation of the ***Environment and Land Act***, and not the Constitution as conceded by the Petitioner in his submissions where he seeks reliefs under ***Section 13(7) of ELC Act***. It further submitted that the Petitioner has merely cited the alleged violations of the Constitution and has disguised them as issues requiring constitutional interpretation by the court.
32. It was its further submissions that the Petition does not challenge the constitutionality of the provisions within an Act of Parliament and neither does it challenge the interpretation of the legislation nor the application of the legislation and as such falls beyond the ambit of constitutional petition.
33. Reliance was sought in the case of ***Anarita Karimi Njeru vs Republic (1979)eklr***, cited with approval in the case of ***Kiragu vs CHuka University (Const. petition E001 of 2023(2024)***, where the court held; -
- “We would however, again stress that if a person in seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that (if***

***only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”***

34. Further, it was submitted that the Petitioner has failed to plead with precision as to how the leasing of the suit property to the 2<sup>nd</sup> Respondent has posed irreversible environmental degradation contrary to the provisions of **Articles 10, 42, 70** and **232** of the **Constitution**, and as such does not give the 2<sup>nd</sup> Respondent proper Notice on the nature of the claims against it.
35. It was also submitted that the Petitioner is challenging the validity of the 2<sup>nd</sup> Respondent’s Lease over **LR 212713/1**, and the mode of acquisition of the said lease under the guise of constitutional Petition. That the Petitioner has claimed that the 2<sup>nd</sup> Respondent **illegally acquired** the said property, and such challenge does not raise any constitutional issues for determination
36. Reliance was sought in the case of **CNM VS WMG alias HNC**, which was cited with approval in the case of **KKB vs SC & 5 others( Constitutional Petition E014 of 2020(2022) KEHC 289(KLR))**, wherein the Petitioner filed a constitutional Petition instead of defamation suit. Further

Reliance was sought in the case of **Recreation Commission vs Sagittarius Wrestling Club and another** where the court held;-

***“Courts will not normally consider a constitutional question unless the existence of a remedy depends upon it, if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been, in addition, a breach of the Declaration of Rights.”***

37. The 2<sup>nd</sup> Respondent argued that the remedy for the issues raised by the Petitioner can adequately be found under **Section 13(7)** of the **Environment and Land Court Act**, and under the doctrine of **constitutional avoidance**, as the issues raised in the Petition do not qualify as constitutional issues for determination by this court.
38. On whether the Petition offends the **doctrine of exhaustion**, it was submitted that the Petition has raised a raft of criminal allegations against the 1<sup>st</sup> to 4<sup>th</sup> Respondents and he also did forward to the 5<sup>th</sup> Respondent a complaint for investigation on the alleged **fraudulent acts** of the Respondents. The matter herein falls within the purview of a

Constitutional body/ies and the court has no jurisdiction to determine the said issues. Reliance was sought in the case of ***William Kabogo vs Ferdinand Ndungu WAititu( supra)***

39. Further Reliance was sought in the case of ***Speaker of National Assembly vs James Njenga Karume (1992) ekr***, which cited with approval in the case of ***Robert Khamala Situma & 8 others vs Acting clerk of Nairobi City County Assembly (2022) ekr***, where the court held; -

***“... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament.”***

40. Further Reliance was sought in the case of ***Martin Kabubii Mwangi vs County Government of Laikipia(2019)ekr***, where the court held; -

***“The exhaustion principle enunciated in precedents such as the case of Secretary, County Public Service & Another v Hulbhai Gedi Abdille (supra) does not permit an election as to the parts of a statute that one should rely on. Put another way, it removes discretion on the part of a litigant from choosing whether to follow the provision***

**or not. In this case the suit was filed before the exhaustion of the remedy under the law, namely the provisions of Section 77 of the County Governments Act. The claimant ought to have appealed against his removal to the Public Service Commission before moving the court. The suit did not fall in the category of suits that can be entertained by the court. As he did not appeal as provided for in law, the suit is a non-starter and is accordingly struck out with no order as to costs.”**

41. Therefore, the 2<sup>nd</sup> Respondent submitted that this court is precluded from **exercising jurisdiction** over the instant Petition by virtue of the **doctrine of ripeness**, which prohibits a party from approaching a court prematurely as was held in the case of **Wanjiru Gikonyo & 2others vs National Assembly of Kenya & others**
42. The 2<sup>nd</sup> Respondent argued that the court **lacks jurisdiction** to hear and determine the present Petition since the matter complained of is still pending investigation before the 5<sup>th</sup> Respondent, and as such is **not ripe** for determination by this court. It urged the court to find that the Petitioner failed to exhaust **administrative actions** available to him before

resorting to seek redress in a constitutional Petition, and thus this Petition should be dismissed and the Preliminary Objection upheld.

43. The Petitioner opposed the Preliminary Objection via his written submissions dated **12<sup>th</sup> June 2025**, and the supplementary submissions dated **2<sup>nd</sup> July 2025**.

44. In his initial submissions, the Petitioner set out two issues for determination being;

- i) Whether the court has the requisite jurisdiction to hear and determine the petition the application;***
- ii) Whether the 1<sup>st</sup> Respondent preliminary objection is merited.***

45. On the 1<sup>st</sup> issue, the Petitioner relied on the case of ***Owners of Motor Vessel Lillian(supra)*** and ***Article 162(2)(b)*** of the ***Constitution***, and ***Section 13*** of ***Environment and Land Court Act***. He submitted that the Petition is premised on the infringement of constitutional rights by the 1<sup>st</sup>, 2<sup>nd</sup> and 3 Respondents herein in relation to land reference ***No. LR 212713/1 Mara Triangle Game Reserve*** the suit property, and which rights are infringed to the detriment of the people of ***Narok County***, and the wide public in the Republic of Kenya.

46. It was the Petitioner's further submissions that the court is clothed with jurisdiction over the subject matter, which relates to land, which is a public land, and is a Public interest case/litigation. He relied on **Articles 10(2)a, b, 35, 40, 42 47, 62(4), 63, 73** and **75** of the Constitution which provisions echo the **standard of integrity, transparency** and **accountability** that person's holding state and public offices ought to demonstrate, as those positions are held in trust for the people of Kenya.
47. Further, he submitted that he is only exercising his right to public litigation in the instant Petition which is brought on behalf of the people of **Narok County**, and for the wider public good, and as concerned citizen who sees the importance of protecting the **biodiversity** and preventing wasting of public land, which is held in trust for the people of Narok County.
48. The Petitioner relied on the case of **Trusted Society of Human Rights Alliance vs Attorney General & 2 others; Matemu (Interested Party); with Kenya Human Rights Commission & another (Amicus Curie) (Petition 229 of 2012) [2012] KEHC 2480 (KLR) (Constitutional and Human Rights**
49. He argued that the prayers and orders sought are well within the jurisdiction of this court, and he urged the court to dismiss the instant preliminary objection.

50. On whether the 1<sup>st</sup> Respondent Preliminary Objection is merited, the Petitioner relied on the case of **Rebecca Chumo vs Christine Cheptoo Chumo (2021)eklr**, where the court adopted the holding in **Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969)EA 696**
51. He also relied on the Supreme Court’s decision in the case of **Hassan Ali Joho & another vs Suleiman Said Shabal & 2 Others SCK Petition No.10 of 2013 [2014]eklr** where the court held; -

***“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary Point may dispose of the suit.”***

52. The Petitioner argued that a **Preliminary Objection** should only settle a matter in a crisp point of law in undisputed facts which would lead to one conclusion that the facts are incompatible with the point of law. It was his further argument that the instant **Preliminary Objection** is unmerited, **unwarranted**, gross abuse and violation of the court process and should be dismissed with costs.
53. In his further submissions, the Petitioner argued that he has complied with the procedural and substantive requirements

for constitutional litigation as the Petition clearly identifies the parties involved, the factual background upon which the claim is premised, the **specified nature** and **extent** of the injury or harm suffered, and set out the constitutional and legal issues for determination. He relied on the case of ***Murugi vs Attorney General & 2 others ELC Pet No. E007 of 2023(2024)KEELC 4343(KLR)(22rd May 2024) Judgment.***

54. The Petitioner also relied on the case of ***Francis Atanasio Kithure vs County Government of Meru; Ethics & Anti Corruption Commission(Interested Party) [2021] eklr*** where the court held;

***“The overriding objective, also referred to as the double o (OO) or oxygen principle comes out and urges courts to deal with a view to meeting out the ends of justice. This is in agreement with the provisions of Article 159(2) d of the Constitution of Kenya, 2010 above cited. This further illustrated in the authority of Abdirahman Abdi also known as Abdirahman Muhumed Abdi vs Safi Petroleum Products Ltd. & 6 others, Civil Application No. Nai 173 of 2010 where a notice of appeal was served on the Respondent out of time and without leave of court. Upon being asked to strike it out,***

**(Omolo, Bosire and Nyamu JJ. A) observed thus;**

**“The overriding objective in civil litigation is a policy which the court invokes to obiate hardship, expenses, delay and to focus on substantive justice...”**

55. In conclusion, the Petitioner submitted that the Preliminary Objection by the 1<sup>st</sup> Respondent is **frivolous, baseless**, which has been brought with malicious intention to delay and frustrate the move by the Petitioner to represent the interests of the residents of Narok County as well as the people accessing justice and recovering land belonging to the people, which land was illegally taken away by public officers, who used their positions for personal gains, instead of upholding the integrity and protecting fundamental rights.
56. The above are the arguments in support and against the instant Preliminary Objection, which objection is challenging the jurisdiction of this court. This being a challenge on the jurisdiction of the court, then the said objection is on a point of law, and fits the description of what amount to a Preliminary Objection as described in the **Mukisa Biscuits case (Supra)**, which case was been cited by all the parties herein.

57. Having considered the instant **Preliminary Objection**, the rival written submissions and the relevant provisions of law, the court finds the issues for determination are:-

**i) Whether the Court has jurisdiction to entertain the instant petition;**

**ii) Whether the instant Notice of Preliminary Objection is merited.**

**I) Whether the court has jurisdiction to hear and determines the instant Petition**

58. It is the argument of the 1<sup>st</sup> Respondent that the court has no jurisdiction to hear and determines the Petition herein since the issues raised by the Petitioner are touching on the actions of the 1<sup>st</sup> Respondent while he was in office as the **Governor of Narok County**, wherein he alleged **illegally acquired 1000 acres** from **Mara Triangle Game Reserve**, and later leased it to the 2<sup>nd</sup> Respondent. He argued that the issues raised by the Petitioner are covered under the **Leadership and Integrity Act No 19 of 2012**. further any investigations on the wrong doing touching on criminal activities can be ably investigated by the **National Police** as provided by the **National Police Act**, and any integrity issues are investigated by the **Ethics and Ant-corruption Commission of Kenya** and not by this court.

59. On his part, the Petitioner argued that this is a **public interest litigation**, aimed at safeguarding the biodiversity of **Mara Triangle Game Reserve**, and public land, which should not be delayed and/ or frustrated through this Preliminary Objection.
60. The court has considered the **Petition** and the **Notice of motion Application** as filed by the Petitioner herein. Basically the main complaint is that the 1<sup>st</sup> Respondent in his capacity as the former Governor of **Narok County Government** abused his office, caused the loss of the original title of the Game Reserve, and upon construction, he **illegally** caused **1000 acres** within **Mara Triangle Game Reserve** to be alienated and registered in his name, and later this **1000 acres** were **illegally** leased to the 2<sup>nd</sup> Respondent.
61. These alleged actions of the 1<sup>st</sup> Respondent if true go against the principles of good governance, and contravenes the expected ethics and integrity of a public officers. The **Constitution of Kenya 2010** is very clear in **Article 75(1)** of what is expected of a State Officer, and any contravention of the expected behaviour, then there are established **independent Constitutional bodies** to deal with such conducts.
62. In that regard, the Constitution provides for establishment of **Ethics and Ant-corruption Commission of Kenya**, which

investigates cases of integrity issues and corruption, National Police is also mandated to investigate cases touching on criminal aspects and activities, of any individuals be they state officers or private citizens.

63. Chapter 6 of the Constitution provides values expected of a public officer, and any contravention of the provisions of Chapter 6 of the Constitution is enforced through the **Leadership and Integrity Act**. The enforcement of **Leadership and Integrity Act**, is done through the criminal justice system, but not through the civil process, or through the Environment and Land Court Act.
64. The jurisdiction of the Environment and Land Court is well set out in **Article 162(2)b** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**. Dealing with cases of contraventions of Leadership and Integrity Act is not one of them.
65. It is evident that the Petitioner herein on **25<sup>th</sup> March 2025**, wrote a letter to the **Director of Criminal Investigations** requesting for investigations on illegal alienation of **1000 acres in Mara Triangle Game Reserve** registered as **LR No. 212713/1**. This is the parcel of land that was allegedly leased to the 2<sup>nd</sup> Respondent. However, the lease in issue is between the 3<sup>rd</sup> Respondent and 2<sup>nd</sup> Respondent, and not between the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent.

66. Given that the alleged actions or conduct that culminated in the suit land being leased to the 2<sup>nd</sup> Respondent is supposed to be criminal in nature, and given that the said action has not been investigated and held to be illegal or fraudulent, then this court finds that it has no jurisdiction to direct the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents carry out their constitutional mandate by directing them to investigate circumstances under which approximately **1000 acres** were alienated from the **Mara Triangle Game Reserve**, and later **illegally** leased to the 2<sup>nd</sup> Respondent as sought by the Petitioners in his **prayers v, vi, vii, and viii** of his Notice of Motion dated **11<sup>th</sup> April 2025**.
67. Taking into regard the jurisdiction of the court as set out in **Article 162(2)(b)** of the Constitution and **Section 13** of the Environment and Land Court Act, this court finds and holds that it has **no jurisdiction** to hear and determines this Petition as framed.
68. Further, this court finds that the Petitioner herein did write to **Director of Criminal Investigation(DCI)** requesting for investigations into the circumstances leading to the alleged **illegal alienation** of the suit property. The said letter is dated **25<sup>th</sup> March 2025** and this Petition is dated **11<sup>th</sup> April 2025**. It seems the Petitioner did not wait for response from the **Director of Criminal Investigation(DCI)** or the other public bodies that he had requested for information from. This Petition was brought to court prematurely and is against

the doctrine of exhaustion. See the case of **Geofrey Muthinja & another vs Samuel Muguna Henry & 1756 others [2015] ekr,**

69. Further, as submitted by the 2<sup>nd</sup> Respondent, the Petitioner complaint is about the **illegal alienation** and leasing of the suit property to 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent alleged it entered into a legal or proper lease with 3<sup>RD</sup> Respondent. This is therefore a normal civil dispute which ought to have been filed as normal a ELC Matter, since the constitutional question is not clear.
70. With the above analysis, this court finds and holds that it has no jurisdiction to hear and determines the Petition herein whose foundation is the alleged contravention of the provisions of Chapter 6 of the Constitution, and enforcement of **Leadership and Integrity Act.**

**II) Whether the 1<sup>st</sup> Respondent's Preliminary Objection dated 19<sup>th</sup> May 2025, is merited?**

71. This court having found that the Petition herein raises no constitutional question, contravened the doctrine of exhaustion, and thus the court has no jurisdiction, then this court finds and holds that the **Preliminary Objection** herein **is merited**, and the court proceeds to down its tools, since a court without jurisdiction cannot go any other step in a matter. See the case of **Owners of the Motor Vessel**

**'Lilian "S" Vs\_Caltex Oil (Kenya) Ltd (1989) KLR 1**  
where the court held;

**"..... 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 pending other evidence. A court of law downs its tools the moment it holds the opinion that it is without jurisdiction"**

72. For the above reasons, this court proceeds to allow the **Notice of Preliminary Objection** dated **19<sup>th</sup> May 2025**, with costs, and proceeds to **strike out** and **dismiss** the instant Petition and Notice of Motion Application even dated entirely *in limine*

***It is so ordered.***

***Dated, signed and delivered virtually at Narok this 11<sup>th</sup> day of December 2025***

**L. Gacheru**  
**Judge**

***Delivered online in the presence of***

***Elijah Meyoki - Court Assistant***

***Jummy Luka Parnymbe Petitioner in person***

***Mr. Otieno holding brief for Kere for 1***

***<sup>st</sup> Respondent***

***Mr. Kabaiku for 2<sup>nd</sup> Respondent***

***Ms Lyona holding brief Maina for 3<sup>rd</sup> Respondent***

**Ms. Mathenge for 4<sup>th</sup> Respondent**

**N/A for 5<sup>th</sup> Respondent**

**Ms. Mathenge for 6<sup>th</sup> and 7<sup>th</sup> Respondents**

**N/A for 1<sup>st</sup> Interested party**

**N/A for 2<sup>nd</sup> interested party.**

**L. Gacheru**

**Judge**