



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

PETITION NO. E016 OF 2025

MUSA AHMED.1ST

PETITIONER

MILLICENT MUTHONI MUNENE2ND

PETITIONER

=VERSUS=

THE COUNTY GOVERNMENT OF KILIFI.....

RESPONDENT

RULING

1. The respondent has filed a Notice of Preliminary Objection (PO), dated 25th November, 2025, to the effect that the court herein lacks jurisdiction to determine the Petition herein, as the dispute should be referred to the Kilifi County Physical and Land Use Planning Liaison Committee. The

Respondent has referred to Section 72 (3) of the Physical and Land Use Planning Act.

2. The court directed that the PO be canvassed through written submissions. Counsels for the parties complied.
3. The issues I then frame for this court's determination are whether this court has jurisdiction to entertain the petition in view of the PO raised concerning this court's jurisdiction.
4. Citing judicial authorities and the relevant law, counsel for the respondent contend that the issues raised in the petition and the dispute preferred before this Court are matters that ought to be addressed within the ambit of the Physical and Land Use Planning Act. It is submitted that the Court lacks the requisite jurisdiction to entertain the matter presently before it, which arises from the aggrievement of the refusal of development permission in the letter dated 21st July, 2025.
5. On the other hand, counsel for the petitioners avers that when the matter appeared before the court on 27th November, 2025, and on 1st December, 2025, the respondent failed to tender the Kenya Gazette Notice, which bespeaks that the said committee exists in Kilifi and that its

members have been constituted. In the circumstances, the respondent has been unable to prove its assertion, yet he who alleges has the duty to prove it. See Sections 107 and 108 of the Evidence Act. Failure to discharge such a burden results in the dismissal of such an allegation. This is the fate that the PO by the respondent should suffer.

6. In the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, the court articulated that a PO constitutes a legal point which, if presented at an early stage, could potentially result in the termination of the suit. Such objections must be grounded upon uncontested facts and should not engage the court in the examination of the substantive issues of the case. Law, JA, and Sir Charles Newbold P. elucidated the core definition of a PO in the seminal case of **Mukisa Biscuits Manufacturing Co Ltd v West End Distributors (1969) EA 696 at 700**. Law, JA, clarified that a PO involves a point of law expressly pleaded or clearly emerging from the pleadings, and, if queried at this stage, might lead to the dismissal of the suit. Typical examples include objections to the court's jurisdiction, pleas of limitation, or requests to

refer the dispute to arbitration. A principal criterion of a PO is that it must solely concern points of law.

7. In the present matter, the respondent invokes Section 72(3) of the Physical and Land Use Planning Act, which establishes the County Physical and Land Use Planning Liaison Committee. This autonomous and impartial body is tasked with adjudicating appeals and disputes concerning enforcement notices and decisions denying development permissions, thereby raising pertinent questions about the court's jurisdiction to entertain the current claim or petition.

8. I concur with the respondent that the cited provision of the law vests this court with no jurisdiction to entertain the petition as a court of first instance. The framework for enforcement notices is outlined in Section 72(3) of the Physical and Land Use Planning Act, which designates the County Physical and Land Use Planning Liaison Committee as the specialized statutory entity authorized to address all grievances related to the county's enforcement notices. The provision states:

"Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land

Use Planning Liaison Committee within fourteen days of being served with the notice, and the committee shall hear and determine the appeal within thirty days of the appeal being filed."

9. Thus, the Act clearly provides that any grievances or disputes arising from enforcement notices served by the county must be referred to the County Physical and Land Use Planning Liaison Committee as the forum of first instance, not the ELC.

10. In the case of **Republic v National Environment Management Authority [2011] eKLR**, the court reaffirmed the doctrine of exhaustion of statutory remedies. It held that where a statute provides a clear procedure for redress of any grievance, that procedure must be strictly followed. The court stated:

"Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Alternatives should not be sought unless exhaustion of those remedies has been demonstrated."

11. The Court of Appeal in **Speaker of the National Assembly v Karume [1992] KLR 21** articulated the

principle now widely recognized as the Karume doctrine. The court held:

"Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure must be strictly followed. It is inappropriate to seek redress in the courts before the prescribed procedure has been exhausted."

12. Given the foregoing, the first port of call should be the Kilifi County Physical and Land Use Planning Liaison Committee.

13. Because there is doubt as to whether such a committee exists, the Court will stay this petition pending referral to that committee. If it does not exist, the petition can then be revived.

14. Thus, the PO succeeds to that extent. There shall be no order as to costs.

Dated, signed, and delivered virtually at Nyeri on this 28th day of January 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Otieno for the Petitioners

Mr. Muigai for the Respondent

Kendi: Court Assistant