

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PET NO. E060 OF 2022

SAMORA SIKALIEH suing as the chairman of

KAREN LANGATA DISTRICT ASSOCIATION.....PETITIONER

VERSUS

KARUNA HOLDINGS LIMITED.....1ST RESPONDENT

MARULA MANOR LIMITED.....2ND RESPONDENT

CHAKULA TAYARI ENTERPRISES.....3RD RESPONDENT

THE NAIROBI CITY COUNTY.....4TH RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER

NAIROBI CITY COUTY5TH RESPONDENT

THE CHAIR, NAIROBI CITY COUNTY

ALCOHOLIC DRINKS AND LICENSING BOARD.....6TH RESPONDENT

NATIONAL ENV'MENT MAG'MENT AUTHORITY.....7TH RESPONDENT

RULING

1. Following the amendment of the petition, the 1st and 2nd Respondents filed a P.O dated 16th August 2025 on the grounds that the jurisdiction of this Court has been wrongly and prematurely invoked and that the Court cannot sit as a court of first instance in the matters raised. They contend that, in so far as the Amended Petition

challenges the change-of-user approvals granted on 7th March 2024, it is incompetent and fatally defective for failure to exhaust the dispute resolution mechanisms under the Physical and Land Use Planning Act, 2019 and to obtain an exemption under section 9(4) of the Fair Administrative Action Act, 2015.

Submissions

2. In support of their P.O, the 1st and 2nd respondents filed two (2) copies of submissions dated 16th September 2025 and 4th November 2025. The 1st and 2nd Respondents argue that the court's jurisdiction has been prematurely invoked because the Petitioner challenges the change of user approvals issued on 7th March 2024 without exhausting the statutory appeal mechanism to the County Physical and Land Use Planning Liaison Committee under sections 61(3) and 76 of the Physical and Land Use Planning Act, 2019, and without seeking exemption under section 9(4) of the Fair Administrative Action Act, 2015.
3. They relied on the cases of **Speaker of the National Assembly v Njenga Karume [1992] KECA 42** for the proposition that where a statute provides a dispute resolution procedure it must be strictly followed; **Mutanga Tea & Coffee Company Ltd v Shikara Limited & another [2015] KECA 469** on the requirement to appeal change-of-user decisions to the Liaison Committee; **Kenya Revenue Authority & 2 others v Doshi Iron Mongers Ltd [2024] KECA 640** on the tests for availability, effectiveness and sufficiency of alternative remedies, and

Buku v National Environmental Authority & 3 others [2021] KEELC 4752

where the court struck out claims for failure to exhaust the PLUPA mechanism.

4. They submit that in the absence of any exceptional circumstances, the amended petition is incompetent and should be dismissed with costs.
5. In opposing the P.O, the Petitioner filed submissions dated 29th October 2025 stating that the court is not barred by the doctrine of exhaustion from hearing the petition because Article 162(2)(b) of the Constitution and section 13(3) of the Environment and Land Court Act vest the ELC with original jurisdiction to hear and determine disputes relating to the environment, land, and alleged violations of the constitutional right to a clean and healthy environment.
6. Consequently, where a petition is founded on alleged infringement of constitutional and environmental rights, the court's original jurisdiction cannot be ousted merely because a statutory dispute resolution mechanism exists. The Petitioner cited the Court of Appeal in **Base Titanium Limited v Kiswili (on behalf of 65 others) & 3 others [2025] KECA 1330 (KLR)**, where it held that where a petition alleges violation of fundamental rights, including the right to a clean and healthy environment, the existence of alternative statutory remedies cannot oust the jurisdiction of the ELC, particularly in "mixed grill" disputes that cut across several statutory regimes.

7. The Petitioner also cited **Northern Block Residents Limited v National Environment Management Authority & 2 others [2024] KEELC 6170 (KLR)** and the Supreme Court decision in **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR)**, which decisions affirmed that the Environmental Management and Co-ordination Act does not expressly oust the ELC's jurisdiction. That the ELC retains original jurisdiction unless such ouster is clear, specific and constitutionally compliant.
8. Further, they state that the alternative remedies under the Environmental Management and Co-ordination Act and the Physical and Land Use Planning Act were not available or effective in the circumstances, noting that there is no provision for extension of time before the County Physical and Land Use Planning Liaison Committee.
9. That guided by the African Commission's test in **Dawda K. Jawara v Gambia (ACmHPR 147/95–149/96)** on availability, effectiveness and sufficiency of remedies, and the High Court decision in **William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR)**, they submitted that where a suit primarily seeks enforcement of fundamental rights and the constitutional

violations are not a mere façade, it is not barred by the doctrine of exhaustion and the court properly assumes jurisdiction.

Analysis and determination:

10. I have read the Preliminary Objection and the submissions rendered in support and against. The P.O raises these central issues for determination on jurisdiction;

a. *whether this Court has been prematurely invoked in relation to the matters in the amended Petition and*

b. *whether the Amended Petition is incompetent for failure to exhaust the statutory dispute resolution mechanisms under the Physical and Land Use Planning Act, 2019 (“PLUPA”) and*

c. *failure to obtain an exemption under section 9(4) of the Fair Administrative Action Act, 2015 (“FAAA”).*

11. The 1st and 2nd Respondents contend that the Court lacks original jurisdiction because the Petitioner has not followed the statutory dispute resolution mechanism provided under PLUPA. They argue that, as a general rule, a statute that provides a specific appeal or resolution process must be strictly followed, and that the Court should decline jurisdiction absent exceptional circumstances.

12. However, the Petitioner counters that the Court’s original jurisdiction is constitutionally guaranteed under Article 162(2)(b) and section 13(3) of the Environment and Land Court Act. Where a petition alleges violations of

fundamental rights, including the right to a clean and healthy environment, the existence of a statutory dispute resolution mechanism does not oust the Court's jurisdiction.

13. There is no dispute that PLUPA provides a mechanism for appealing change-of-user approvals, but the 1st and 2nd Respondents admit that the mechanism does not wholly bar constitutional petitions if there are exceptional circumstances. In their view, the Petition does not raise any such exceptions. This Petition was filed in 2022, and the impugned change of user was approved in 2024, while this matter was pending. Would the pendency of the case create/make for an exceptional circumstance so that the Petitioner does not approach two courts to handle related matters?

14. The doctrine of exhaustion of remedies is designed to allow administrative bodies to correct errors and avoid unnecessary litigation. Its applicability requires that alternative remedies be available, effective, and sufficient as was pronounced in the case of **Kenya Revenue Authority v Doshi Iron Mongers Ltd [2024] KECA 640** and **William Odhiambo & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2021] eKLR**

15. In this case, the Petitioner demonstrated that the alternative remedy under PLUPA, appeal to the County Physical and Land Use Planning Liaison Committee is neither effective nor sufficient because there is no provision for extension of time

before the Committee, and adherence to this mechanism would unduly restrict the enforcement of constitutional right(s).

16. It is my considered view that the absence of power to extend time to file an appeal before the Committee is not a ground to measure the effectiveness or otherwise of the dispute resolution body. The question is whether it is bestowed with jurisdiction to address the alleged Constitutional violations of the right to a clean and healthy environment which forms part of the reliefs sought in the Petition.
17. Equally, I am alive to the fact of the Nairobi Liaison Committee downing their tools from November, 2024 for lack of facilitation in their duties from the County government. This was done through a letter addressed to the Law Society of Kenya and copied to various stakeholders and the Committee have since been sued for not conducting their sittings. In light of this position, even if the Petitioner lodged an appeal before the Committee, they would not be heard making the alternative remedy ineffective.
18. Further, the case of **Buku v National Environmental Authority & 3 others [2021] KEELC 4752** cited by the 1st and 2nd Respondents is distinguishable as it concerned ordinary administrative disputes without primary allegations of constitutional or environmental rights violations. In contrast, the present Petition raises claims that go beyond procedural irregularities and seek the protection of fundamental rights.

19. In the light of the foregoing analysis, it is my considered opinion, and I so hold that the Preliminary Objection is premature and without merit. It is ordered dismissed.

Dated, Signed and Delivered at Nairobi via CTS this 22nd day of January, 2026

A. OMOLLO

JUDGE

ORIGINAL