



**Kithiu v Khaleej Towers Lomited & 2 others (Environment and Land Petition E069 of 2024) [2026] KEELC 532 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 532 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND PETITION E069 OF 2024**

**MN KULLOW, J**

**FEBRUARY 5, 2026**

**IN THE MATTER OF THE ALLEGED VIOLATION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 42(1) AND 70 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ARTICLE 10 OF THE CONSTITUTION OF KENYA, 2010 AND SECTION 115 OF THE COUNTY GOVERNMENTS ACT, 2012**

**AND**

**IN THE MATTER OF SECTION 3 OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT**

**AND**

**IN THE MATTER OF RULES 3 AND 17 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION) PRACTICE AND PROCEDURE RULES, 2012 AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**JOHN KITHIU ..... PETITIONER**

**AND**

**KHALEEJ TOWERS LOMITED ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY WATER AND SEWERAGE COMPANY ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 3<sup>RD</sup> RESPONDENT**



## JUDGMENT

### Introduction

1. Vide the Petition dated 28<sup>th</sup> August 2024, the Petitioner, John Kihiu, approached this Honourable Court alleging violation of his constitutional right to a clean and healthy environment under Articles 42(1) and 70 of *the Constitution* of Kenya, 2010. The Petition was brought against Khaleej Towers Limited, the Nairobi City County Government, the Nairobi City Water and Sewerage Company and the National Environment Management Authority.
2. The Petitioner sought, inter alia, declarations that the development being undertaken by the 1<sup>st</sup> Respondent on Land Reference No. 36/VII/234 was unlawful and environmentally harmful, together with injunctive relief restraining the Respondents from continuing with the said construction works.
3. The Petition was opposed by the Respondents who maintained that the impugned development had been undertaken pursuant to all requisite statutory approvals and in compliance with environmental, planning and public utility regulations. Prior to the determination of the Petition on its merits, the Petitioner withdrew the same with costs to the Respondents.
4. Notwithstanding the withdrawal of the main Petition, the 3<sup>rd</sup> Respondent, Nairobi City Water and Sewerage Company, had filed a Cross-Petition dated 28<sup>th</sup> October 2024 wherein it sought declaratory and injunctive reliefs relating to the alleged interference by the Petitioner with a public sewer line and wayleave traversing Land Reference No. 36/VII/235.
5. The Cross-Petition contends that the sewer line in question constitutes public infrastructure established under statutory authority for communal benefit, and that the Petitioner has unlawfully obstructed, interfered with and endangered the said sewerage system through construction of temporary structures, vandalism, dumping of waste and obstruction of lawful access by other users.
6. The Petitioner opposed the Cross-Petition and asserted that the sewer line exists as a private easement within Land Reference No. 36/VII/235 and not as a public wayleave, and further contended that he is merely a tenant and not the registered proprietor of the said parcel of land. Following the withdrawal of the main Petition, the sole matter for determination before this Court is the Cross-Petition by the 3<sup>rd</sup> Respondent.

### The Parties' Cases

#### The 3<sup>rd</sup> Respondent's (Cross-Petitioner's) Case

7. The 3<sup>rd</sup> Respondent, Nairobi City Water and Sewerage Company, opposed the Petition and filed a Cross-Petition through the affidavit of Manasses Yada Omala, a Technical Officer – Waste Water. Its case was that a public sewer line was established in the early 1980s pursuant to the Wayleave Act (Cap 292) running along Muratina Street across several parcels of land including Land Reference Nos. 36/VII/234 and 36/VII/235 and extending to the Ruai Treatment Plant.
8. It was contended that the sewer line constitutes public infrastructure intended for communal benefit and that the wayleave has existed for decades to facilitate maintenance, repair and lawful connections by adjoining landowners. The 3<sup>rd</sup> Respondent maintained that the 1<sup>st</sup> Respondent lawfully connected to the sewer line through a manhole constructed pursuant to regulatory approvals, which it described as a standard and safe method of connection.



9. The Cross-Petitioner further alleged that the Petitioner had persistently interfered with the sewer corridor by erecting structures, dumping waste, obstructing inspection access and tampering with sewer mechanisms, thereby risking blockages, environmental contamination and infringement of the rights of other users. It therefore sought declarations affirming the public nature of the wayleave, orders for clearing of obstructions, injunctive relief and costs.

### **The Petitioner's Case in Opposition**

10. The Petitioner opposed the Cross-Petition through a Replying Affidavit sworn on 2<sup>nd</sup> April 2025 and written submissions. He contended that he is merely a tenant on Land Reference No. 36/VII/235, which is registered in the name of Coldstone Investment Limited.
11. He further asserted that the sewer line does not lie on a public wayleave but exists as a private easement within the said parcel of land, and that official survey records and correspondence from the Nairobi City County Government and the Ministry of Lands confirm that no registered sewer wayleave exists between the two parcels.
12. The Petitioner denied the allegations of interference and maintained that no evidence had been adduced to prove obstruction, dumping or vandalism. He argued that without proof of ownership of a wayleave by the Cross-Petitioner, the Court could not issue the declarations or injunctive relief sought, and further contended that the Cross-Petition failed to meet the constitutional threshold.

### **The Evidence**

13. The Petition and Cross-Petition were determined on the basis of affidavits and written submissions in accordance with the directions of the Court, and no oral testimony was tendered.
14. The 3<sup>rd</sup> Respondent relied on the affidavit of Manasses Yada Omala together with annexed correspondence, sewer maps, regulatory approvals and rulings from previous proceedings. The evidence indicated that the sewer line was constructed in the early 1980s under statutory authority, serves multiple properties along Muratina Street and is maintained as a public utility. Letters from the Managing Director of the 3<sup>rd</sup> Respondent confirmed its public character and the entitlement of adjoining landowners to connect subject to approval. Documents were also produced showing authorization for the 1<sup>st</sup> Respondent's manhole connection and complaints relating to alleged obstruction, dumping and interference along the sewer corridor.
15. The Cross-Petitioner further exhibited rulings from other courts and tribunals arising from earlier disputes concerning the same sewer line and parcels of land.
16. In response, the Petitioner produced a Certificate of Title and official searches confirming that Land Reference No. 36/VII/235 is registered in the name of Coldstone Investment Limited. He also tendered correspondence from the Nairobi City County Government and the Ministry of Lands stating that Survey Plan F/R 56/79 reflects no registered sewer wayleave between the two parcels and that the sewer line exists on the ground as an easement within Land Reference No. 36/VII/235. A ground report and survey findings alleging encroachment by scaffolding and a manhole chamber were also placed before the Court.

#### Issues For Determination

Having considered the pleadings, affidavits, documentary evidence and submissions on record, the Court is of the view that the following issues arise for determination:



- a. Whether the sewer line traversing Land Reference Nos. 36/VII/234 and 36/VII/235 constitutes public infrastructure established on a public wayleave or a private easement.
- b. Whether the Petitioner unlawfully interfered with the sewer line and its associated corridor through construction of structures, obstruction, dumping of waste or denial of access.
- c. Whether the Cross-Petitioner is entitled to the declaratory and injunctive reliefs sought.
- d. Who should bear the costs of the Cross-Petition.

### **Analysis and Determination**

SUBDIVISION - Issue One: Whether the sewer line traversing Land Reference Nos. 36/VII/234 and 36/VII/235 constitutes public infrastructure established on a public wayleave or a private easement

17. The central question before this Court is whether the sewer line that traverses the subject parcels of land is a private proprietary easement as contended by the Petitioner or whether it is public sewerage infrastructure established pursuant to statutory authority and intended for communal use. The answer to this question determines the extent of rights exercisable by the parties and whether the Petitioner can lawfully assert exclusive control over the corridor through which the sewer line runs.
18. Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment, while Article 69 places an obligation upon the State and its organs to ensure sustainable exploitation, utilisation and management of environmental resources, including sanitation systems. Article 70 further empowers the Court to issue appropriate reliefs where environmental rights have been violated or are threatened. Sewerage infrastructure is therefore not merely a private convenience but a critical public health mechanism whose protection is anchored in constitutional obligations.
19. The evidence placed before this Court by the 3<sup>rd</sup> Respondent demonstrates that the sewer line in dispute was constructed in the early 1980s pursuant to statutory authority then vested in the Government under the Wayleave Act and has since served numerous properties along Muratina Street extending to the Ruai Treatment Plant.
20. The correspondence from the 3<sup>rd</sup> Respondent confirms that the sewer line has continuously been maintained, regulated and managed as a public utility, and that adjoining landowners are entitled to connect thereto subject to regulatory approval. This evidence establishes that the sewer line was designed and implemented to serve the wider community and not a single proprietor.
21. The Petitioner on the other hand relied on survey plans and letters from the Nairobi City County Government and the Ministry of Lands asserting that Survey Plan F/R 56/79 does not reflect a registered sewer wayleave between the two parcels and that the sewer line exists on the ground as an easement within Land Reference No. 36/VII/235. While these documents may show the absence of formal registration of a wayleave on the survey records, they do not in themselves negate the public character of infrastructure lawfully established and continuously operated as a public utility.
22. It is a matter of historical reality that much public infrastructure in Kenya, particularly that constructed several decades ago, was laid under statutory authority without formal notation on individual titles or modern survey plans. The absence of registration does not convert public infrastructure into private property where evidence demonstrates long-standing public use, statutory establishment and continuous maintenance by a public authority.
23. A private easement is a proprietary right created for the benefit of specific landowners, allowing limited use of another's land. A wayleave or public utility corridor, on the other hand, is established to permit



installation, maintenance and access to infrastructure intended for public service. Where infrastructure is constructed by government authority, serves multiple properties, is regulated by a statutory body and exists for communal benefit, it transcends the nature of a private easement and assumes the character of public infrastructure held in trust for the public.

24. The sewer line in question meets all the hallmarks of public infrastructure. It serves a corridor of properties, is maintained by the 3<sup>rd</sup> Respondent pursuant to its statutory mandate, and its connections are regulated through official approvals. To recharacterize such infrastructure as a private easement subject to individual landowner control would expose essential sanitation systems to obstruction, undermine environmental protection obligations and jeopardize public health.
25. This Court therefore finds that the sewer line traversing Land Reference Nos. 36/VII/234 and 36/VII/235 constitutes public sewerage infrastructure established under statutory authority and operating as a public utility corridor notwithstanding the absence of formal registration on the survey plan. The Petitioner cannot lawfully assert exclusive proprietary dominion over the corridor through which the sewer line runs.

**Issue Two: Whether the Petitioner unlawfully interfered with the sewer line and its associated corridor through construction of structures, obstruction, dumping of waste or denial of access.**

26. Having found that the sewer line in question constitutes public infrastructure held for communal benefit, the next issue for determination is whether the Petitioner unlawfully interfered with the sewer line and the corridor through which it runs in the manner alleged by the Cross-Petitioner.
27. Article 42 of *the Constitution* guarantees the right to a clean and healthy environment, but that right must be exercised in a manner that does not prejudice the corresponding rights of others or undermine public environmental systems. Article 69 imposes upon both the State and every person the duty to protect and conserve the environment, while Article 70 empowers courts to intervene where conduct threatens environmental harm.
28. The statutory mandate of the 3<sup>rd</sup> Respondent includes the maintenance, protection and regulation of sewerage infrastructure to prevent blockages, spillages and environmental contamination. Any obstruction, vandalism or unauthorized construction along sewer corridors therefore directly threatens environmental integrity and public health.
29. The 3<sup>rd</sup> Respondent placed before this Court evidence in the form of affidavits, correspondence and reports alleging that the Petitioner erected temporary structures along the sewer corridor, interfered with sewer mechanisms, constructed an inspection chamber over the sewer line, obstructed lawful access by other users, and dumped waste materials in a manner likely to cause blockages and spillages. The Cross-Petitioner further demonstrated that such conduct had prompted repeated regulatory interventions.
30. The Petitioner denied these allegations and contended that no proof had been adduced to demonstrate interference. He further asserted that as a mere tenant he lacked capacity to undertake such activities.
31. However, the Court is guided by the principle that once credible evidence of interference with public infrastructure is placed before it, the burden shifts to the party alleged to have engaged in such conduct to rebut the same with cogent evidence. Mere denials without substantive rebuttal do not suffice where documentary and affidavit evidence demonstrates ongoing obstruction and misuse.
32. The materials placed before the Court show persistent disputes, regulatory correspondence, site findings and previous proceedings arising from interference along the sewer corridor. These are not



isolated or speculative claims but demonstrate a pattern of conduct aimed at asserting private control over a public utility.

33. The Petitioner did not place before the Court any technical or regulatory evidence disproving the allegations of obstruction or demonstrating compliance with sewer corridor protection requirements. His reliance on ownership status and survey descriptions does not address the factual question of interference with the sewer system.
34. In the circumstances, the Court is satisfied on a balance of probabilities that the Petitioner engaged in conduct that obstructed, interfered with and endangered the sewer line and its associated corridor, thereby undermining the statutory mandate of the 3<sup>rd</sup> Respondent and threatening environmental integrity.
35. Such conduct is inconsistent with the constitutional obligation to protect the environment and respect public utilities established for communal benefit.

### **Issue Three: Whether the Cross-Petitioner is entitled to the declaratory and injunctive reliefs sought**

36. Having found that the sewer line constitutes public infrastructure held for communal benefit and further that the Petitioner unlawfully interfered with its operation and access, the Court now turns to the question of whether the Cross-Petitioner is entitled to the reliefs sought in the Cross-Petition.
37. Article 70 of *the Constitution* empowers this Court to issue appropriate orders to prevent, stop or redress environmental harm. Such orders may include declarations, injunctions and directives necessary to secure the protection of the environment and public resources.
38. The Court is further vested with inherent jurisdiction to issue equitable remedies where conduct threatens public infrastructure and infringes upon communal rights.
39. A declaration is appropriate where the Court clarifies the legal status of a right or public resource in order to prevent continued dispute or unlawful interference. In this case, a declaration as to the public nature of the sewer line and the corridor through which it runs is necessary to forestall further attempts at private appropriation and to affirm the statutory mandate of the 3<sup>rd</sup> Respondent.
40. Injunctive relief is equally appropriate where there is demonstrated interference with public infrastructure and a real risk of continued obstruction or environmental harm. The evidence before the Court establishes persistent conduct by the Petitioner aimed at obstructing and undermining the sewer system. Absent injunctive orders, there is a real likelihood of recurrence.
41. The Court is mindful that public utilities such as sewerage infrastructure must remain accessible for inspection, maintenance and lawful connection by all entitled users. Any structures erected on such corridors pose serious risks of blockages, spillages and environmental contamination.
42. In the circumstances of this case, orders directing the clearing of unauthorized structures and restraining further interference are necessary to secure the integrity of the sewer system and uphold constitutional environmental obligations. The reliefs sought by the Cross-Petitioner are therefore proportionate, lawful and justified by the evidence.

### **Issue Four: Who should bear the costs of the Cross-Petition**

43. Costs ordinarily follow the event unless the Court, for good reason, orders otherwise. The Cross-Petitioner has substantially succeeded in establishing that the sewer line constitutes public infrastructure and that the Petitioner unlawfully interfered with its operation.



44. No exceptional circumstances have been demonstrated to warrant a departure from the general principle on costs. The Court therefore finds that the Petitioner shall bear the costs of the Cross-Petition.

#### Final Orders

For the foregoing reasons, the Court makes the following orders:

- a. A declaration is hereby issued that the sewer line traversing Land Reference Nos. 36/VII/234 and 36/VII/235 constitutes public sewerage infrastructure established under statutory authority and held for communal benefit.
- b. A declaration is hereby issued that the Petitioner unlawfully interfered with the sewer line and its associated corridor through obstruction and unauthorized activities.
- c. An order is hereby issued directing the Petitioner to remove and clear forthwith any structures, materials or obstructions erected or placed along the sewer corridor interfering with access, maintenance and operation of the sewer line.
- d. A permanent injunction is hereby issued restraining the Petitioner, his agents or servants from erecting any structures, dumping waste, obstructing access or in any manner interfering with the sewer line and its associated corridor.
- e. The Petitioner shall bear the costs of the Cross-Petition.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgment delivered in the presence of: -

Mr. Wena for the Petitioner

Mr. Akama for Nyaosi for 1<sup>st</sup> Respondent

Ms. Farah for for 2<sup>nd</sup> Respondent

No appearance for 3<sup>rd</sup> and 4<sup>th</sup> Respondents

Philomena W. Court Assistant

