



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELCLC CASE NO. E219 OF 2025

**OAKDALE COMMODITIES
LIMITED PLAINTIFF**

-VERSUS-

**IVORY CONCEPTS
LIMITED 1ST DEFENDANT**

**THE NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY..... 2ND
DEFENDANT**

**THE CECM - BUILT ENVIRONMENT & URBAN PLANNING,
NAIROBI CITY
COUNTY 3RD
DEFENDANT**

**LAVINGTON APARTMENTS
LIMITED 4TH DEFENDANT**

RULING

INTRODUCTION

1. Before Court are Preliminary Objections dated **1st July 2025** and **28th August 2025** raised by the **2nd and 4th Defendants** respectively, in which the jurisdiction of this Court is challenged. The objections arise from the Plaintiff's suit and the application for contempt orders dated **19th August 2025**.

THE PRELIMINARY OBJECTION

2. The 4th Defendant's Notice of Preliminary Objection dated 28th August 2025 is premised on the following grounds:
 - a) This Honourable Court is divested of both the original and appellate jurisdiction to entertain this dispute.
 - b) The application and purported suit are non-starters and classical candidates for striking out with costs for grossly offending Sections 72(1) to (4) and Section 80(3) of the Physical and Land Use Planning Act, Cap 303 Laws of Kenya.
3. The 2nd Defendant's Preliminary Objection dated 1st July 2025 challenges the jurisdiction of this Court on the basis that the Plaintiff's suit offends the doctrine of exhaustion under the relevant statutory dispute resolution mechanisms.

SUBMISSIONS OF THE PARTIES

4. The Court directed that the Preliminary Objections be canvassed by way of written submissions. The parties duly complied, and the Court has considered the submissions and authorities filed, which now form part of

the record.

a) 2nd Defendant's Submissions

5. The 2nd Defendant submits that the central issue for determination is whether this Court has jurisdiction to hear and determine the suit in view of the doctrine of exhaustion. It is contended that the Plaintiff's dispute arises from the issuance of development approvals and environmental licences, matters for which Parliament has provided specialized statutory mechanisms under the **Environmental Management and Coordination Act** and the **Physical and Land Use Planning Act**. The 2nd Defendant argues that the Plaintiff was required, in the first instance, to pursue the remedies available before the **National Environment Tribunal** and the **County Physical and Land Use Planning Liaison Committee** before invoking the jurisdiction of this Court.
6. In support of the doctrine of exhaustion, the 2nd Defendant relies on **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)**, where the Court of Appeal held that where a statute provides a clear procedure for redress, that procedure must be strictly followed. Reliance is further placed on **Geoffrey Muthinja Kabiru & Another vs Samuel Muguna Henry & Others**, [2015] KECA 304 KLR and **United Millers Limited v Kenya Bureau of Standards & 5 Others** (2021) eKLR, for the proposition that courts must exercise restraint and defer to statutory dispute resolution mechanisms unless exceptional circumstances are demonstrated. The 2nd Defendant submits that no such exceptional circumstances have been shown and urges the

Court to find that it lacks jurisdiction.

b) 4th Defendant's Submissions

7. The 4th Defendant submits that the sole issue for determination is whether this Court has jurisdiction to entertain the suit in light of the statutory dispute resolution framework under **the Physical and Land Use Planning Act**. It is argued that the Plaintiff's pleadings reveal that the dispute revolves around the planning, use, regulation and development of land, particularly the alleged contravention of zoning and user provisions.
8. According to the 4th Defendant, such disputes are, by statute, within the primary mandate of the County Executive Committee Member for Physical Planning and the **County Physical and Land Use Planning Liaison Committee**, and can only reach this Court by way of an appeal on points of law pursuant to sections **72(1)-(4)** and **80(3)** of the Physical and Land Use Planning Act. The 4th Defendant contends that the Plaintiff neither invoked nor exhausted these mechanisms before filing suit.
9. In support of this position, the 4th Defendant relies on **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)** for the principle that where statute provides a clear procedure for redress, that procedure must be strictly followed. Reliance is also placed on **United Millers Limited v Kenya Bureau of Standards & 5 others [2021] KESC 72 (KLR)** and **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)** to submit that jurisdiction is foundational and that a court must down its tools where it lacks jurisdiction. The 4th Defendant urges the Court to strike out the suit and all applications therein with costs.

c) 3rd Defendant's Submissions

10. The 3rd Defendant submits that the sole issue for determination is whether this Court has jurisdiction to hear and determine the suit in view of the doctrine of exhaustion. It is argued that the Plaintiff's claim challenges the issuance and legality of development approvals granted to the 4th Defendant, matters which fall squarely within the statutory mandate of the County Physical and Land Use Planning Liaison Committee under sections **72(1)-(4)** and **75** of the **Physical and Land Use Planning Act**. The 3rd Defendant contends that the Act establishes a clear hierarchy of dispute resolution, beginning with the County Executive Committee Member and the Liaison Committee, with this Court only exercising appellate jurisdiction on points of law. According to the 3rd Defendant, the Plaintiff bypassed these mechanisms and prematurely invoked the jurisdiction of this Court.
11. In support of this position, the 3rd Defendant relies on Owners **of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)**, for the principle that jurisdiction is foundational and a court must down its tools where it lacks jurisdiction. Further reliance is placed on **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**, on the source and limits of jurisdiction, and **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)**, on strict adherence to statutory dispute resolution procedures.

d) Plaintiff's Submissions

12. The Plaintiff submits that the Preliminary Objections raised by the 2nd and 4th Defendants are premature and improperly taken, as they cannot be

determined without the Court delving into contested issues of fact. It is submitted that the Defendants have not filed their defences, and that there is no evidence on record demonstrating that the statutory processes alleged to have been bypassed such as the issuance of development approvals, licences, or change of user have in fact been undertaken. The Plaintiff contends that determination of the objections would require the Court to interrogate factual matters including ownership of the suit property, the character of the proposed development, and whether any approvals were lawfully issued, rendering the objections unsuitable for disposal as pure points of law.

13. On jurisdiction, the Plaintiff submits that this Court is properly seized of the matter under **Article 162(2)(b) of the Constitution** and **Section 13 of the Environment and Land Court Act**, as the suit raises issues relating to land use and alleged violation of the right to a clean and healthy environment. The Plaintiff further argues that exceptional circumstances exist to exempt the matter from the doctrine of exhaustion, noting that the dispute involves actions of multiple regulatory bodies whose decisions cannot be conveniently addressed before a single statutory forum.
14. Reliance is placed on **Amos Njoroge Kamweru & 5 others v Kajiado County Government & 2 others [2015] KEELC 759 (KLR)** and **Ken Kasinga v Daniel Kiplagat Kirui & 5 others [2014] KEHC 4427 (KLR)**, to submit that the Environment and Land Court retains original jurisdiction in matters touching on land use and environmental rights, and that the existence of statutory tribunals does not, of itself, oust the Court's jurisdiction.

ISSUES FOR DETERMINATION

15. Having considered the Preliminary Objections, the pleadings, and the submissions by the parties, the Court finds that the issue for determination is: Whether the Preliminary Objections dated 1st July 2025 and 28th August 2025 are merited.

ANALYSIS AND DETERMINATION

16. The objections before Court are anchored on the contention that Parliament, through the **Physical and Land Use Planning Act Cap. 303** and the **Environmental Management and Co-ordination Act, 1999**, established specialized mechanisms for the resolution of disputes relating to development approvals and land use, and that those mechanisms ought to have been exhausted before the Plaintiff approached this Court.

17. There is no dispute that Parliament, through the Physical and Land Use Planning Act, created a structured framework for the regulation of land use and development. That framework includes administrative and quasi-judicial bodies mandated to address specific disputes arising from planning and enforcement processes. Equally, there is no dispute that where such mechanisms exist, courts are required to exercise restraint and give effect to legislative intent, in keeping with the doctrine of exhaustion.

18. However, the doctrine of exhaustion is not applied in abstraction. It must be applied in light of the nature of the dispute presented to the Court, the relief sought, and the jurisdiction conferred upon the Court by the Constitution and statute. Article **162(2)(b) of the Constitution** and **Section 13 of the Environment and Land Court Act** confer upon this Court original jurisdiction to hear and determine disputes relating to the

environment and the use and occupation of land, including disputes alleging infringement of environmental rights.

19. A careful reading of the Plaintiff's claim is not limited to a narrow challenge of a single administrative act capable of being neatly addressed within one statutory forum. Rather, the Plaintiff raises complaints touching on the lawfulness of land use, the character of the proposed development, and the alleged infringement of the right to a clean and healthy environment, while attributing responsibility to multiple actors. Such a claim transcends a purely technical planning dispute and falls squarely within the constitutional mandate of this Court.
20. While statutory mechanisms exist under the Physical and Land Use Planning Act and the Environmental Management and Coordination Act, the existence of those mechanisms does not, of itself, operate as an automatic bar to the exercise of this Court's original jurisdiction. This position has been recognized by the courts, which have emphasized that exhaustion must be applied with flexibility and sensitivity to context, particularly where a dispute is multifaceted or where the remedies available before statutory bodies may not comprehensively address the grievance placed before the Court.
21. Further, **Section 9(4) of the Fair Administrative Action Act** expressly empowers the Court to exempt a party from the obligation to exhaust internal remedies where the interests of justice so require. The Court is satisfied, on the pleadings before it, that the issues raised by the Plaintiff cannot be conclusively or exhaustively resolved through a single statutory process without fragmenting the dispute and risking inconsistent outcomes.

22. In these circumstances, the Court is not persuaded that the Preliminary Objections raise points of law that conclusively dispose of the suit at the threshold stage. While the objections properly raise legal questions on jurisdiction and exhaustion, those questions do not, in the context of this case, operate as an absolute bar to the Court's jurisdiction. The objections therefore fail to meet the standard set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, namely, that a preliminary objection must, if upheld, dispose of the suit in limine.

23. In the result, the Court finds that the Preliminary Objections dated 1st July 2025 and 28th August 2025 are not merited and are hereby dismissed. Costs of the Preliminary Objections shall be in the cause, and the suit shall proceed to hearing on the merits.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **6th** day of **FEBRUARY, 2026.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Gathu..... for Plaintiff/Applicant

Ms. Muyayi.....for 2nd Respondent

Ms. Jeruto.....for 3rd Respondent

Mr. Omondi.....for 4th Respondent

Philomena W..... Court Assistant