



THE JUDICIARY



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND PLANNING DIVISION**

**ELCL PET NO. E003 OF 2025**

**HON. DR JOEL MEITAMEI**

**OLE**

**DAPASH.....PETITIONER/APPLICANT**

**VERSES**

**MARRIOT INTERNATIONAL INC.....1<sup>ST</sup>  
RESPONDENT**

**RITZ-CARLTON HOTEL COMPANY.....2<sup>ND</sup>  
RESPONDENT**

**LAZIZI MARA LIMITED.....3<sup>RD</sup>  
RESPONDENT**

**COUNTY GOVERNMENT OF NAROK.....4<sup>TH</sup>  
RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT  
AUTHORITY (NEMA).....5<sup>TH</sup>  
RESPONDENT**

**RULING**

1. The Petitioner/Applicant herein **Hon. Dr. Joel Maitamei Ole Dapash**, brought this Notice of Motion Application dated **8<sup>th</sup> August 2025**, under *Rule 3(2), (3), (4), 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and Article 23 of the Constitution of Kenya, 2010*), wherein he sought for the following orders;

- i) That pending the hearing and determination of the Application and petition, conservatory order do issue restraining the Respondent from opening or otherwise operationalizing the Ritz Carlton Maasai Mara Safari Camp at Maasai Mara National Reserve**
- ii). Pending the hearing and determination of the Application and Petition, the Respondents be and are hereby ordered to suspend any and all activities including the advertisement, publication and/or advertisement of the scheduled opening on 15<sup>th</sup> August 2025;**
- iii). The court be pleased to certify that the petition raises substantial question of law warranting the empanelment of uneven bench (not less than three) to determine the matter under Article 165(4) of the Constitution.**

2. The application is supported by the grounds set out on the face of the said application and the Supporting Affidavit of the Petitioner/Applicant, **Hon Dr Meitamei Ole Dapash**.
3. The grounds in support of the Application are; the Respondents have undertaken the construction of a massive luxury hotel within the Maasai Mara Ecosystem at **Sand River Wildebeest** migration crossing area (**The Ritz-Carlton Maasai Mara Safari Camp**), which is scheduled to be opened on Friday **15<sup>th</sup> August 2025**; that the construction of this **Ritz-Carlton Maasai Mara Safari Camp** is along the Kenya-Tanzania border, between Maasai Mara National Reserve (*the Mara and the Serengeti National Park*), a globally recognised and one of the most important wildlife migration corridors; the **Mara** and **Serengeti Ecosystem** serve as critical ecological and cultural significance to the wildlife and local communities within the **Maasai Mara National Park** including being a natural habitat for the **Black Rhinos** and the habitat of large herds of the **Buffalos**.
4. Further, that the **Maasai Mara National Reserve** is important to Kenya, and the rest of the world as it is one of the few places on earth where wild animals and their ecosystem still naturally exist in highly protected environment; the **Maasai Mara National Park**, is of great significance to the **Maasai People** - not only as ancestral land, but also as a vital cultural identity and expression and historical preservation.

5. That the construction of the **Safari Camp** and its intended opening on the **15<sup>th</sup> August 2025**; is violation of fundamental constitutional rights enshrined in the constitutional including the right to the protection of **cultural property** and the right to **conservation of natural resources** including wildlife; the **Safari Camp** was constructed without critical constitutional and legal process being complied with.
6. That despite demand and formal notices, construction was undertaken **without proper public participation** of the local communities including the **Maasai** people; the petitioner is concerned that the Respondents will proceed to open the said construction as scheduled on **15<sup>th</sup> August 2025**, despite the clear **illegalities** and violations of the Constitution.
7. That it is in interest of justice and public interest that instant application and petition be heard and determined on priority basis.
8. In his supporting Affidavit, the Petitioner/Applicant acknowledged that **Maasai Mara National Reserve** is a profound inter-play of cultural heritage, cultural industry, and environmental protection, including wildlife preservation, and is of great significance to the **Maasai people**, not only as ancestral land, but also as a vital

cultural identity and expression and historical preservation.

9. He reiterated that the Respondents have undertaken the construction of a massive luxury hotel within **Maasai Mara ecosystem** at **Sand River Wildebeest Migration** corridor and crossing area. That he wrote to the **Executive Officer** of the 1<sup>st</sup> Respondent demanding disclosure on the illegal construction at the sanctuary site of **Sand River-Maasai Mara**.
10. He also wrote to **County Government of Narok**, but instead of replying to his concerns, it dealt with employment opportunities associated with the camp it intends to establishing, neglecting the imperative to preserve of **Maasai Mara Ecosystem** and the rights of **indigenous communities** who are the custodian of the area in it.
11. Further, he averred that the construction of the said **Safari Camp** and its opening of **15<sup>th</sup> August 2025**, is violation of fundamental constitutional rights enshrined in the constitution, including the right to protection of cultural property and the right to conservation of natural resources, including wildlife.
12. The Applicant alleged that at the time of construction and development of the **Ritz -Carlton Maasai Mara Safari Camp**, there was a **Moratorium** stopping any

construction of new lodges and/or camp along the Game Reserve as envisaged in the Presidential directive issued on the **24<sup>th</sup> July 2023**, as per annexure **MOP -5**.

13. To him, the construction of **Ritz -Carlton Maasai Mara Safari Camp** is an outright violation of **Article 69** of the Constitution of **Kenya 2010**, which places an obligation on the State to ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources, including wildlife.
  
14. The deponent averred that the construction of such luxury hotel has a direct and negative impact on the **culture** of the **Maasai Community**, whose communal land has been used in the construction without due process and whose cultural heritage and history is at the brink of alteration contrary to **Articles 11 and 40 of the Constitution**.
  
15. He reiterated that the **Maasai Community** has an ancestral link to the game reserve and granting land rights to **Ritz Carlton Maasai Mara Safari Camp** will Jeopardise the ecosystem of the wildlife and take away the identity of the local community by undermining the sustainability of the ecosystem and its wildlife.

16. He claimed that the Respondents have failed to undertake or ensure that appropriate environmental and social impact study of **Ritz Carlton Maasai Safari Camp** project is undertaken as per the **Constitution** and the law. Further, that if **EIAS** was undertaken, the **Maasai Community**, as well as all the other affected parties on whose behalf the suit has been filed did not participate in the process contrary to the provisions of the Constitution and other relevant law, the *Environmental (Impact Assessment and Audit) Regulations*.

17. It was the Applicant's allegations that the construction of **Ritz-Carlton Maasai Mara Safari Camp** was without critical constitutional and legal processes, being complied with. Further, that despite demand and formal notices, the construction was undertaken without **proper public participation** of the local communities, including the **Maasai people** and the **stakeholders** such as the **Tourism Industry, Conservation Community**, and the **Tanzania Wildlife Authorities**.

18. It was his further contention that he is apprehensive that without the restrictive injunction orders from this court, the Respondents will continue with the grand opening of the **Safari Camp**, in disregard of the environmental implications it will have on the **Maasai**

**Mara Game Reserve**, the wildlife and the Local Maasai Community and the Tourism Sector at large.

19. Further, that the Maasai Community stands to suffer great prejudice if injunction orders sought are not granted, since the **Maasai Mara National Park** is of great significance to them, not only as ancestral, and, but also as vital cultural identity and expression and historical preservation.
20. The Applicant urged the court to allow the application as it is only fair and in the interest of justice to do so.
21. The application is vehemently opposed by the Respondents herein.
22. In response to the Petition and the instant application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a **Notice of Motion Application** dated **16<sup>th</sup> December 2025**, wherein they sought for the striking out of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the proceedings on the ground that the Petitioner/Applicant having not served them with the court documents and pleadings, they just learnt about these proceedings through social media publication, and since this Petition against the Respondents is on alleged violations of the various provisions of the Constitution and statutory obligations during the process of acquisition, construction and operation of the **Ritz-Carlton Maasai**

**Mara Safari Camp**, by the 3<sup>rd</sup> Respondent, which they are not parties to and were not involved.

23. They claimed that they are neither owners nor the operators of the **Safari Camp**, and have not been involved in the **acquisition, construction, licensing** or **operation** of the said **Safari Camp**, and they are not responsible for **obtaining permit** nor were they involved in the process of conducting an environmental or social impact assessment related to Safari Camp.

24. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents averred that they are strangers to the allegations made in the Petition; are not necessary parties; and their inclusion constitutes a misjoinder of parties in the proceedings, and they urged the court to **strike them out** of the proceedings for the interest of justice and promotion of judicial economy.

25. The above application is supported by the Affidavit of **Veronika Walzl**, the VP Finance Business Partner and Administration EMEA Finance of the 1<sup>st</sup> Respondent, and the said application is **yet** to be **canvassed**.

26. The 3<sup>rd</sup> Respondent opposed the application through the Replying Affidavit of **Shivan Patel**, its Director who averred that the instant application and the entire suit are

**misconceived, without merit** and is an **abuse of the court process**, and should be **dismissed** with costs.

27. The deponent averred that by a letter dated **2<sup>nd</sup> October 2023**, the 3<sup>rd</sup> Respondent requested to be allocated a site within **Narok County** for the construction of a Camp. In response to that request, by letters dated **14<sup>th</sup> November 2023**, and **2<sup>nd</sup> January 2024**, the 4<sup>th</sup> Respondent approved the 3<sup>rd</sup> Respondent's request and agreed to lease a portion of land reference No **27668**, for the purpose of developing a **Luxury Safari Camp**. That the said approval was granted on condition that the 3<sup>rd</sup> Respondent complies with all applicable Laws and Regulations.

28. It was his contention that subsequently, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents entered into a Lease dated **5<sup>th</sup> June 2024**, over the referred portion of land, and the lease was duly registered on **13<sup>th</sup> May 2024**, following compliance with the requisite procedure for registration. Further that the 4<sup>th</sup> Respondent approved through a letter dated **26<sup>th</sup> April 2024**, development of a tented camp together with ancillary facilities.

29. The deponent also averred that the 3<sup>rd</sup> Respondent obtained all the **relevant approvals** such as approval from **Water Resources Authority** vide a letter dated **10<sup>th</sup> December 2024**, carried out **Environmental**

**Impact Assessment (EIA)** which it submitted on **18<sup>th</sup> April 2024**, duly made payments to 5<sup>th</sup> Respondent as stipulated in the law, and 5<sup>th</sup> Respondent duly considered the **EIA Report** and issued the **EIA Licence** dated **14<sup>th</sup> May 2024**.

30. He also contended that prior to commencement of the construction, the 3<sup>rd</sup> Respondent submitted **application** for **approval** of the **architectural drawings** for the Camps, bridges and ancillary facilities, which the 4<sup>th</sup> Respondent considered and granted the approval, vide letters dated **8<sup>th</sup> October 2024**, and **5<sup>th</sup> December 2024**.

31. The deponent claimed that on **12<sup>th</sup> August 2025**, the 4<sup>th</sup> Respondent issued a formal **Certificate of Compliance** and endorsement confirming that the camp was fully compliant with the **Maasai Mara Management Plan**, and had adhered to all applicable County by Laws and legislation.

32. Further, that the 5<sup>th</sup> Respondent visited the Camp and carried out an **environmental audit** and **inspection** in line with the pre-conditions stipulated in the EIA Licence. He contended that during the audit, and inspection, the 5<sup>th</sup> Respondent geotagged the migration corridor and prepared a report dated **1<sup>st</sup> August 2025**,

and the 5<sup>th</sup> Respondent confirmed that the camp was situated more than **15kms** away from the nearest wildlife migratory corridor. Further, the report also confirmed that the Camp had no **negative** effect on the **ecosystem**, and is in line with all the recommendations for an eco-camp.

33. The deponent also contended that on **28<sup>th</sup> July 2025**, the **Ministry of Tourism & Wildlife** issued a letter to the 3<sup>rd</sup> Respondent acknowledging the value of the investment made through the project. That on **30<sup>th</sup> April 2024**, the 5<sup>th</sup> Respondent had granted the 3<sup>rd</sup> Respondent a one-time Presidential exemption pursuant to Presidential Directives **NO.OP/CAB 26/1/3A**, and therefore did not breach the referred Moratorium.

30. In further compliance, the 3<sup>rd</sup> Respondent obtained approvals, licences and permits prior to commencing business from:-

- a) Fire Safety Inspection Licence;**
- b) Food Safety Licence;**
- c) Single Business Permit;**
- d) Alcohol Drinks Licence;**
- e) Tourism Licence, and so it is compliant.**

34. He confirmed that the 3<sup>rd</sup> Respondent completed the installation of the tents on **30<sup>th</sup> March 2025**, and the Safari Camp was officially opened on **15<sup>th</sup> August 2025**,

and has been in operation since, accepting visitors from all over the world. He denied that the **Safari Camp** was constructed in a **wildlife migratory corridor** as alleged or at all, and that the report by 5<sup>th</sup> Respondent confirmed that the camp is situated more than **15kms** from the nearest wildlife migration path.

35. The 3<sup>rd</sup> Respondent contended that the Petitioner/Applicant has **deliberately misrepresented** facts by alleging that the 3<sup>rd</sup> Respondent's Camp was constructed **unlawfully** and **without approvals**, since it is evident that the 3<sup>rd</sup> Respondent complied with all the **legal and regulatory requirements** obtained all necessary permits and licences, and remains in good standing with 4<sup>th</sup> and 5<sup>th</sup> Respondents.

36. The 3<sup>rd</sup> Respondent also contended that the **conservatory orders** sought are not capable of enforcement, and are academic exercise since installation of the Safari Camp was completed in **March 2025**, inspection was carried out by the 4<sup>th</sup> and 5<sup>th</sup> Respondents in **July/August 2025**, and was officially opened on **15<sup>th</sup> August 2025**, and has been operational since then receiving guests from all over the world.

37. Ultimately, the deponent urged the court to dismiss the instant Petition and application with costs, since the tented camp was lawfully established.

38. The 4<sup>th</sup> Respondent also opposed the application through the Replying Affidavit of **John Mayian Tuya**, the **County Secretary of Narok County Government**, who denied each and every averments made by the Petitioner/Applicant.

39. Firstly, he averred that his advocate has advised him that this court lacks jurisdiction to entertain this matter, pursuant to *Section 117 of the Wildlife Conservation and Management Act, Cap 376(WCMA)* and *Section 125 and 129 of the Environmental Management and Co-Ordination Act(EMCA)*, which vests the jurisdiction to hear and determines this petition and application to **National Environment Tribunal**.

40. It was his contention that there being a legal and regulatory framework in place that could have dealt with the grant of the prayers sought, then this court has no jurisdiction to entertain this Petition against the Respondents and therefore, the matter should be struck out for failure to exhaust the available remedies.

41. He denied that the construction of **Ritz-Carlton Maasai Mara Safari Camp** does violates any Constitutional rights or laws alluded to by the Petitioner. It was his contention that for decades the 4<sup>th</sup> Respondent

has played a central role in the management and administration of the **Maasai Mara National Reserve**, one of Kenya most famous wildlife conservation area, and the Reserve belongs to 4<sup>th</sup> Respondent as the custodian for and on behalf of the community.

42. The deponent further claimed that as the official administrator, the 4<sup>th</sup> Respondent is responsible for overseeing conservation efforts, regulating tourism activities, managing infrastructure and ensuring that the **Local Maasai Communities** benefit from the reserve resources.

43. Further, that the County Government works to balance the needs of **wildlife conservation** with those of the people who live in and around the reserve. Its effort in **Wildlife Protection, Tourism Management, and Community Development** have helped maintain the **Maasai Mara National Reserve** as one of Africa's most important conservation areas, a clear testament of a properly functioning utilization.

44. He contended that he is aware that on **30<sup>th</sup> April 2024**, the Office of the President directed the 5<sup>th</sup> Respondent to give the 1<sup>st</sup> Respondent a one-time exemption from the Presidential Directive of **OP/CAB 26/1/3A** of **24<sup>th</sup> July 2023**, and therefore like many other

establishments within **Maasai Mara National Reserve**, the 3<sup>rd</sup> Respondent is a lawful lessee carrying out legal business of tourism, conservation and community empowerment to the highest standards.

45. The deponent further contended that the Petitioner/Applicant has not provided any evidence on how the construction of this **Safari Camp** has affected the peaceful migration of wildebeests which occur year - round.

46. It was his further contention that in so far as the application for **conservatory order** is concerned, the grand opening of **Ritz Carlton Maasai Mara Safari Camp** was officially done, and the instant application for **conservatory orders** has been **overtaken** by **events**, and he urged the court to dismiss the said application with costs.

47. On empanelment of a bench, the 4<sup>th</sup> Respondent averred that the Petition does not **disclose** any **sufficient grounds** to warrant such empanelment, and the issues raised herein squarely falls within the jurisdiction of **National Environment Tribunal**, and thus the said prayer should not be allowed.

48. The 5<sup>th</sup> Respondent, National Environment Management Authority filed its Replying Affidavit dated **10<sup>th</sup> September 2025**, in opposition to the instant Notice of Motion and the Petition through **David Ngare**, Director Environmental Compliance, and averred that the Petitioner did not fully utilise the **doctrine of exhaustion** or **alternative disputes resolutions remedies**, as this matter ought to have been ventilated through the National Environment Tribunal pursuant to *Section 129 of EMCA*.

49. He alleged that this Petition and application were filed in this court to mischievously circumvent the provisions of **EMCA**, and therefore this court has no jurisdiction.

50. He further contended that even without admitting jurisdiction, he was aware that on **18<sup>th</sup> April 2024**, the 3<sup>rd</sup> Respondent informed the Authority via submissions of a **Comprehensive Environmental Impact Assessment (EIA)** to **Narok, NEMA Offices**, of its intention to establish an eco-tented campsite in the **Maasai Mara National Reserve**, Narok County.

51. Further, that the 3<sup>rd</sup> Respondent was not supposed to carry out any development works until the 5<sup>th</sup> Respondent reviewed the **EIA Report** and issued its decision on the same, and the issues raised addressed, a condition that was fully complied with. He also contended that the 5<sup>th</sup>

Respondent contacted the lead and relevant agencies in accordance with **EMCA**, and requested for their views and comments, which was to help the Authority make an informed decision, in reviewing the EIA Project Report.

52. He averred that on **30<sup>th</sup> April 2024**, the 5<sup>th</sup> Respondent Narok Team visited the site in order to verify the **appropriateness** of the proposed site as is evident from annexure DO2. He contended that the proponent of the project conducted and supplied **evidence of public participation meetings** with the **project affected persons** to assist in decision making.

53. He confirmed that the 3<sup>rd</sup> Respondent holds a **lawfully** obtained **Environmental Impact Assessment Licence** No **NEMA/EIA/PSL/32348**, issued on **14<sup>th</sup> May 2024**. He claimed that the 5<sup>th</sup> Respondent has never received any complaint from the Petitioner or his Advocate regarding the project, including during the EIA, application and processing stages or in respect of consultations undertaken, all of which were conducted with the full knowledge and participation of the project-affected community.

54. It was his contention that they put into consideration all the concerns of **public participation**, and that was the reasons it requested for more information from the 3<sup>rd</sup>

Respondent in the course of reviewing the report, such as further evidence of **public participation engagements** and mitigation measures.

55. He promised that the 5<sup>th</sup> Respondent through coordination and supervision of the relevant agencies will **continuously** undertake **compliance monitoring** of the **Environmental and Social Safeguards** instituted through **Environmental Management Plan** in the EIA project report and the EIA licence conditions to ensure sustainable development and operation of the project and sound environmental management.

56. He claimed the Petitioner's allegations of irregularities in the process are unsubstantiated and lack any factual basis or supporting evidence to warrant grant of conservatory orders. He further alleged that the instant Petition and application are nothing but **forum shopping** as the claims made therein are unsubstantiated, but also are brought one year after the impugned licence was issued, and also bale brought to circumvent the National Environmental Tribunal.

57. The deponent urged the court to dismiss the instant application with costs.

58. The 4<sup>th</sup> Respondent filed a **Notice of Preliminary Objection** dated **15<sup>th</sup> September 2025**, wherein it averred that;

- i) That this court lacks jurisdiction to hear and determines the matters raised in the Petition herein and the application dated 8<sup>th</sup> August 2025, in view of section 117 of the Wildlife Conservation and Management Act (Cap 376) and sections 125,126,127 and 129 of the Environmental Management and Co-ordination Act(EMCA);**
- ii) That this Petition and application dated 8<sup>th</sup> August 2025, is frivolous, vexatious and an abuse of the court process.**

59. The court directed the parties to canvass the **Notice of Motion Application** and the **Preliminary Objection** together through written submissions. In compliance, the Petitioner/ Applicant filed his submissions dated **29<sup>th</sup> January 2026**, through **Kwame Shago & Co Advocates**, the 3<sup>rd</sup> Respondent filed its written submissions dated **26<sup>th</sup> January 2026**, through **Hamilton Harrison & Mathews Advocates**, 4<sup>th</sup> Respondent filed its submissions dated **27<sup>th</sup> January 2026** through **Maina Ngaruiya & Co Advocates** and 5<sup>th</sup> Respondent filed its submissions dated **26<sup>th</sup> January 2026**, through **Ngararu Advocates**. The court has read and considered all the submissions as filed.

60. However, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties did not comply nor file any written submissions. The court checked the **CTS** and found no submissions by any of the two Interested Parties herein and will proceed to consider the **Application** and the **Preliminary Objection** without their input.

61. In his submissions, the Petitioner/Applicant set out two issues for determination;

- i) Whether the threshold for the grant of the conservatory orders has been met;*
- ii) Whether empanelment under Article 165(4) is warranted.*

62. On whether the threshold for grant of conservatory order had been met, the Petitioner/Applicant relied on the cases **Gatirau Peter Munya Vs Dickson Mwenda Kithinji & 2 others (2024) eKLR; Centre for Rights Education and Awareness (CREAW) & 7 Others Vs Attorney General (2011) eKLR; Ken Kasinga Vs Daniel Kiplagat Kirui & 5 Others (2015) eKLR; Doctors for Life International Vs Speaker of National Assembly; and rusted Society of Human Rights Alliance Vs Attorney General & 2 others (2012) eKLR;**

63. While relying on the above cited cases, the Petitioner/Applicant submitted grant of **conservatory orders** being evidence driven, the threshold **has not been met**, and that the apprehended constitutional

violations have been sufficiently met, no imminent or continuing infringement of **Articles 42, 69 Or 70** of the Constitution has been demonstrated, and the **public interest** no longer favour grant of conservatory orders.

64. He concluded that the threshold for grant of the orders sought has not been met, and the prayers sought have also been overtaken by events.

65. On whether empanelment under Article 165(4) is warranted, he relied on the cases of ***Harrison Kinyanjui Vs Attorney General & Another (2012) eKLR; Judicial Service Commission Vs Speaker of National Assembly & Another (2013) eKLR; and Okiya Omtatah Vs Anne Waiguru & 3 Others (2017) eKLR;*** and submitted that the basis upon which empanelment was initially sought has been **overtaken by events** and thus empanelment would not serve any constitutional purpose, as the matter can be determined by a single judge.

66. In its submissions, the 3<sup>rd</sup> Respondent set out two issues for determination;

***a) Whether the Petitioner/Applicant has met the threshold for grant of conservatory orders sought;***

***b) Whether the petition should be heard by an expanded bench.***

67. On whether conservatory orders should be issued, the 3<sup>rd</sup> Respondent while relying on the case of ***Centre for Rights Education and Awareness Vs Speaker of National Assembly (Supra)*** set out the principles to be considered in such an application being;

***i) A prima facie case with likelihood of success;***

***ii) A real and imminent risk of violation that cannot await the final determination of the petition.***

68. It also relied on the case of ***Gatirau Peter Munya Vs Dickson Mwenda (Supra); Mohamed & Another Vs Haidara & Another (1972) EA 166***, and submitted that the Petitioner/Applicant failed to satisfy either of the limb of the test for conservatory relief, and therefore the instant application is **moot**, unsupported by **prima facie** case and is devoid of any imminent constitutional harm, and should be dismissed.

69. On the issue of empanelment, the 3<sup>rd</sup> Respondent also relied on the case of ***Harrison Kinyanjui Vs Attorney General & Another (Supra); Martin Nyaga & Another Vs Speaker County Assembly of Embu & 4 Others & Amicus Curiae (2014) KEHC 7962 (KLR)***;

***Philip K. Tunoi & Another Vs Judicial Service Commission & Another (2016) eKLR***, and submitted that the Petitioner/Applicant failed to satisfy the constitutional and jurisprudential threshold for empanelment under **Article 165(4)** of the Constitution, and the court should decline that prayer of empanelment, and proceed to hear the matter as a single judge.

70. The 4<sup>th</sup> Respondent in its submissions set out three issues for determination;

**i. whether the court has jurisdiction to hear and determine the Petition and application;**

**ii. whether the Petitioner/applicant has met the threshold for grant of conservatory orders;**

**iii. whether the Petition should be heard by an expanded bench.**

71. On jurisdiction, the 4<sup>th</sup> Respondent submitted that this court lacks jurisdiction to hear and determine this petition and application. It relied on **section 76** of the **Physical & Land Use Planning Act**, which establishes the **County Physical and Land Use Liaison Committee**, with jurisdiction to hear any dispute regarding environmental impacts of any development approved by the County.

72. It also relied on **Wildlife Conservation & Management Act Cap 376** specifically **Section 117; Section 125 and 129 of Environment Management & Coordination Act(EMCA)**, which establishes **National Environment Tribunal** with jurisdiction to hear disputes related to issuance of licence or permit under the Act, by NEMA.

73. For this, the 4<sup>th</sup> Respondent relied on the following cases; ***Kibos Distillers Ltd & 4 Others Vs Benson Ambuti & 3 Others (2020) eKLR; Geoffrey Muthinja Kabiru & 2 Others Vs Samuel Munga Henry & 1756 others (2015) eKLR***; where the Court of Appeal held that ***where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked.***

74. It further submitted that the Petitioner contravened the **doctrine of exhaustion**, which is an important constitutional principle as it allows administrative agencies to address and potentially resolve any complaints or disputes before it is escalated to courts. 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 eKLR; Speaker of National Assembly Vs James Njenga Karume (1992) eKLR; Orata International Ltd Vs National Environment Management Authority***

**(2019) eKLR.** It urged the court to down its tools and strike out the matter for want of jurisdiction.

75. On grant of **conservatory orders**, it submitted that the Petitioner/Applicant has not met the threshold of grant of such orders as it failed to establish a prima facie case; the violation or threatened violation is likely to continue unless the conservatory order is granted. Reliance was sought in the case of ***Gatirau Pater Munya Vs Dickson Mwenda Kithinji & 2 Others (Supra)***.

76. It was its further submissions that the conservatory order sought was to prevent the opening of the Safari Camp, which was officially opened on **15<sup>th</sup> August 2025**, and the orders sought are incapable of being granted, as the event sought to be prevented has already occurred or completed. Further, that the conservatory orders sought would **undermine the public interest** of the **local community** who expects to benefit directly from the Camp operations.

77. On empanelment, the 4<sup>th</sup> Respondent relied on the case of ***Harrison Kinyanjui Vs Attorney General & Another (supra); Okiya Omtatah Okiiti Vs Attorney General (Supra)*** and submitted that this Petition does not raise **any novel** or **unsettled** question of

Constitutional or Environmental Law, and should be determined by a single judge.

78. In conclusion, the 4<sup>th</sup> Respondent urged the court to allow is **Preliminary Objection** dated **15<sup>th</sup> September 2025**, and the Petition and application **dated 8<sup>th</sup> August 2025**, be dismissed and/or struck out with costs.

79. The 5<sup>th</sup> Respondent set out three issues for determination;

- i) **Whether the court is properly seized of jurisdiction to hear and determine the dispute;**
- ii) **Whether the Petitioner has met the threshold for the grant of the conservatory orders sought;**
- iii) **Whether the Petition satisfies the threshold for certification and empanelment of a multi-judge bench.**

80. On jurisdiction, the 5<sup>th</sup> Respondent submitted that this court has **no** jurisdiction. It submitted that the doctrine of exhaustion ought to have been invoked as provided by **Sections 125 and 129 of EMCA**. It also submitted that the Petitioner ought to have invoked **Section 117** of the Wildlife Conservation and Management Act, which states that *disputes relating to Wildlife Management, Protection or Conservation should first be referred to the lowest devolved structure before being escalated to court.*

81. Reliance was sought in the similar cases referred to by 4<sup>th</sup> Respondent, and also in the case of ***R Vs Transport Licencing Appeal Board & 2 Others Ex parte MNG Sacco Ltd (2017) eKLR***; and ***Owners of Motor Vessel Lillian S Vs Caltex Oil (Kenya) Ltd (1989) KLR 1***; and submitted that this court should allow NET to exercise its powers as granted by **Sections 125 and 129 of EMCA**, and **117** of Wildlife Conservation and Management Act.

82. On whether the Petitioner/Applicant has met the threshold for grant of conservatory orders, reliance was sought in similar cases referred by the other Respondents, and submitted that the Applicant did **not establish prima facie case** by placing before the court cogent and credible evidence of the threatened violation attributable to the Respondents.

83. It submitted that as a statutory body mandated under **Section 7 of EMCA**, it carried out its duty of general supervision and coordination over all matters relating to environment by receiving the EIA Report, reviewing it and consulting the lead agencies and also carried site inspection on **30<sup>th</sup> April 2024**.

84. Further reliance was sought in the case of ***Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others Vs County of Nairobi Government & 3 Others (2013) eKLR***, where the court held:-

**“Further it does not matter how the public participation was effected. What is needed, in my view, is that the public was accorded some level of public participation and I must therefore agree with sentiments of Sachs J. in Minister of Health Vs. New Clicks South Africa (PTY) Ltd where he expressed himself as follows; ”. The forms of facilitating on appropriate degree of participation in the law making process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of public and all interested parties to know about the issue and to have adequate say.”**

85. On empanelment, the 5<sup>th</sup> Respondent submitted that the issues raised by the Petitioner are neither novel nor complex since they relate to environmental licencing, public participation and regulatory compliance, which matters can be handled by a single judge.

86. The 5<sup>th</sup> Respondent quoted the case of **Community Advocacy Awareness Trust & Others vs Attorney General & Others HCPT No. 243 of 2011; Okiya Omtata Okoiti & 4 Others Vs Attorney General & Others (2019) eKLR**, where the court held; *a substantial question of law must involve issues not conclusively settled by the highest courts ,directly affect the bright of parties, and be of genuine public importance.*

87. Ultimately, the 5<sup>th</sup> Respondent submitted that the Petitioner/Applicant is not entitled to any reliefs sought in the Notice of Motion application or the Petition at all and prays that he same should be dismissed entirely with costs.

88. The above are the pleadings in respect of the instant Application for **Conservatory Orders**, the **Preliminary Objection**, the submissions by the parties and the cited authorities which this court has carefully read and considered and renders itself as follows: -

89. As stated earlier, this court did not have the benefit of reading and considering the submissions from the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties will rely on the available submissions for all the other parties.

90. At the core of the dispute herein are the allegations that the construction of **Ritz-Carlton Maasai Mara**

**Safari Camp** has **obstructed** the **migration corridors of wildlife** especially the **wildebeests** along **Sand River** in Maasai Mara, and that the approvals and licence issued for such construction contravenes the **Constitutional and Statutory Laws**, since they were issued without **public participation** of the **local community**, who are adversely affected of the construction by the said **Luxury Hotel** and obstruction of the wildlife, specifically the **wildebeests**.

91. Having considered the pleadings herein and the respective submissions by the parties herein, the court finds the issues for determination are;

- i. Whether Petitioner/Applicant's application dated 8<sup>th</sup> August 2025 is merited;***
- ii. Whether the Preliminary Objection by the 4<sup>th</sup> Respondent dated is merited;***
- iii. Who should meet costs of this application/ preliminary objection.***

92. In answering the first issue, the court will consider whether the Petitioner/Applicant has met the **threshold** for grant of **conservatory orders**. The Applicant has sought for conservatory orders to restrain the Respondents from opening or operationalizing the **Ritz-Carlton Maasai Mara Safari Camp** at **Maasai Mara National Reserve**, and to suspend any and/or all

activities including advertisement of the scheduled opening of **15<sup>th</sup> August 2025**. It should be noted that this event has already occurred.

93. **Conservatory Orders** are orders that are anchored on the Articles of the Constitution; which are issued by the court on a temporary basis, and are meant to **preserve the status quo** and **protect** the subject matter of the Petition or a law suit until the Petition is fully heard and determined. Further, **conservatory orders** are rooted in **Article 23** of the Constitution, and are meant to **prevent actions** that could render a case moot or nugatory. See the case of **Mwaniki v Ndiga & 3 others (Constitutional Petition E020 of 2024) [2025] KEHC 9562 (KLR) (1 July 2025) (Ruling)**, where the court held;

***“A conservatory order is a judicial remedy sought or issued by a court to preserve a subject matter until a petition is heard and determined. It is an order of status quo ante so that the substratum of the petition is preserved or so that the same is not rendered an academic exercise.”***

94. Further, in the case of **David Ndi & Others Vs Attorney General & Others (2021) eKLR**, the court held;

***“ ....such orders ( conservatory ) are granted to preserve the substratum of the Petition and therefore , where it is contended that there is a threat of violation of the constitution ,any stage in the chain of constitutional process under challenge may properly be the subject od a conservatory order as long as that action is consequential to the process under challenge,,”***

95. From the above holdings of the court, it is trite that **conservatory orders** maintain the situation as it is by preventing any action that would alter the subject matter of the dispute, by ensuring that the said subject matter is preserved before the final decision is given. Therefore, it is clear that **conservatory orders** are issued to **preserve** the subject matter when an action is being challenged through a Petition.

96. The case of ***Board of Management of Uhuru Secondary Scholl Vs City County Director of Education & 2 others (2015) eKLR***, summarised the principles to be considered in grant of conservatory orders as follows;

***i) “The needs for the Applicant to demonstrate an arguable prima facie case with likely hood of success and to show that in the absence of the conservatory orders he is likely to suffer prejudice.***

**ii) The secondary principal in whether the denial of the conservatory order will enhance the constitutional values and objects of the specific right or freedom in the Bill of Rights.**

**iii) The court should consider whether if an interim conservatory order is not granted, the Petition or its substratum will be rendered nugatory.**

**iv) Whether the public interest would be prejudiced by a decision to exercise discretion to grant or deny conservatory order.”**

97. All the parties herein relied on the decision of the Supreme Court in the case of **Gatirau Peter Munya - Vs- Dickson Mwendwa Kithinji and Another (Supra)**, where the court held;

**“Conservatory Orders” bears a more decided public law connotations: for these orders are to facilitate ordered function within public agencies as well as to uphold the adjudicatory authority of the court is the public interests. Conservatory orders, therefore, are not, unlike interlocutory injections, linked to such private party issues as “the prospects of irreparable harm occurring during the pendency of a case, or “high probability of success” in the applicant’s case, for orders of stay.”**

98. While considering whether to grant or not to grant **Conservatory Orders**, it is important to consider that

there is need for the court to **exercise caution** when dealing with any request for such prayers for the reason that matters which are a preserve of the main Petition are not to be dealt with finality at the interlocutory stage. See the case of **Centre for Rights, Education and Awareness (CREAW) & 7 Others -Vs- the Attorney General (2011) eKLR.**

99. From the authorities relied upon by the parties, it is settled that for a party to succeed in an application for grant of conservatory orders, he/it must establish that; he has a *prima facie case with probability of success; whether the party is likely to suffer irreparable prejudice in the absence of the conservatory orders.* See the case of **Wilson Kaberia Nkunja -Vs\_ The Magistrates & Judges Vetting Board & Others (2016) eKLR.**

100. Further, the court will consider whether if the conservatory order is **not** granted or **is** granted, will it enhance the constitutional values? and the objects of the specific right or freedom in the Bill of Rights? The party seeking such orders must also demonstrate that if the interim conservatory orders are not granted, the Petition or the substratum of the said Petition will be rendered nugatory, and whether granting of the conservatory orders is necessary in the public interest. See the case of **Gitarau Peter Munya Vs Dickson Mwenda Kithinji & others (supra).**

101. Bearing the above in mind, this court will consider the available evidence and then juxtapose it with the instant application and the submissions therein and then comes up with a conclusion on whether the Applicant is deserving of the orders sought.

102. In the main Petition and this application, the Applicant had challenged the **legality**, environmental compliance and constitutionality of the construction and development of **Ritz-Carlton Maasai Mara Safari Camp** within **Maasai Mara National Reserve**, and sought **conservatory orders** until the hearing and determination of the Petition.

103. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed their responses and annexures in opposition to the Petition and application, wherein they availed evidence of compliance with all the relevant laws and regulations, evidence of **public participation, meetings** and the fact that the **Ritz-Carlton Maasai Mara Safari Camp** is constructed about **15km** from the wildlife migration corridor. In a turn of event, the Petitioner/Applicant admitted that the Petition/Application has **not met** the threshold for grant of conservatory orders.

104. The Applicant submitted that upon review of the Replying Affidavits particularly by the 3<sup>rd</sup> Respondent, he has ascertained that a **Comprehensive EIA Project Report** was submitted to **NEMA**, and the project fell within the relevant schedule of **EMCA**, and **NEMA** undertook technical evaluation, inter-agency consultation and site inspections and the EIA Licence was issued accordingly. The Petitioner/Applicant admitted that there was substantive compliance with the various provision on **EMCA** and Environmental (Impact Assessment and Audit) Regulations.

105. The Applicant also conceded that there was evidence of **public participation** through various **meetings** held especially the meeting of **18<sup>th</sup> April 2024**, and the community concerns were incorporated into mitigation measures.

106. With the above admission, it is clear that the Applicant has **not established a prima facie case with probability** of success. There is no doubt that the material placed before the court demonstrated that the **Safari Camp** was **constructed** and **developed** pursuant to the structured regulatory framework, approvals were granted by the relevant statutory bodies, and the project was subjected to environmental scrutiny, land use control and regulatory oversight in accordance with the applicable law.

107. From the available evidence, it is evident that from the conception of the project, construction and development to the date of the instant application, it took about **2 years**, and if there was a genuine grievance, it ought to have been escalated at the commencement of the project, and not at the tail end. It is evident from the replies and annexures by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents that: -

- i) A Comprehensive Environmental Impact Assessment process was undertaken.***
- ii) Inter-agency consultations and technical evaluations were conducted;***
- iii) Site inspections were carried out.***
- iv) An EIA license was issued on 14<sup>th</sup> May, 2024.***
- v) A lawful variation was granted on 31<sup>st</sup> October, 2024.***

108. The 4<sup>th</sup> Respondent confirmed that it granted the approval for the construction of the **Safari Camp** after consideration of all necessary measures, just like it has approved for many other establishments with **Maasai Mara National Reserve**, and 5<sup>th</sup> Respondent, submitted that the 3<sup>rd</sup> Respondent having fully complied with the statutory framework under **EMCA** including undertaking **Comprehensive Environmental Impact Assessment**,

**conducted public participation, and secured approvals from relevant lead agencies, and implementing mitigation measures,** it had no reasons not to grant the permit or licence.

109. From the materials placed before this court, and as admitted by the Applicant, it is evident that the project or Construction of the said **Safari Camp** was carried after full compliance with the relevant laws and regulations; there is no evidence of **illegality** or **lack of public participation**. Thus the Applicant has not established a prima facie case for any constitutional or statutory violations.

On whether there will be likelihood of the Applicant suffering irreparable harm or prejudice in the absence of conservatory orders, it is not in doubt, the **Safari Camp** was officially opened on **15<sup>th</sup> August 2025**, and the conservatory orders were intended to prevent the opening of the same. That has already occurred, and the prayer has been overtaken by events. No evidence of any imminent harm or prejudice to the applicant or any other party herein. Conservatory orders cannot be issued to an event that has already occurred. See the case of ***Katiba Institute & 4 others v Attorney-General & 3 others; Inuka Kenya ni Sisi & another (Interested Parties) (Petition E234 of 2025) [2025] KEHC 12779 (KLR)***.

110. On whether the conservatory orders will enhance constitutional values, the Applicant did confirm that the Respondents herein complied with the relevant provisions of law, and since constitutional litigation must be evidence driven and responsive to evolving fact, then grant of the sought orders would not enhance any constitutional value. Infact, they would impede on the rights of the 3<sup>rd</sup> Respondent who complied with the required conditions **2 years ago** without objection, **constructed** and **developed** the said **Safari Camp**, only to be challenged through this application after the completion of the construction, and an official opening date already set.

111. On whether the conservatory orders are necessary for public interest, the Petition and Application had been couched as a public litigation, but from the material presented to court, it is clear that the **Safari Camp** was constructed within a regulated framework, with full **public participation** and **conservation management** was put into consideration in the issuance of the permit/licence. The 4<sup>th</sup> Respondent submitted that this **Safari Camp** was licenced to operate within **Maasai Mara Game Reserve** just like many others such facilities, after meeting all the conditions set out, and it s for the public interest for **conservatory orders** not to be issued, since the **Safari Camp** is an avenue for revenue generation and

contributes to employment, and supports local community.

112. With the above submissions, the court finds and holds that the conservatory orders will not enhance public interest.

113. On empanelment, the Petitioner/Applicant had sought for an expanded bench under **Article 165(4)** of the Constitution. However, in his submissions, he argued that being satisfied with the documentary evidence adduced by the Respondents, he had confirmed that the regulatory framework under **EMCA** was properly invoked and the statutory agencies had discharged their respective mandates, and thus the Petition herein does not raise any **unresolved, novel or complex constitutional question** requiring an expanded bench.

114. All the Respondents were opposed to the empanelment, and relied on various decided cases; being the case of ***Harrison Kinyanjui Vs. Attorney General & Another [2012] eKLR, Okiya Omtatah Okoiti VS. Anne Waiguru & 3 Others [2017] eKLR and Judicial Service Commission Vs. Speaker of the National Assembly & Another [2013] eKLR***, to support their objection to the empanelment.

115. The Applicant abandoned this prayer of empanelment, and the court finds and holds no reasons

were advanced for such an expanded bench, and the said prayer fails.

116. Having considered the available evidence, the court finds that the Petitioner/Applicant did not meet the threshold for grant of **conservatory orders**, and /or empanelment under **Article 165(4)** of the Constitution. For the above reasons, the Notice of Motion Application dated **8<sup>th</sup> August 2025** is dismissed entirely.

117. On whether the Preliminary Objection dated **15<sup>th</sup> September 2025**, by the 4<sup>th</sup> Respondent is **merited**, the court finds that the said objection challenges the Jurisdiction of this court to hear and determines this Petition.

118. In the said **Preliminary Objection**, which is supported by the 5<sup>th</sup> Respondent, it is alleged that the court lacks jurisdiction to hear and determines the matter raised in the Petition, as the Petitioner failed to invoke the provisions of **Sections 117 of Wildlife Conservation and Management Act (WCMA)**, and **Sections 125 ,126, 127 and 129** of Environmental Management and Coordination(EMCA).

119. Section 117 of Wildlife Conservation & Management Act provides:-

**“(1) Any dispute that may arise in respect of wildlife management, protection or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the Devolution of Government Act including traditional resolution mechanisms.**

**(2) Any matter that may remain un-resolved in the manner prescribed above, shall in all appropriate cases be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie to the Environment and Land Court as established under the Environment and Land Court Act (Cap. 8D).”**

120. Section 129 of EMCA provides:-

**“Appeals to the Tribunal**

**(1) Any person who is aggrieved by—**

**(a) A refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;**

**(b) The imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder; 65 [Issue 1]No. 8 of 1999 Environmental Management and Co-ordination [Rev. 2012]**

**(c) (d) (e) The revocation, suspension or variation of his licence under this Act or regulations made thereunder; the amount of money which he is required to pay as a fee under this Act or regulations made**

***thereunder; the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.***

121. It is evident that the Petition herein challenges the obstruction or blocking of **wildlife migration corridor**, within **Sand River** at **Maasai Mara Natural Reserve** and the approval or grant of licence to construct **Safari Camp** within the said Maasai Mara National Reserves. The 4<sup>th</sup> Respondent submitted that the Petitioner prematurely invoked the jurisdiction of this court, since there are other statutory bodies that he could have involved before coming to court, such as the Liaison Committee under the Physical Planning and Land Use Act on **EMCA**.

122. The jurisdiction of this court has been challenged, and jurisdiction is everything. Without it, the court has no option but to down its tools. ***See the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, where the court held that: -***

***"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 in respect of the matter before it the moment it holds the opinion that it is without jurisdiction .....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."***

123. By alleging that the Petitioner invoked the jurisdiction of this court, while there are other statutory bodies mandated to determine the dispute, then the Petition herein has contravened the doctrine of exhaustion.

124. The **doctrine of exhaustion** which is codified in **section 9** of the **Fair Administrative Act**, and it mandates that a party challenging an administrative action or decision to first utilize all available statutory or internal remedies before approaching the Court for intervention. This ensures that courts are not burdened prematurely and agencies resolve disputes using their expertise See the case of **Robert Khamala Situma & 8 others v Acting Clerk of the Nairobi City County Assembly [2022] eKLR**.

125. The Doctrine of Exhaustion is defined in **Blacks Law Dictionary 10th Edition** as follows -

***“exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine’s purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.***

126. This doctrine has been entrenched in various decisions made by our courts, and it emphasises that where Parliament has established specialised disputes resolution mechanisms, parties are bound in the first instance to invoke those mechanisms before approaching the court. See the case of **Samson Chembe Vuko Vs. Nelson Kilumo & 2 Others [2016] eKLR**, where the **Court of Appeal** relied on the decision of **Kones Vs. Republic & Another Exparte Kimani Wa Nyoike & 4 Others [2000] eKLR at 296.**

127. In the case of **Speaker of National Assembly Vs Karume (1992) KLR**, the court held that where a statute provides for a dispute resolution mechanism, that procedure must be followed.

128. Further, the Court of Appeal in the case of **Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Ogers (2015) eKLR**, held:-

*“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be for a last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute.”*

129. The Petition herein though having quoted the Articles of the Constitution, is challenging the obstruction of **wildlife migration** corridor and grant of licence or permit by NEMA to construct **Ritz-Carlton Maasai Mara Safari Camp**. Though couched a constitutional petition, the grievances herein are more on the grant of approvals, and the fact that the construction of the **Safari Camp** will interfere with the wildlife migration that falls squarely under the **Wildlife Management Act**.

130. As provided by **Sections 117 of WCMA ,125 and 129 of EMCA**, these grievances ought to have been challenged to the relevant statutory bodies before invoking the jurisdiction of this court. See the case of **Mungai & 6 others v National Environment Management Authority & 2 others (Tribunal Appeal 5 of 2024) [2024] KENET 630 (KLR) (29 April 2024) (Ruling).**

131. From the various decisions of courts, it is evident that where the procedure for redress has been clearly outlined by the Constitution or an Act of Parliament, that procedure must strictly be followed. It is a common denominator in all the decisions cited that an aggrieved party ought to approach the court only after exhausting all the available **alternative disputes resolution mechanism**. In this case **WCMA** and **EMCA**, have provided for such mechanism.

132. Having considered the submissions by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, the Petition in general and the cited provisions of law, this court finds and holds that the jurisdiction of this court was prematurely invoked by the Petitioner because he failed to raise his grievances under **Section 117 of WCMA, and Section 129 Of EMCA.**

133. Further, if the Petitioner was aggrieved with the grant of building approvals under the Physical Planning, he ought to have appealed to the relevant Committee. See the case of **Mutanga Tea & Coffee Company Ltd Vs Shikara Ltd & Another (2012) eKLR**, where the court held:-

***“Any person aggrieved by the decision of the Director of Physical Planning has a right to appeal to the Local Liaison Committee within sixty days, and if dissatisfied with the decision of the liaison committee, a further right to appeal to the National Liaison Committee, and if still dissatisfied with the decision of the National Liaison Committee, a final right to appeal to the High Court.”***

134. The court will also rely on the case of **Zoa Ltd vs Arvind Mani & 2 Others (2020) eKLR**, where the court held;

***“ Whether the 2nd and 3rd Respondents applied the necessary criteria before granting approvals is not for this court to address at this stage and in any case. if the Applicant was dissatisfied with the grant of the approvals and licences, it was free to ventilate its grievances before the National Environment Tribunal and County Physical and Land Use Planning Liaison Committee as provided for under the Physical and Land Use Planning Act. This was the***

***reasoning in Deepak Harakch & another Vs Anmol Limited & 4 others (2018) e KLR where Justice Eboso declined to grant an injunction where the Applicants had not exhausted the mechanisms under the then Physical Planning Act (Now repealed)."***

135. In the case of ***William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR*** the Court held as follows;

***"The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts."***

136. There are exceptions to this doctrine of exhaustion, where the court may intervene despite non-exhaustion of remedies under "**exceptional circumstances**," such as, where; *the statutory remedy is not adequate or effective; where the administrative body acted ultra vires; where*

*matter involves fundamental constitutional issues that cannot be adequately handled by the tribunal and where action is in violation of the principles of natural justice. See the case of **Fleur Investments Limited v Commissioner of Domestic Taxes & another [2018] eKLR.***

137. This court has not seen any of the above exceptions in this Petition. The court finds that the jurisdiction of this court has been **prematurely** invoked and being persuaded by various authorities cited by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, the court finds that the **Preliminary Objection** herein is **merited**. The court has **no jurisdiction** to hear and determines this Petition for contravening the doctrine of exhaustion.

138. Consequently, the court will down its tool and strikes out the entire Petition. See the case of **Angela Mbugua & 4 Others vs KQ Holding Ltd & 2 Others ( 2020) eKLR**, where the court held;

***“Having carefully considered the available pleadings, the rival submissions herein, the cited authorities and the relevant provisions of the law, the Court finds that it lacks jurisdiction to deal with this matter as there are relevant alternative disputes resolution mechanisms, which were not employed by the Plaintiffs and therefore***

***this suit was prematurely filed, and the Court is divested of Jurisdiction. Without Jurisdiction, the Court's hands are tied, and it has no option but to down its tools as for any action taken without Jurisdiction shall be null and void. Having now downed its tools, the Court finds that the entire suit herein ought not to stand."***

139. The final issue for determination is who should bear costs of this Petition/Application and the Preliminary Objection. Having found and held that the application for conservatory order was **not merited** and having dismissed it entirely, then the Petitioner/Applicant is condemned to pay costs of the said Application.

140. On the Notice of Preliminary Objection, the court has upheld the same, and has proceeded to down its tools, and has struck out the entire Petition. Costs to be borne by the Petitioner.

141. In a nutshell, after careful consideration of all the issues before this court, the final orders are as follows;

- i) The Notice of Motion Application dated 8<sup>th</sup> August 2025, is dismissed entirely with costs.***
- ii) The Notice of Preliminary Objection by 4<sup>th</sup> Respondent dated 15<sup>th</sup>***

**September 2025, is upheld, and the court downs its tools, and the entire Petition is struck out with costs to the Respondents.**

**It is so ordered.**

***Dated, Signed and delivered virtually at Narok this 26<sup>th</sup> day of February, 2026.***

**L. Gacheru**

**Judge**

**Delivered online in the presence of**

***Elijah Meyoki - Court Assistant***

***Mr. Owino holding brief Mr. Shago for the Petitioner/Applicant***

***Mr. Odhiambo holding brief for Mr. Munyu for 1<sup>st</sup> and 2<sup>nd</sup> Respondent***

***Mr. Kiragu Kimani & Ezra Makori for 3<sup>rd</sup> Respondent***

***M/S. Lyona for 4<sup>th</sup> Respondent***

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

***Mr. Shiundu holding brief for Ochiel Duddley for 1<sup>st</sup> Interested Party***

***N/A for 2<sup>nd</sup> Interested Party***

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