



Alfajiri Kilimani Limited v National Environment Tribunal & 3 others (Environment and Land Appeal E038 of 2026) [2026] KEELRC 665 (KLR) (10 March 2026) (Ruling)

Neutral citation: [2026] KEELRC 665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E038 OF 2026
EK WABWOTO, J
MARCH 10, 2026**

BETWEEN

ALFAJIRI KILIMANI LIMITED APPELLANT

AND

THE NATIONAL ENVIRONMENT TRIBUNAL 1ST RESPONDENT

MAZINGIRA GREEN PARTY OF KENYA 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

COUNTY GOVERNMENT OF NAIROBI 4TH RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 5th March 2026 brought by the Applicant seeking inter alia an order for a stay of execution and suspension of the exparte orders issued by the National Environment Tribunal (NET) on 13th February 2026 and extended on 27th February 2026. The application is premised on the grounds on its face and also supported by the affidavit sworn by Peter Kinyua Kungu on 5th March 2026.
2. The Applicant contends that unless this Court intervenes, they will suffer substantial loss and their intended appeal against the said orders will be rendered nugatory.
3. The Applicant argues that the NET's orders are oppressive and were issued exparte and without due regard to the facts. They further submit that although they have filed an application at the NET seeking to discharge the said orders, that application is yet to be determined.
4. The Respondent opposes the application vide a replying affidavit sworn by John Kiplagat Bunei on 9th March 2026 primarily on the ground that it is premature. They argue that since a discharge



application is currently live before the Tribunal, this Court should not interfere until that Tribunal fully determines the matter.

5. The primary issue for consideration is whether the Applicant has made out a case for grant of the orders sought.
6. It is not in doubt that under Section 13 of the *Environment and Land Court Act*, this Court exercises supervisory jurisdiction over the NET. However, that power is discretionary. In *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal emphasized that such discretion must be exercised in a way that does not defeat the ends of justice.
7. While the Court acknowledges the potential for loss as submitted by the Applicant, the threshold for a stay under Order 42 Rule 6(2) of the Civil Procedure Rules requires more than just an allegation of loss since it requires proof that the loss is irreversible.
8. It is a settled principle that where a specialized dispute resolution mechanism is provided by statute, parties must first utilize and exhaust that forum before seeking recourse in superior courts.
9. In the case of *Community Action for Nature Conservation (CANCO) & others v. Cabinet Secretary, Ministry of Mining & others* [2015] eKLR, the court held that:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
10. By filing a discharge application at the NET, the Applicant has correctly invoked the Tribunal's jurisdiction. For this Court to step in now would result in a parallel process, creating a risk of conflicting decisions between the ELC and the NET.
11. In the present case, the Applicant has not demonstrated that the Tribunal has refused to hear the discharge application or that there is a manifest failure of justice. The mere existence of an interlocutory order does not of itself, warrant bypassing the subordinate body's own review process. Both parties have admitted that the Applicant's application seeking to set aside the Tribunal's orders is due for hearing on 11th March 2026.
12. The Applicant's rights are currently being litigated at the NET. If this Court grants a stay and or a suspension of the said orders at this stage, it would be leapfrogging the Tribunal's mandate. As stated in *Lawrence P. Mukiri Mungai v. Attorney General & 4 others* [2017] eKLR, an application for stay should first be determined by the body that issued the order, unless exceptional circumstances exist. No such exceptional circumstances such as a total lack of jurisdiction by the NET have been proven here.
13. The Applicant's move to this Court is premature. The National Environment Tribunal is currently seized of the matter through the pending discharge application. This Court must allow the Tribunal to exercise its statutory mandate under the *Environmental Management and Co-ordination Act* (EMCA).
14. In view of the foregoing, it is the finding of this court that the application dated 5th March 2026 is not merited, the court is unable to grant the orders sought, the same is hereby dismissed. Costs of this application shall be in the cause.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF MARCH, 2026.



E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Kimanthi for the Appellant.

Mr. Omangwa for the 2nd Respondent.

N/A for the other Respondents.

Court Assistant: Mary Ngoira.

