



REPUBLIC OF KENYA



Northern Block Residents Limited v Air View Properties Limited & 2 others (Environment and Planning Petition E042 of 2025) [2026] KEELC 1343 (KLR) (4 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E042 OF 2025**

TW MURIGI, J

FEBRUARY 4, 2026

BETWEEN

NORTHERN BLOCK RESIDENTS LIMITED PETITIONER

AND

AIR VIEW PROPERTIES LIMITED 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

RULING

1. The Petitioner instituted this Petition against the Respondents seeking the following orders:
 - a. A declaration that the Respondents actions and omissions violated the Petitioners rights under Articles 10, 35, 40, 42, 47, 69, and 70 of the *Constitution*.
 - b. A declaration that the licenses and approvals issued by the 2nd and 3rd Respondents in respect of the proposed development are unconstitutional, unlawful, null, and void.
 - c. An order of Certiorari quashing the licenses and approvals issued by the 2nd and 3rd Respondents to the 1st Respondent in respect of the proposed development.
 - d. An order prohibiting the 1st Respondent from commencing, carrying out, and/or continuing any demolitions, renovations, and/or construction works on the suit property.
 - e. An order of Mandamus compelling the Respondents to provide to the Petitioner all records, reports, and approvals relating to the proposed development.



- f. An order of Mandamus compelling the 2nd and 3rd Respondents to subject any demolitions, renovations, and/or construction works on the suit property to fresh approvals in full compliance with the law.
 - g. Costs of the Petition.
 2. Alongside the Petition, the Petitioner filed a Notice of Motion dated 24th October 2025 seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. That the Honourable Court be pleased to issue a conservatory order restraining the 1st Respondent its agents, servants, and/or employees or any other person acting under the Respondent's mandate or from commencing, carrying out and/or continuing any construction, renovation or related works on Land Reference Number 17/433 within Kitusuru Estate pending the hearing and determination of the suit.
 - d. Spent.
 - e. This Honourable court be pleased to issue a conservatory order suspending and/or staying the operation and effect of the licenses and approvals issued by the 2nd and 3rd Respondents for the proposed development on Land Reference Number 17/433 within Kitusuru Estate pending the hearing and determination of the Petition.
 - f. Any other orders or reliefs that this Honourable court deems fit to grant
 - g. Costs of this application be provided for.
 3. The application is premised on the grounds appearing on its face together with the supporting affidavit of Ruth Ndesandjo, sworn on even date.
 4. In response, the 1st Respondent filed a Notice of Preliminary Objection dated 5th November 2025, arguing that the court lacks jurisdiction to hear and determine the application and Petition, as they contravene Sections 125 and 129 of the *Environment Management and Coordination Act*, as well as Sections 40(4), (7), 76, and 80 of the *Physical and Land Use Planning Act*, Cap 303.
 5. The Preliminary Objection was canvassed by way of written submissions.

The 1st Respondent's submissions

6. The 1st Respondent filed its submissions dated 11th November 2025.
7. On behalf of the 1st Respondent, Counsel outlined the following issues for the Court's determination:
 - i) Whether the Court has jurisdiction to hear and determine the Petition and application.
 - ii) Whether the Petition against the 1st Respondent violates the doctrine of Constitutional avoidance.
 - iii) Whether the Petition and application against the 1st Respondent violates the doctrine of exhaustion of remedies.
8. Regarding the first issue, Counsel submitted that the Petitioner neither invoked nor exhausted the statutory dispute resolution mechanisms under Sections 125 and 129 of the *Environment*



Management and Coordination Act, which set out the appeal process for any person aggrieved by NEMA's decision to grant, refuse, or transfer a license.

9. Counsel further submitted that the Petitioner neither invoked nor exhausted the statutory dispute resolution mechanisms under Sections 40(4), (7), 76, and 80 of the Physical and Land Use Planning Act. To support this point, Counsel relied on the cases of Eaton Towers Kenya Limited v Kasingá & 5 others, Kibos Distillers Limited & 4 others vs Benson Ambuti Adega & 3 others (2020) eKLR, and Adega & 2 others v Kibos Distillers Limited & 5 others.
10. Regarding the second issue, Counsel submitted that the Petition violates the doctrine of constitutional avoidance. Counsel further submitted that the Petitioner should have exhausted the statutory dispute resolution mechanism before instituting this Petition. Counsel contended that the Petition raises procedural and administrative issues disguised as constitutional and multifaceted issues that transcend the jurisdiction of the County's Physical Land Use Planning Liaison Committee and the National Environment Tribunal. To support this argument, Counsel relied on the Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (2014) KESC 53 (KLR).
11. Regarding the third issue, Counsel submitted that the Petition against the 1st Respondents violates the doctrine of exhaustion of remedies as the Petitioner failed to file its case with the established liaison committee and/or tribunal as required. To support this point, reliance was placed on the Supreme Court case of United Millers Limited v Kenya Bureau of Standards & 5 others (2021) KESC 72 (KLR).
12. Counsel submitted that disputes regarding approvals and licenses fall within the jurisdiction of the Physical and Land Use Liaison Committee and the National Environment Tribunal. To support this argument, Counsel relied on the case of Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (20150 KECA 304).
13. In conclusion, Counsel urged the court to strike out the Petition and the application with costs to the 1st Respondent.

The Petitioner's Submissions

14. The Petitioner filed its submissions dated 13th November 2025.
15. On behalf of the Petitioner, Counsel submitted that the only issue for determination is whether the Court has jurisdiction to hear and determine this Petition.
16. Counsel submitted that the statutory mechanism under the National Environment Tribunal or the Committee cannot oust the Court's jurisdiction under 162 (2) (b) of the Constitution. It was further submitted that this Court has jurisdiction under Section 13 of the Environment and Land Court Act and Section 33 of the Environment Management and Coordination Act.
17. Counsel submitted that the National Environment Tribunal and the Committee lack jurisdiction to determine constitutional issues raised in the Petition.
18. Counsel further submitted that the EMCA and PLUPA do not bar an individual from instituting a suit without first appearing before the Committee or NET where their constitutional rights have been threatened or violated. To support this argument, reliance was placed on the case of Nicholas v Attorney General & 7 others, National Environmental Complaints Committee & 5 others (Interested Parties) (20230 KESC 113 (KLR)).
19. Counsel further submitted that the doctrine of exhaustion does not oust the Court's jurisdiction when the enforcement of rights is at issue. To support this argument, reliance was placed on Section 9(4) of



the *Fair Administrative Action Act* and on the cases of *East African Wildlife Society & 3 others v Kenya National Highways Authority & 3 others; Law Society of Kenya & 5 others (Interested Parties)* (2025) KEELC 1259 (KLR) and *Anami & 2 others (suing as officials of Rhapta Road Residents Association) v County Executive Committee Member (CECM) Built Environment and Urban Planning Nairobi City County & 20 others* (2025) KEELC 128 (KLR)

20. Counsel relied on the Supreme Court case *Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* (2014) KESC 53 (KLR) to assert that the doctrine of exhaustion applies when a dispute can be fully resolved through an alternative claim without raising a constitutional issue.
21. In conclusion, Counsel submitted that the Petition alleges violations of constitutional rights within this court's jurisdiction. Based on the foregoing, Counsel urged the court to dismiss the preliminary objection with costs to the Petitioner.

Analysis And Determination

22. Having considered the Preliminary Objection and the rival submissions, the only issue for determination is whether the Preliminary Objection is merited.
23. The law on preliminary objections is well settled. A preliminary objection must be based on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd v. West End Distributors Ltd* (1969) EA 696, Law JA stated;

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

24. In *Oraro Vs Mbaja* 2005 eKLR Ojwang J (as he then was) described it as follows:

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

25. The 1st Respondent's Preliminary Objection is based on the ground that the Petition offends the provisions of Sections 125 and 129 of the *EMCA* as well as Sections 40 (4), (7). 76 and 80 of the *Physical and Land Use Planning Act*, and that consequently, this court lacks jurisdiction to determine it. The 1st Respondent contends that the Petitioner ought to have exhausted the statutory dispute resolution remedies before approaching this court.
26. The Petitioner argued that the Petition raises constitutional issues that cannot be resolved by the statutory bodies established under the *EMCA* and *PLUPA*.



27. It is trite law that jurisdiction is everything, and without it, the court cannot take any further step in the matter. In the celebrated case of *Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Limited* (1989) eKLR, 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...”

28. Similarly, the Supreme Court in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others* [2012] eKLR pronounced itself as follows:

“A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

29. Section 125 of *EMCA* establishes the National Environmental Tribunal, whose mandate is to hear disputes arising from NEMA's decisions on the issuance, denial, or revocation of a license.

30. Section 129(1) and (2) of *EMCA* provides;

“ Any person who is aggrieved by;

- a. the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
- b. the imposition of any condition, limitation, or restriction on the person's licence under this Act or its regulations;
- c. the revocation, suspension, or variation of the person's licence under this Act or its regulations;
- d. the amount of money required to be paid as a fee under this Act or its regulations;
- e. the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations, may, within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority, or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

In *Republic v NEMA Ex parte Sound Equipment Ltd* [2011] eKLR, the Court of Appeal stated that:

Challenges to the Environmental Impact Assessment study report and/or Environmental Impact Assessment Licenses shall be made to the National Environment Tribunal



established under section 125 of the Environment Management and Coordination Act. The tribunal should have been given the first opportunity and option to consider the matter. The Tribunal is the specialized body with the capacity to minutely scrutinize the Environmental Impact Assessment study report as well as the licences”.

In equal measure, Section 76 of the *Physical and Land Use Planning Act* (PLUPA) establishes County Physical and Land Use Planning Liaison Committees as the initial forums for challenging development permits.

31. The Respondent contended that the Petitioner should have exhausted the statutory remedies available under the *EMCA* and *PLUPA* before seeking this court’s intervention.
32. The doctrine of exhaustion has been articulated in numerous judicial precedents. This doctrine now has an esteemed juridical lineage in Kenya. It was perhaps most felicitously stated in the case of *Speaker of the National Assembly v. Karume* [1992] KLR 21, where the Court of Appeal stated as follows:

“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. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”
33. Similarly, in the case of *Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others* [2015] eKLR, the Court of Appeal held that:

“It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of 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. The Ex Parte Applicants argue that this accords with Article 159 of the *Constitution*, which commands Courts to encourage alternative means of dispute resolution.”
34. The 1st Respondent argued that the issues raised in the Petition are administrative issues disguised as constitutional issues. The Petitioner contends that statutory bodies are not authorized to address the constitutional issues raised in the Petition.
35. Sections 125 and 129 of *EMCA*, and Sections 40, 76, and 80 of *PLUPA*, provide administrative or statutory remedies. However, these remedies cannot oust the Court’s original jurisdiction to enforce rights.
36. The doctrine of exhaustion is not absolute in matters involving constitutional issues. In *A.M. Murumba v. Nairobi City County* (2108) eKLR, the court held that a Petitioner is not precluded from seeking constitutional redress even when statutory remedies exist, particularly when statutory processes cannot adequately address the infringement of constitutional rights.
37. The Petition raises issues regarding the protection of constitutional and environmental rights, as well as matters related to public participation. Accordingly, this court has jurisdiction to hear and determine the same.
38. The upshot of the foregoing is that the Preliminary is without merit and is hereby dismissed with costs to the Petitioner.



RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 4TH DAY OF FEBRUARY, 2026.

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T. MURIGI

JUDGE

In the Presence of:

Ntabo alongside with Kiarie for the Petitioner

Lilan holding brief for Amir Zahid for the 1st Respondent

Cheruiyot for the 2nd Respondent

