



Lekupe & 2 others v County Land Registrar Isiolo & Marsabit & 2 others (Environment and Land Petition E002 of 2025) [2026] KEELC 1871 (KLR) (23 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND PETITION E002 OF 2025**

**JO MBOYA, J
MARCH 23, 2026**

BETWEEN

**SEBASTIAN LOUYEI LEKUPE 1ST PETITIONER
BENEDICT SANITA KEKENIT 2ND PETITIONER
LESIKIM LEKENIT 3RD PETITIONER**

AND

**COUNTY LAND REGISTRAR ISIOLO & MARSABIT 1ST RESPONDENT
COUNTY GOVERNMENT OF MARSABIT 2ND RESPONDENT
CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS, HOUSING &
URBAN PLANNING 3RD RESPONDENT**

RULING

1. Before me is a Notice of Preliminary Objection dated 16.10.2025 lodged by the 2nd Respondent. For coherence, the 2nd respondent's Notice of Preliminary Objection revolves around the legal issue of locus standi, doctrine of ripeness and exhaustion pursuant to Sections 7 and 8 of the *Community Land Act*, 2016 and Regulation 12 (6) of the Community Land Regulations, 2017. The same is seeking an order for striking out the petition for reasons mentioned hereinabove.
2. For coherence, the petitioners lodged the instant petition dated 25th June 2025; with regards to a Gazette Notice No. 10358 that had been issued by the 3rd respondent pursuant to Section 8 (1) of the *Community Land Act*, 2016. The petitioners are alleged to have lodged the petition on behalf of South Horr Ldonyo Mara Community. It was the petitioners' case that the purported gazette ment had threatened their right[s] to property as envisaged in *the Constitution*. For clarity, the petitioners sought for inter alia a declaration that the said gazette notice dated 3rd July 2024 was unlawful, unconstitutional, null and void for violating provisions of Articles 1,2, 3(1), 10,27, 40, 47,48, 56, 63(2)



of *the Constitution* of Kenya and Articles 8, 26 and 39 of the United Nations Declaration on the Rights of Indigenous people.

3. Upon being served with the petition, the 2nd respondent herein lodged the notice of appointment dated 30th June 2025 and later lodged the instant Notice of Preliminary Objection. On the 6th November 2025, parties herein took directions as to the hearing of the Notice of preliminary objection. For coherence, the parties herein agreed that the preliminary Objection be canvassed by written submissions.
4. I have appreciated the issues raised in the parties' written submissions vis a vis the notice of preliminary objection before the court and it is my considered view that the issues that the court is being called upon to decide on are three issues, namely; Whether the preliminary objection is properly before the court; Whether the petitioners have the locus standi to bring the instant petition; and Whether the petition herein offends the doctrine of ripeness and exhaustion hence the court is bereft with jurisdiction to entertain the petition.
5. I will proceed to discuss same as hereunder;

Issue Number One [1].

Whether the preliminary objection is properly before the court

6. A notice of preliminary objection must raise a pure point of law which is discernable from the pleadings lodged before the court. In the instant preliminary objection, the 2nd respondent is raising an issue of locus standi and whether the court has jurisdiction to hear the instant petition on grounds that the petition contravenes the doctrine of ripeness; and exhaustion.
7. For clarity, in *J E N -V- D O K* [2018] EKLR, the Court of Appeal held that:

“The essence of a preliminary objection was succinctly set out by the predecessor of this Court in the locus classicus case of *Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors* (1969) EA 696 at 700 wherein Law, JA stated that: “...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.” Sir Charles Newbold P. added at page 701: “A preliminary objection is in the nature of what used to be a demurrer.

It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...’
8. Having looked at the issues being raised in the notice of preliminary objection, I find that same is properly before me as my jurisdiction to hear and determined the petition herein is a pure point of law.



Issue Number Two [2].

Whether the petitioners have the locus standi to bring the instant petition

9. At paragraph 6 of the Petition dated 25th June 2025, the petitioners alleged that:

The petitioners herein are vested with locus Standi to institute these court proceedings on their behalf and on behalf of the proposed South Horr Ldonyo Mara Community of Kargi/South Horr Ward in Marsabit County for protection of their rights and fundamental freedoms and *the Constitution* itself...’ Annexure SBL-1 of the affidavit in support of the Petition seems to be the purported authority of community members which number sums up to 60 (sixty) members. The petitioners aver that those are the members of the of the South Horr Ldonyo Mara Community that gave them the authority to lodge the petition herein.

10. Looking at the said document, I discern that some of the purported members have not signed and/or affixed their thumb prints on the said document for instance member number 002, 013, 036, 038 and 057. Besides, on the same document, it can be observed that some alleged members have no national identity cards thus confirming whether they are genuine, alive or deceased members becomes difficult.

11. Be that as it may, the petition herein has been lodged pursuant to the *Community Land Act, 2016* [hereinafter referred to as the Act]. The petitioners were aware that the issues being raised in the petition were subject to the provision of the said Act. According to the Petitioners, they faulted Section 7(1) for being unconstitutional. However, the Honorable Attorney General as the principal adviser of the government has not been sued in the instant petition neither has the Speaker of National Assembly as the law-making Authority been enjoined in the petition.

12. Section 7 of the Act prescribes for procedure for registration of communities. Section 7 (1) is to the effect that;

‘...A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section...’

13. The net effect of this provision is that any group of persons deeming themselves as a community must be registered in order to claim any interest over land that has been deemed as community land.

14. On the other hand, Section 2 of the Act prescribes a community as:

‘...a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

15. Unless the Petitioners are complaining about the definition of a community, then same are bound by the very Act which they allege to be unconstitutional. No wonder Annexure SBL-1 of the affidavit in



support of the petition herein, the petitioners have identified themselves as South Horr Ldonyo Mara Community. That being said, Section 7 (1) of the Act came into play and thus it is necessary to discern whether the petitioners are registered as a community in order to lodge the instant petition.

16. If I hear the petitioners right, they are complaining about a gazette notice that was issued by the 3rd respondent regarding a community land. It then behooved the petitioners to be registered first before claiming an interest on the community land.
17. In the case of *Obo & 3 others v National Land Commission & 5 others* [2024] KECA 232 (KLR), the appellate court stated that,

‘...From the foregoing, it is clear that what gives a community the standing to claim land in that capacity is registration under the Act. In this case, the learned Judge found that there was no evidence of registration by the appellants. In their submissions, the appellants have not addressed this particular finding. We agree with the learned Judge that in the absence of registration, the appellants had no locus to make a claim for the suit land.

In the absence of any evidence of registration, the question that arises is whether the appellants could make out a claim for ancestral land. In our view, it was not possible for the claim for ancestral land to be made out in those circumstances...’

18. The petitioners vide Annexure SBL-3, also a letter dated 27th March 2024 applied for registration of South Horr Ldonyo Mara Community. No evidence has been placed before the honorable court to prove that indeed the said application was allowed and the community registered pursuant to Section 7 of the Act. Annexure SBL-4(b) is the letter dated 29th April 2024 whereby the petitioners were writing to the principal secretary, ministry of energy and petroleum informing the said office that they are in a process to formally register the said land.
19. Beyond that, there is no iota of evidence placed before me that the application for registration of the community sailed through. In the absence of such evidence, I concur with the Learned Counsel for the 2nd respondent that the Petitioners herein lacked the locus standi to lodge the instant petition. The petitioners cannot claim any interest on the said community land if they have not been registered as a community.
20. To that extent, and taking into account the provisions of Section 7 of the *Community Land Act* [supra], I find that the petitioners herein lack locus standing to maintain the petition herein.

Issue Number Three [3].

Whether the petition herein offends the doctrine of ripeness and exhaustion hence the court is bereft with jurisdiction to entertain the petition?

21. I have had the benefit of reading and/or going through the Gazette Notice No. 10358 that was issued by the 3rd respondent. The said gazette notice is issued pursuant to Section 8 of the Act. The said section provides for procedures for recognition and adjudication of community land.
22. Subsection (1) thereof is to the effect that:

“Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication program for purposes of registration of community land...’



23. In the instant case, the 3rd respondent, if I get the petitioners right, had just published in the gazette that the subject community land would be under adjudication for purposes registration. There were no ascertainment of rights yet. It was only a declaration that the community land in question would be subject to adjudication process which involved ascertainment of rights and/or claims related to adjudication process. No community land had been registered in the name of a certain community yet; and hence whatever grievances emanating to the program of adjudication and/or process were to be handled as they come pursuant to the Act.
24. In this case, the petitioners who had not been registered as a community have approached the seat of justice alleging that their rights had been infringed. Other than lacking the locus standi, it cannot be discerned as to the nature of their grievances vide the gazette notice that was issued. No action had been carried out by the community land registrar nor the adjudication officer with regards to ascertainment of rights on the community land and registration.
25. Based on the foregoing, the question that does arise, is whether the petition before the Court was/ is ripe? The doctrine of ripeness is a critical doctrine. It enables courts of Law to entertain and adjudicate upon only matters/ disputes, which are justiciable; and ripe. It eschews entertainment of hypothetical issue[s], or questions.
26. In the case of *K K B v S C M & 5 others* (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR), the Court [per Mativo-J; as he then was] expressed himself on the doctrine of ripeness and constitutional avoidance as hereunder:

‘...In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause...’
27. It is also critical to say that other than the cause of action having not crystalized, the Act is self-sufficient and makes available dispute resolution mechanisms for parties under the Act who feel aggrieved by an action.
28. Part VIII of the *Community Land Act* [Supra] provides for settlement of disputes relating to Community Land. Needless to say that, Section 39 thereof provides for dispute resolution mechanism and same has identified traditional dispute and conflict resolution mechanism as alternative methods for dispute resolution mechanisms. It further identified the nature of disputes involving members of a registered community, a registered community and another registered community which disputes ought to be resolved using internal mechanism as prescribed in the community by-laws.
29. Notably, members of registered communities are urged to give priority to alternative methods of dispute resolution. For good measure, the Stipulated Internal Dispute resolution mechanism should be the first port of call, the moment a dispute [sic] arises.
30. Moreover, Section 40 of the Act encourages parties to attempt mediation as a method of dispute resolution which at Section 41, the Act provides for Arbitration. Of importance to note is Section 42 that incorporates judicial proceedings as in the instant case.
31. It prescribes that;



- (1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.
 - (2) The Court may—
 - (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or
 - (b) make any order in connection therewith as it may deem fit.
32. My understanding of Section 42 of the Act is that parties under Community Act must attempt the dispute resolution available in the Act and then after if same doesn't bore fruits, then parties can approach the court. In the instant case, there is no evidence that the parties herein attempted to partake either of the dispute resolution mechanism provided for in the Act. What is even peculiar is that the Act applies to parties who are members of a registered Community to partake of the mechanisms therein. With the failure by the petitioners to register their community, how then would they invoke the dispute resolution mechanisms?
33. Clearly, the petitioners decided to jump the gun. They failed to register the community despite commencing the process. Besides, they are aware that with the lack of locus standi, they could not invoke the dispute resolution mechanism hence the petition herein which is not ripe before the court. Can it be said that I am seized of the requisite jurisdiction to entertain such a petition?
34. In *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, thus:
- ‘...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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.
- This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. 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. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law...
35. In the instant case, even assuming that the petitioners were a registered community, [which has now been established that they not], same would have contravened the doctrine of exhaustion.
36. In *Geoffrey Muthinja & Another –vs- Samuel Muguna Henry & 7 Others* (2015) eKLR, the Court of Appeal highlighted; and underscored the importance of the Doctrine.
37. The Court stated thus:
- We see this as the crux of the matter in this and similar cases. 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 the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen.

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 of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.

We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms.

By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely.

38. Additionally, I take cognizance of the decision in the case of BETHWEL ALLAN OMONDI OKAL –VS- TELKOM KENYA LIMITED & 9 OTHERS (2017) eKLR. The Court of Appeal reiterated the importance of the Doctrine before invoking the Jurisdiction of the Court. Pertinently, the Court underscored that the doctrine suffices even in matters of *the Constitution*.

39. The Court stated thus:

The Appellant might want to argue that he has a constitutional right of access to justice, and we agree that he does, but the High Court and this Court have pronounced themselves many times to the effect that a party must first exhaust the other processes availed by other statutory dispute resolution organs, which are by law established, before moving to the High court by way of constitutional petitions. See International Centre for Policy and Conflict & 4 others vs The Hon. Uhuru Kenyatta and others, Petition No. 552 of 2012, and Speaker of National Assembly vs Njenga Karume [2008] 1KLR 425.

40. In view of the afore-cited decisions, it was incumbent upon the petitioners herein, to first and foremost exhaust all the Internal dispute Resolution Mechanisms, provided under the Act, before approaching this Honorable court, subject to the petitioners being registered as a community under the Act.

41. Lastly, in Speaker of The National Assembly V James Njenga Karume [1992] eKLR, the honorable appellate judges held that:

‘In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the constitution* or an Act of Parliament, that procedure should be strictly followed...’

42. Needless to say, that Article 159 (2) (c) encourages parties to pursue alternative dispute resolution in resolving disputes. These mechanisms have been incorporated in the Act and the Community Land Regulations, 2017 (Rule 25).

43. On the other hand, the *Fair Administrative Action Act*, 2015 prescribes that parties to first exhaust internal mechanism and/or remedies before approaching court. The Act has elaborated the procedure upon which a member of community that is registered and/or registered community can pursue in



the event there are disputes. It behooved the petitioners herein to first pursue those avenues before approaching court. This could only be done upon same being registered as a community to enable them claim an interest in the subject community land.

44. I thus find that having failed to pursue the internal dispute resolution mechanism as provided for in the Act, the petitioners jumped the gun by lodging the instant petition. It was incumbent upon the petitioners to pursue registration of their community which process they had commenced, then after have their dispute resolved pursuant to the Act and the Community Land Registration, 2017.

45. Regarding the issue of costs, I place reliance on the case of Farah Awad Gullet v. CMC Motors Group Limited [2018] eKLR where the Court of Appeal held that:

“...we also set aside the order on costs and substitute it with an order that the appellant who has substantially succeeded on his appeal as against the respondent will have three-quarter costs on appeal and costs in the court below...”

46. In the instant petition, the petitioners were aware that they had not registered their community pursuant to the Act, yet same decided to lodge the instant Petition. Additionally, the Petitioners were aware that the Act which they had invoked, contained and provided protocol for internal Dispute resolution. Nevertheless, the Petitioners mounted the Petition before the Court. The Petitioners adopted a carefree approach. The Petitioners paid little regard to the provisions of Article 159 [2] [c] of *the Constitution*, 2010.

47. Consequently, and in the premises, the Petitioners are therefore liable in Costs.

Final orders:

48. From the foregoing analysis, the final orders that commend themselves to the court are:

- i. The Notice of Preliminary Objection dated 16th October 2025 is hereby upheld.
- ii. For avoidance of doubt, the Petition dated 25th June 2025 lodged by the Petitioners herein is hereby struck out.
- iii. The Costs of the Notice of Preliminary Objection be and are hereby awarded to the 2nd respondent.

49. It so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 23RD DAY OF MARCH, 2026.

OGUTTU MBOYA FCIArb; CPM [MTI- EA]

JUDGE

In presence of:

Mukami/Naserian: Court Assistants

Ms. Jepkosgei holding brief for Mr. John Abwuor for the Petitioners.

Mrs. Ahomo for the 2nd Respondent.

N/A for the rest of the Respondents

Mr. Joseph Mwangi for the Interested Parties.

