

1. This Ruling concerns two Preliminary Objections dated 30th January 2026 and 2nd February 2026 raised by the 1st and 3rd Respondents respectively, challenging the competence of the Petition dated 23rd December 2025.
2. The said Preliminary Objections principally contend that this Honourable Court lacks jurisdiction to entertain the Petition by virtue of the doctrine of exhaustion, as codified under **Section 61(3) and Section 61(4) of the Physical and Land Use Planning Act, 2019**, as well as **Section 9(2) and (3) of the Fair Administrative Action Act**. It is the Respondents' position that the Petitioner failed to first invoke the statutory dispute resolution mechanism before the County Physical and Land Use Planning Liaison Committee, thereby prematurely invoking the jurisdiction of this Court.
3. The 3rd Respondent further raises the issue of locus standi, contending that the Petitioner, being a welfare association registered **under the Societies Act (Cap 108)** and therefore an unincorporated association, lacks juristic personality and consequently the legal capacity to institute or maintain these proceedings, whether under statute or the **Constitution of Kenya, 2010**, particularly in light of **Articles 22 and 258**.

B. The Petitioner's Replying Affidavit

4. In opposition to the Preliminary Objections, the Petitioner filed a Replying Affidavit sworn on 9th February 2026 by Daniel Kibira, the Chairman of the Petitioner. The Petitioner avers that it has the requisite locus standi to institute the present proceedings by virtue of **Articles 22(1), 22(2)(d), 258(1) and 258(2)(d) of the Constitution**, which permit a person, including an association whether incorporated or unincorporated as defined **under Article 260**, to institute proceedings on its own behalf or

on behalf of its members for the enforcement of fundamental rights and freedoms. It is further deposed that the Petition raises violations of constitutional rights, including the right to public participation, fair administrative action, and a clean and healthy environment **under Articles 10, 42 and 47 of the Constitution**, thereby properly invoking the jurisdiction of this Court.

5. On the issue of exhaustion of statutory remedies **under Section 61(3) of the Physical and Land Use Planning Act, 2019**, the Petitioner contends that the same was not available nor effective in the circumstances of this case. It is deposed that the approvals for change of user and development permission were issued in July 2025, but the Petitioner only became aware of the same on 31st October 2025, long after the lapse of the statutory 14-day period for appeal to the County Physical and Land Use Planning Liaison Committee.
6. The Petitioner attributes this to the failure by the 3rd Respondent to conduct mandatory public participation, thereby denying its members the opportunity to challenge the approvals within the prescribed timeline. It is further averred that the said Liaison Committee lacks jurisdiction to determine constitutional violations, and therefore the Petitioner is entitled to approach this Court directly under **Articles 22, 23, 70 and 162(2)(b) of the Constitution**, the alternative remedy being inadequate, unavailable and ineffective.

C. Submissions

The Preliminary Objections were canvassed by way of written submissions filed by the respective parties.

a) Submissions of the 1st Respondent

7. Counsel for the 1st Respondent submitted that this Court lacks jurisdiction to entertain the Petition by reason of the doctrine of exhaustion, as provided under **Section 61(3) and (4) of the Physical and Land Use Planning Act, 2019** and **Section 9(2) and (3) of the Fair Administrative Action Act**. It was submitted that the Petitioner, being aggrieved by the approvals for development, ought to have first lodged an appeal before the County Physical and Land Use Planning Liaison Committee, and only thereafter approach this Court on appeal. Reliance was placed on the decisions in **Whitehorse Investments Ltd v Nairobi City County [2019] KECA 102 (KLR)**, **Mutanga Tea & Coffee Company Limited v Shikara Limited & another [2015] KECA 469 (KLR)** and **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, for the proposition that where a statute provides a dispute resolution mechanism, the same must be strictly followed.
8. It was further submitted that the Petition raises issues that fall squarely within the statutory framework of the **Physical and Land Use Planning Act**, and therefore do not warrant invocation of this Court's original jurisdiction. Counsel argued that no exceptional circumstances had been demonstrated to justify departure from the exhaustion doctrine. Additional reliance was placed on **Nyaoga v Chairman Kisii County Assembly & 3 others [2023] KECA 1540 (KLR)**, **Owalla v County Attorney of Siaya County Government & 2 others [2024] KEHC 3896 (KLR)**, and **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR)**, to emphasize that courts must defer to statutory dispute resolution mechanisms and only intervene as a last resort.

b) Submissions of the 3rd Respondent

9. Counsel for the 3rd Respondent similarly submitted that the Petition is incompetent for failure to comply with the doctrine of exhaustion under **Section 61(3) of the Physical and Land Use Planning Act, 2019** and **Section 9(2) and (3) of the Fair Administrative Action Act**. It was contended that the Petitioner ought to have appealed to the County Physical and Land Use Planning Liaison Committee and that this Court's jurisdiction has been prematurely invoked. Reliance was placed on **Republic v National Environment Management Authority CA No. 84 of 2010 [2011] eKLR**, **KO Holdings Limited v County Government of Kiambu & another [2019] eKLR**, and **Angela Mbugua & 4 others v KO Holdings Limited & 2 others [2020] eKLR**, for the proposition that failure to exhaust statutory remedies deprives the Court of jurisdiction.
10. On the issue of locus standi, counsel submitted that the Petitioner, being an unincorporated association registered **under the Societies Act (Cap 108)**, lacks juristic personality and therefore cannot institute proceedings in its own name. Reliance was placed on **Teachers Service Commission v Kenya Union [2019] eKLR**, **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR**, and **Trusted Society of Human Rights Alliance v Attorney General & 2 Others [2013] eKLR**, to argue that a party must demonstrate sufficient interest, identifiable membership, and proper authorization to litigate on behalf of others. Counsel further submitted that the Petition constitutes an abuse of the court process, the issues raised being purely statutory and administrative in nature.

c) Submissions of the Petitioner

11. Counsel for the **Petitioner** submitted that the Petitioner has the requisite **locus standi** under **Articles 22(1), 22(2), 258(1) and 258(2)**

of the Constitution, as read together with **Article 260**, which defines a “person” to include an association whether incorporated or unincorporated. It was submitted that the Constitution has broadened the scope of standing, allowing a party to institute proceedings on behalf of its members or in the public interest. Reliance was placed on **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)**, **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**, and **Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others [2016] eKLR**, for the proposition that constitutional litigation should not be hindered by technical rules of standing.

12. On the issue of exhaustion, counsel submitted that the doctrine is not absolute and does not apply where the alternative remedy is unavailable, ineffective or inadequate, or where the dispute raises constitutional issues. It was argued that due to the failure by the Respondents to conduct mandatory public participation, the Petitioner became aware of the approvals after the lapse of the statutory period for appeal, rendering the remedy under **Section 61(3) of the Physical and Land Use Planning Act** unavailable.
13. Reliance was placed on **Northern Block Residents Limited v National Environment Management Authority & 2 others [2024] KEELC G170 (KLR)** and **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR)**. Counsel further invoked **Article 70(1) of the Constitution**, submitting that the Petitioner is entitled to approach this Court directly for enforcement of the right to a clean and healthy environment **under Article 42**, the alternative mechanism being incapable of addressing constitutional violations.

D. Issues for Determination

13. I have considered the **Preliminary Objections dated 30th January 2026 and 2nd February 2026**, the **Replying Affidavit**, the **written submissions**, and the **authorities cited**, and in my view the following issues arise for determination: —

I. **Whether the Preliminary Objections are merited;**

II. **What orders should issue;**

III. **Who should bear the costs.**

E. Analysis

14. The Preliminary Objections raised by the 1st and 3rd Respondents principally challenge the jurisdiction of this Court on the basis of the doctrine of exhaustion. As a starting point, a Preliminary Objection must raise a pure point of law capable of disposing of the matter without recourse to evidence. In **Quick Enterprises Ltd vs Kenya Railways Corporation, Kisumu HCCC No. 22 of 1999**, the Court held that: *“When preliminary points are raised, they should be capable of disposing the matter preliminary without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings.”*

15. Similarly, in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 697**, it was stated that: *“It raises a pure point of law which is argued on assumption that all the facts pleaded are correct. It cannot be raised if any facts have to be ascertained or if what is sought is the exercise of judicial discretion.”*

16. It follows therefore that the issue of jurisdiction, being a pure point of law, is properly taken as a Preliminary Objection.
17. Jurisdiction being foundational, this Court must determine the same at the outset. In **Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd [1989] KLR**, 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 it tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
18. Similarly, in **Samuel Kamau Macharia v Kenya Commercial Bank & 2 others [2012] eKLR**, the Supreme Court held that: “A Courts Jurisdiction flows from either the Constitution or legislation or both. Thus a Court can only exercise Jurisdiction as conferred by the Constitution or other written laws. It cannot arrogate to itself Jurisdiction exceeding that which is conferred upon it by law. The Court must operate within the constitutional limits. It cannot expand Jurisdiction through Judicial craft or innovation.”
19. From the pleadings before this Court, the Petition challenges the approval of change of user and development permission, as well as the issuance of an Environmental Impact Assessment licence. These are matters relating to planning, use and development of land, which are regulated under the **Physical and Land Use Planning Act, 2019** and the **Environmental Management and Coordination Act**.

20. The **Physical and Land Use Planning Act, 2019** establishes a comprehensive dispute resolution framework. Under **Section 61(3)**: “An applicant or interested party that is aggrieved by the decision of a County Executive Committee Member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days...”and under **Section 61(4)**, any party aggrieved by the decision of the Liaison Committee may appeal to this Court. Further, **Section 78 of the Act** sets out the functions of the County Physical and Land Use Planning Liaison Committee, which include hearing appeals against decisions made by the planning authority with respect to physical and land use development. The statutory scheme therefore vests the primary jurisdiction in the Liaison Committee, with this Court exercising an appellate mandate.
21. With respect to the Environmental Impact Assessment licence, **Section 129 of the Environmental Management and Coordination Act** provides that any person aggrieved by the issuance of such licence may appeal to the National Environmental Tribunal within sixty days. These statutory bodies are established to determine disputes within their technical competence before recourse is had to the courts.
22. The law is settled that where a statute provides a clear procedure for the redress of a grievance, that procedure must be strictly followed. In **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, the Court held that where there is a clear procedure prescribed by statute, it ought to be adhered to. Similarly, **Section 9(2) of the Fair Administrative Action Act** provides that a Court shall not review an administrative action unless the internal mechanisms for appeal or review have first been exhausted. The Court of Appeal in **Republic v National Environment Management Authority, Civil Appeal No. 84 of 2010 [2011] eKLR** reiterated that: “...where there was an alternative remedy

and especially where Parliament had provided a statutory appeal process, it is only in exceptional circumstances that an order for Judicial Review would be granted...”

23. The only exception to the doctrine of exhaustion is provided under **Section 9(4) of the Fair Administrative Action Act**, which allows a party to seek exemption from the obligation to exhaust statutory remedies upon application and upon demonstration of exceptional circumstances. In the present case, there is no application before this Court seeking such exemption, nor has any basis been laid upon which this Court can invoke that provision.
24. In the present case, and from the pleadings, the Petitioner has approached this Court in the first instance without demonstrating that it invoked the dispute resolution mechanisms provided under **Section 61(3) of the Physical and Land Use Planning Act, 2019** or **Section 129 of the Environmental Management and Coordination Act**. In the absence of compliance with the statutory framework, and in the absence of an application for exemption under **Section 9(4) of the Fair Administrative Action Act**, this Court finds that the Petition has been filed prematurely.
25. I find that the dispute herein falls squarely within the statutory framework governing development approvals and land use planning, and the Petitioner was therefore required, in the first instance, to pursue the remedies provided under the said statutes. By failing to do so, the Petitioner has prematurely invoked the jurisdiction of this Court.
26. In the circumstances, this Court finds that it lacks original jurisdiction to entertain the present Petition, the same having been filed in

contravention of the doctrine of exhaustion of statutory remedies.

27. Having found that this Court lacks jurisdiction, it must down its tools in line with the holding in Owners of Motor Vessel “Lillian S” (supra). It is therefore not necessary to determine the issue of locus standi.

28. The upshot is that the Preliminary Objections dated 30th January 2026 and 2nd February 2026 are merited and are hereby upheld.

29. Consequently, the Petition dated 23rd December 2025 is hereby struck out with no orders as to costs.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **25th** day of **March, 2026.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Ms. Muchoki..... for the Petitioner

Ms. Ndoigo for Mumii..... for the 1st Respondent

Mr. Kahura for Garita..... for the 2nd Respondent

Ms. Mulwa holding brief for Nassir (SC)..... for the 3rd Respondent

Philomena W...... Court Assistant