



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

COUNTY COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCLPET/E018/2025

KILINDINI WAREHOUSE LTD VS COUNTY GOVERNMENT OF MOMBASA

RULING

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Kilindini Warehouse Ltd hereinafter referred to as Petitioner has come to this court against County Government of Mombasa vide Petition dated 28.8.2025 seeking a declaration that the actions of the Respondent in unilaterally and retrospectively increasing the Petitioner's annual land rates from Kshs. 743,400/= to Kshs. 1,858,500/= without due process are unlawful, unconstitutional/ null and Void ab initio.

Moreover, she seeks a declaration that the Respondent's demand letter dated 18th August 2024 requiring the Petitioner to pay Kshs, 2,030,689/= within seven (7) days is irregular, unconstitutional, and incapable of enforcement in law.

Furthermore a declaration that the Respondent, by its conduct, has Violated the Petitioner's rights and legitimate expectations under Articles 10, 40, 47, 48, 50, and 201 of the Constitution of Kenya, 2010.

The petitioner also prays for an order of permanent injunction restraining the Respondent, its servants, agents, or any person acting under its authority from demanding, levying, recovering, distressing for, or in any manner enforcing payment of the impugned enhanced land rates against the Petitioner unless and until full compliance with the Valuation for Rating Act (Cap 266), the Public Finance Management Act, 2012, and the Constitution of Kenya, 2010.

An order of certiorari to bring into this Honourable Court and quash the decision of the Respondent purporting to vary the Petitioner's annual rates from Kshs. Kshs. 743,400/= to Kshs. 1 Kshs.

1,858,500/= as unlawful, unconstitutional and procedurally unfair.

An order of mandamus compelling the Respondent to strictly comply with the provisions of the National Rating Act, the Public Finance Management Act,



and the Constitution of Kenya, 2010 before imposing or enforcing any future Variation of land rates.

Lastly, an order directing the Respondent to reimburse the Petitioner all monies paid pursuant to the unlawful increment, including the sum of Kshs. 2,230,200 remitted on 14th May 2025, or in the



alternative, credit the same towards the Petitioner's lawful rates payable in subsequent financial years. Costs of this Petition be provided for by the Respondent.

The respondent has filed a preliminary objection on the basis that this Honourable Court lacks jurisdiction to hear and entertain this suit as it offends the mandatory provisions of Section 10 of the Valuation for Rating Act (REPEALED), CAP 266, LAWS OF KENYA which designates the Valuation Court as the primary authority responsible for handling complaints related valuation for rating.

THAT this Honourable Court lacks jurisdiction to hear and entertain this suit as it offends the mandatory provisions of Section 25 of the Rating Act (REPEALED), CAP 267, LAWS OF KENYA which designates the Magistrate's Court as the primary authority responsible for handling complaints related to rates payable.

That this Honourable Court lacks jurisdiction to hear and entertain this suit as it offends the mandatory provisions of Section 41 of the National Rating Act, 2024, CAP 267, LAWS OF KENYA which designates the National Rating Tribunal as the primary authority responsible for handling complaints related to rates payable. That the Petitioner's suit is premature and unripe for determination by this Honourable Court as the Petitioner has not invoked or exhausted the available administrative avenues having failed to lodge a complaint with the National Rating Tribunal first as required under Section 41 of the National Rating Act, 2024, CAP 267, Laws of Kenya.

THAT the orders sought by the Petitioner are statutory remedies available under Section 41 of the National Rating Act, 2024, CAP 267, Laws of Kenya and the National Rating Tribunal has the Jurisdiction to grant them and therefore this Honourable Court ought to discourage invocation of the trial process where there is an alternative statutory remedy. Lastly, that the suit is incompetent, bad in law, improperly filed and an abuse of the Honourable Court's process. The respondent submits that the petitioner has moved this court in total disregard of the tenets of the valuation for rating Act, rating Act as well as the National Rating Act that provides for other avenues of redress before landing in the environment and land court.

The respondent submits that the doctrine of exhaustion which is an administrative remedy that a party ought to seek redress from before proceeding to invoke the jurisdiction of the court as may be provided in legislation in various agencies and authorities has been violated. It is mandatory that all available avenues of dispute resolution ought to be pursued before court action.

He cites the case of Mwangi & Another v Naivasha County Hotel t/a Sawela Lodges (Petition E003 of 2021) 120221 KEHC 10975 (KLR) cited with approval the position in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi and 3 Others y Attorney General & 4 Others; Muslims for Human Rights & 2 others (Interested Parties) (2020) KLR. where a 5-judge bench stated 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. This encourages alternative dispute resolution mechanisms in line with Article 159 of the Constitution and was aptly elucidated by the High Court in R v Independent Electoral and Boundaries Commission (LEB.C) ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR where the Court opined as follows:

"This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Kaname [1992] KLR 21 in the following often repeated words, "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.

In the instant case, the Petitioner herein ought to first invoke the jurisdiction of the Valuation Court, Magistrate's Court and the National Rating Tribunal before invoking the jurisdiction of this Court.

According to the respondent, it is a cardinal principle that where there exists an alternative remedy under statutory law or otherwise, then such a remedy should be pursued instead of invoking the jurisdiction of any Court, This was the holding by Lenaola, J (as he then was) in Patrick Mbau Karanja v Kenyatta University [2012] eKLR held:

"I should only say this as I conclude; in Francis Waithaka vs Kenyatta University Petition No. 633 of 2011, this Court was categorical that it is imperative that the Bill of Rights and the constitutional imperative mandate of this court should not be invoked where other remedies lie. I have considered the Preliminary Objection and submissions on record and do find that this is a constitution petition and not a regular suit. The prayers being sworn cannot be granted by the National Rent Tribunal.

In the case of Abidha Nicholus v Attorney General & Others 2023 in a landmark judgment, the Supreme Court of Kenya in (Petition No. E007 of 2023) established significant exceptions to the Exhaustion of Remedies Doctrine in constitutional and environmental cases. The Court held that litigants raising mixed questions of constitutional rights and administrative remedies cannot be forced to exhaust all administrative avenues before accessing the court, especially when the Environment and Land Court (ELC) has jurisdiction over the constitutional violations. This decision, delivered on December 28, 2023, overruled previous lower court findings that had struck out the petition on jurisdictional grounds, emphasizing that access to justice and the enforcement of fundamental rights should not be stifled by procedural delays.

The appellant, Abidha Nicholus, challenged illegal mining activities in Ramba, Siaya County, alleging violations of constitutional rights including property, environment, and fair administrative action.

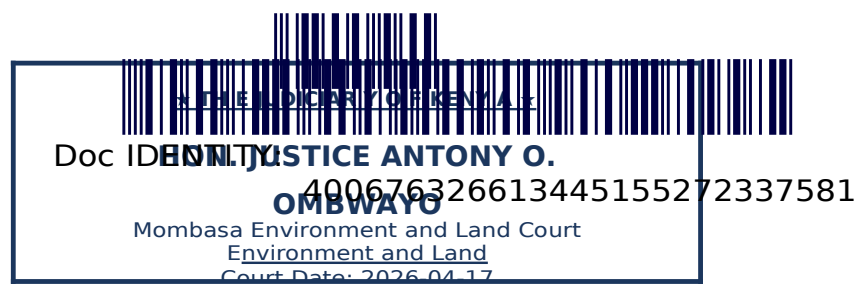
The Supreme Court held that where a suit primarily seeks to enforce fundamental rights, the doctrine of exhaustion does not apply if alternative remedies are inadequate to address the constitutional breach.

In this case, I do find that the issues raised by the petitioner can only be entertained by the Environment and land court as they are hinged on the interpretation of the Constitution of Kenya 2010. The petitioner seeks this court to interpret the provisions of Articles 2(1) , 3, 10,19, 20, 21, 22, and other various provisions of the constitution of Kenya 2010, and the doctrine of public participation which cannot be adequately dealt with by the rating court. The preliminary objection therefore lacks basis and is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY AT MOMBASA THIS 17th DAY OF APRIL 2026.

SIGNED BY/FOR:
HON. JUSTICE ANTONY O. OMBWAYO

The Judiciary of



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