



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC. EP PET NO. E004 OF 2026

**OAK VALLEY MANAGEMENT LIMITED
PETITIONER**

VERSUS

**COUNTY EXECUTIVE COMMITTEE MEMBER (CECM) BUILT
ENVIRONMENT AND URBAN PLANNING,
NAIROBI CITY COUNTY.....1ST
RESPONDENT**

**THE NAIROBI CITY COUNTY GOVERNMENT.....2ND
RESPONDENT**

**DIRECTOR GENERAL, NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY.....3RD
RESPONDENT**

**NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY.....4TH
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....5TH
RESPONDENT**

CALLA RESIDENCY VENTURES

**KENYA COMPANY LIMITED6TH
RESPONDENT**

RULING

1. This ruling is in respect of a Notice of Preliminary Objection dated 11th March 2026, in which the 3rd and 4th Respondents challenge both the Petition and the Notice of Motion dated 5th February 2026 on the grounds that they offend the doctrine of exhaustion. They argued that the matters raised fall within the statutory dispute resolution mechanisms established under the Environmental Management and Co-ordination Act and the Physical and Land Use Planning Act.
2. They also argued that Section 125 of the Environmental Management and Co-ordination Act establishes the National Environment Tribunal with jurisdiction to hear appeals arising from the grant or denial of a licence and permit, while Section 76 of the Physical and Land Use Planning Act establishes County Physical and Land Use Planning Liaison Committees with jurisdiction to hear appeals arising from decisions on development permissions. It was further contended that the law provides a clear appellate framework, including specified timelines within which aggrieved parties must lodge their appeals with the relevant bodies.
3. Based on the foregoing, the 3rd and 4th Respondents argued that the Petitioner failed to exhaust the available remedies before approaching this Court, thereby depriving the Court of jurisdiction to entertain the Petition. Consequently, they contended that the Petition and the accompanying application amounted to an abuse of the Court process and

should be dismissed with costs. In support of the doctrine, the Respondents cited the following authorities: **Speaker of the National Assembly v James Njenga Karume [1992] eKLR, Kibos Distillers Limited & 4 others v Benson Ambuti Adegga & 3 others [2020] eKLR, and Benson Ambuti Adegga & 2 others v Kibos Distillers Limited & 5 others [2020] eKLR.**

4. The preliminary objection was canvassed by way of written submissions.

THE 3RD AND 4TH RESPONDENTS SUBMISSIONS

5. The 3rd and 4th Respondents filed their submissions dated 13th March 2026.
6. On their behalf, Counsel submitted that the Petition and the Notice of Motion were incompetent for contravening the doctrine of exhaustion of remedies. Counsel argued that the gravamen of the Petition concerns the legality of an Environmental Impact Assessment licence issued under the Environmental Management and Co-ordination Act, along with development approvals granted under the Physical and Land Use Planning Act.
7. It was submitted that Section 125 of the Environmental Management and Co-ordination Act establishes the National Environment Tribunal, while Section 129 thereof grants the Tribunal jurisdiction to hear appeals arising from the granting, refusal, or transfer of licences under the Act. Counsel further submitted that Sections 56, 61, and 78 of

the Physical and Land Use Planning Act establish the County Physical and Land Use Planning Liaison Committee and confer upon it jurisdiction to determine disputes arising from development approvals.

8. It was submitted that the issues raised in the Petition fall within the jurisdiction of these specialised statutory bodies, and that no appeal has been filed before the Tribunal or the Liaison Committee as required by law. Counsel asserted that the Petitioner initially approached the Court, thereby bypassing the prescribed dispute resolution process.
9. Counsel relied on the doctrine of exhaustion of statutory remedies, which stipulates that when a statute provides a specific mechanism for redress, that procedure must be strictly followed. Reliance was placed on the cases of **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR**, **Jason Edward Matus & Another v Summit Gehlot & Another; NEMA & 2 Others (Interested Parties) [2021] eKLR**, **Kibos Distillers Limited & 4 Others v Benson Ambuti Adegga & 2 Others [2020] eKLR**, **Benson Ambuti Adegga & 2 Others v Kibos Distillers Limited & 5 Others [2020] eKLR**, and **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**.
10. It was submitted that the Petitioner had not demonstrated any exceptional circumstances to justify

exemption from the exhaustion requirement. Counsel contended that merely citing constitutional violations does not suffice to bypass statutory procedures.

11. Counsel further submitted that the Petition amounted to forum shopping, was premature, and an abuse of the Court process. In conclusion, Counsel urged the Court to uphold the Preliminary Objection and strike out both the Petition and the Notice of Motion with costs.

THE PETITIONER'S SUBMISSIONS

12. The Petitioner filed its submissions dated 17th March 2026.
13. On behalf of the Petitioner, Counsel submitted that the Preliminary Objection is incompetent as the doctrine of exhaustion does not bar this Court from exercising jurisdiction in the circumstances of the case.
14. On the threshold of a proper preliminary objection, Counsel submitted that the objection does not raise a pure point of law as required. Counsel contended that the objection requires the Court to examine and evaluate contested and evidentiary issues, including the nature of the Petition, whether the Petitioner invoked regulatory mechanisms, whether NEMA failed to act and whether the statutory remedies are effective and timely. To support this argument, reliance was placed on **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**

[1969] EA 696 and Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others [2014] eKLR.

15. Regarding the doctrine of exhaustion, Counsel acknowledged its general application but argued that it is not absolute. Counsel contended that Courts retain jurisdiction in cases involving constitutional questions, where statutory remedies are inadequate or ineffective, or where exceptional circumstances exist. It was argued that the Petition, based on Articles 42 and 70 of the Constitution, seeks preventive relief against imminent environmental harm. Counsel pointed out that Article 70 is expressed in preventative terms and does not depend on the prior exhaustion of statutory remedies or proof of personal loss.
16. Counsel further submitted that the Petitioner has demonstrated exceptional circumstances. Counsel explained that the Petitioner had lodged a formal complaint with the National Environment Management Authority on 15th January 2026, raising the same concerns, yet no action had been taken. It was contended that a remedy that exists only in theory, but is ineffective in practice, especially when faced with imminent harm, cannot bar recourse to the Court. In this regard, reliance was placed on **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR.**
17. The Petitioner cited Articles 22(2)(b) and 258(1) of the Constitution to submit on the Petitioner's right to initiate proceedings regarding a threatened violation of

constitutional rights. Further reliance was placed on the case of **Mohamed Ali Baadi and others v Attorney General & 11 others [2018] eKLR.** In conclusion, Counsel urged the court to dismiss the preliminary objection with costs.

THE 5TH RESPONDENT'S SUBMISSIONS

18. The 5th Respondent filed its submissions dated 18th March 2026.
19. On behalf of the 5th Respondent, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the preliminary objection meets the threshold; and*
 - b) *Whether the preliminary objection is merited.*
20. Regarding the first issue, Counsel submitted that the objection met the legal criteria of raising a pure point of law. Counsel argued that the Preliminary Objection was valid and well-founded, asserting that it raised a jurisdictional issue based on the doctrine of exhausting statutory remedies. To buttress this argument, reliance was placed on **Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd [1969] EA 696, Oraro v Mbaja [2005] 1 KLR 141,** and **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.**
21. Regarding the second issue, Counsel argued that the Petition challenged both the Environmental Impact Assessment licence issued by the National Environment Management Authority and the development approvals

granted by the County Government. Counsel asserted that both the Environmental Management and Co-ordination Act and the Physical and Land Use Planning Act establish specialised statutory mechanisms for resolving such disputes.

22. Counsel asserted that Sections 125 and 129 of the Environmental Management and Co-ordination Act establish the National Environment Tribunal and confer upon it the jurisdiction to hear disputes arising from decisions made by the Authority, including the issuance of Environmental Impact Assessment licences. It was argued that these provisions create a mandatory appellate framework, with the Tribunal serving as the primary forum and the Court having appellate jurisdiction.

23. Similarly, Counsel asserted that Sections 61(3), 76, and 78 of the Physical and Land Use Planning Act establish the County Physical and Land Use Planning Liaison Committees and confer upon them jurisdiction to hear disputes related to development approvals and planning decisions. It was contended that these provisions constitute a comprehensive dispute-resolution mechanism, thereby ousting the Court's jurisdiction at the first instance.

24. Counsel highlighted the legal principles underpinning the doctrine of exhaustion, noting that it promotes the use of specialised bodies with technical expertise, enhances efficiency in dispute resolution, prevents premature judicial intervention, and upholds the statutory hierarchy of dispute

resolution mechanisms. Counsel submitted that when Parliament has established a clear procedure for redress, such procedure must be strictly followed unless exceptional circumstances are demonstrated.

25. Counsel contended that no exceptional circumstances had been demonstrated to justify a departure from the statutory framework in this matter. Counsel argued that the Petitioner failed to invoke the jurisdiction of the National Environment Tribunal and the Liaison Committees, thereby rendering the proceedings premature and incompetent.

26. In conclusion, Counsel submitted that the combined effect of Sections 125 and 129 of the Environmental Management and Co-ordination Act and Sections 61(3), 76, and 78 of the Physical and Land Use Planning Act enshrines the doctrine of exhaustion as a mandatory procedural requirement. Counsel argued that the Petition, having been instituted in breach of this framework, is improperly before the Court and should be dismissed with costs.

THE 6TH RESPONDENTS SUBMISSIONS

27. The 6th Respondent filed its submissions dated 16th March 2026.

28. On behalf of the 6th Respondent, Counsel supported the Preliminary Objection and submitted that the Petition and the accompanying application are incompetent due to lack of jurisdiction, for being filed in breach of the doctrine of exhaustion of remedies.

29. Regarding jurisdiction, Counsel submitted that both the Environmental Management and Co-ordination Act and the Physical and Land Use Planning Act establish specialised dispute resolution mechanisms that must be invoked in the first instance. Reliance was placed on Section 125 of the Environmental Management and Co-ordination Act, which establishes the National Environment Tribunal with jurisdiction over disputes arising from decisions of the National Environment Management Authority, including the issuance of Environmental Impact Assessment licences. Similarly, Counsel cited Section 76 of the Physical and Land Use Planning Act which establishes the County Physical and Land Use Planning Liaison Committee and has jurisdiction over disputes related to development approvals.
30. Counsel argued that the doctrine of exhaustion requires parties to exhaust all available administrative remedies before seeking judicial intervention. Counsel maintained that the doctrine aims to protect administrative autonomy, enhance efficiency, allow specialised bodies to apply their expertise, and ensure Courts are approached only as a last resort.
31. To support this argument, Counsel cited **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR, Speaker of the National Assembly v James Njenga Karume [1992] eKLR, Kibos Distillers Limited & 4 Others v Benson Ambuti Adegwa & 3 Others [2020] eKLR, William Odhiambo Ramogi &**

3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR, Narok ELC Land Planning Petition No. E003 of 2025, Meitamei Olol Dapash v Marriott International Inc & 5 Others, and Zoa Ltd v Arvind Mani & 2 Others [2020] eKLR.

32. Counsel submitted that the Petition challenged the legality of an Environmental Impact Assessment licence, the adequacy of public participation, and the propriety of development approvals which clearly fall within the jurisdiction of the National Environment Tribunal and the County Physical and Land Use Planning Liaison Committee. It was contended that the Petitioner had neither lodged an appeal before the Tribunal nor invoked the jurisdiction of the Liaison Committee.

33. Counsel further argued that no exceptional circumstances had been demonstrated to justify departing from the doctrine of exhaustion. Counsel maintained that relying solely on constitutional provisions does not exempt the Petitioner from adhering to the statutory framework.

ANALYSIS AND DETERMINATION

35. Having considered the Preliminary Objection and the rival submissions, the sole issue for determination is whether the preliminary objection is merited.

36. The law regarding Preliminary Objections is well established. 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 submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

37. 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.”

38. The issue of jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. This Court is therefore satisfied that the Defendants' Preliminary Objection is based on a pure point of law.

39. It is trite law that jurisdiction is everything, and without it, the Court cannot take one more step in the case. The locus classicus on jurisdiction is the celebrated case of **Owners of Motor Vessel 'Lillian S' Vs Caltex Oil (Kenya) Limited (1989) eKLR**, where 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..."

40. Similarly, in **Samuel Kamau Macharia & Another Vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR**, the Supreme Court held that;

"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....”

41. A Court derives its jurisdiction from the Constitution, legislation, or both. The jurisdiction of this Court is derived from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.

42. The Respondents challenged this Court's jurisdiction on the grounds that the Petition is premature, arguing that the Petitioner should have exhausted all statutory remedies before filing this Petition.

43. The Petitioners argued that the preliminary objection is incompetent as it requires the determination of contested facts, including the nature of the Petition, whether the Petitioner has invoked the relevant regulatory mechanisms, whether the National Environment Management Authority failed to act, and whether the available statutory remedies are effective and timely. The issue before the Court is whether its jurisdiction has been ousted by the doctrine of exhaustion.

44. The doctrine of exhaustion is well established in Kenya. It was perhaps most felicitously articulated in **Speaker of 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.”

45. Similarly, in **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 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.”

46. The doctrine of exhaustion was outlined in **William Odhiambo Ramogi & 3 others v Attorney General & 4**

others; Muslims for Human Rights & 2 others
(Interested Parties) [2020] eKLR 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.*”**

47. It is not in dispute that the Petition was filed before this Court in its original jurisdiction, and that the dispute was neither referred to the National Environment Tribunal nor to the County Physical and Land Use Planning Liaison Committee, in accordance with the relevant statutory frameworks.
48. The Respondents contend that the application and Petition offend the provisions of Section 125 and 129 of the Environmental Management and Coordination Act, 1999

(EMCA) and Section 61(3) and 76 of the Physical Planning and Land Use Act, 2019.

49. Section 125 of EMCA establishes the National Environmental Tribunal, whose mandate is to hear disputes regarding NEMA's decisions on the issuance, denial, or revocation of a licence.

50. 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.

51. The Environmental Management and Coordination Act (EMCA) stipulates that disputes arising from environmental impact assessment licences must first be referred to the National Environment Tribunal (NET) established under Section 125 of EMCA.
52. Equally, the Physical and Land Use Planning Act (PLUPA) under Section 76 establishes County Physical and Land Use Planning Liaison Committees as the initial forums for challenging development permissions.
53. It is also not disputed that the impugned decisions relate to the issuance of an Environmental Impact Assessment licence and development approvals. These issues prima facie fall within the jurisdiction of the National Environment Tribunal under Section 129 of the Environmental Management and Co-ordination Act and the County Physical and Land Use Planning Liaison Committees

under Sections 61, 76 and 78 of the Physical and Land Use Planning Act. Accordingly, the Respondents' argument that the Petition offends the doctrine of exhaustion is legally tenable.

54. However, the doctrine of exhaustion is not absolute. Section 9(4) of the Fair Administrative Action Act explicitly authorises the Court, in exceptional circumstances and when it is in the interest of justice, to exempt a party from the requirement to exhaust alternative remedies.

55. In **Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR)**, the Court outlined the scope and application of these exceptions and stated as follows:

***“60. As observed above, the first principle is that the High Court may, in exceptional circumstances, consider and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.*”**

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.

62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."

56. The Supreme Court in **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR)** endorsed a context-specific and purposive approach to the doctrine. It asserted that nothing precludes the adoption of a nuanced approach that safeguards a litigant's right to access justice while also recognising the efficiency and specificity that established alternative dispute resolution mechanisms can offer.
57. The first factor to consider is the nature of the dispute. While the Respondents characterise the Petition as a challenge to licensing and development approvals, a closer examination reveals that the Petition raises substantive constitutional questions. The Petitioner alleges violations of Articles 10, 42, 69, and 70 of the Constitution, including flawed public participation, failure to conduct necessary environmental and technical assessments, and exposure of residents to imminent environmental harm. These are not peripheral or superficial constitutional claims; they seek the enforcement of fundamental rights and freedoms, and are not merely intended to circumvent statutory mechanisms.
58. The second factor is the adequacy and suitability of the alternative remedies. The jurisdiction of the National Environment Tribunal under Section 129 of EMCA is appellate and limited to disputes arising from decisions of the Authority on licences. Similarly, the Liaison Committees established under the Physical and Land Use Planning Act

are specialised bodies with specific mandates concerning planning disputes. These forums lack jurisdiction to grant the full range of constitutional remedies sought in the Petition, particularly declaratory relief based on constitutional violations and structural orders grounded in Articles 42 and 70.

59. Furthermore, the Petition is framed in preventative terms under Article 70 of the Constitution, which allows a person to approach the Court to prevent imminent environmental harm without needing to prove personal loss. The statutory mechanisms relied upon by the Respondents cannot be regarded as adequate remedies.

60. The Court is guided by the Supreme Court decision in **Nicholus v Attorney General & others(supra)**, which emphasizes the importance of applying the exhaustion doctrine. It advocates for balancing the role of specialized statutory bodies with the constitutional obligation of Courts to protect rights and ensure access to justice.

61. Although the dispute falls within the statutory framework established under EMCA and the Physical and Land Use Planning Act, the Court is satisfied that the Petitioner has demonstrated exceptional circumstances. The constitutional nature of the claims and the inadequacy of the alternative forums to grant appropriate relief collectively justify an exemption from the exhaustion requirement. The Court is therefore properly seized of jurisdiction to hear and determine the Petition on its merits.

62. The upshot of the foregoing is that the Preliminary Objection dated 11th March 2026 is devoid of merit and is hereby dismissed. Each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF APRIL, 2026.

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:-

Gitonga for the Petitioner

Ms Kiso for the 1st and 2nd Respondents

Makori for the 6th Respondent

Vena - Court Assistant