REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: PM Mwilu; DCJ& VP, Wanjala, Njoki, Lenaola & Ouko SCJJ)

SC. PETITION NO. E040 0F 2025

BETWEEN

BASE TITANIUM LIMITED.....APPELLANT

AND

MICHAEL KISWILI

(Acting On his own behalf and on behalf of 65 others) **..... 1ST**

RESPONDENT NATIONAL ENVIRONMENT MANAGEMENT

AUTHORITY.....2ND RESPONDENT

COMMISSIONER OF MINES AND GEOLOGY...3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

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*(Being an appeal from the Judgment of the Court of Appeal at Mombasa (**A.K. Murgor, Dr. K.I. Laibuta & G.W. Ngenye-Macharia, JJ. A**) in Civil Appeal No. E142 of 2022 delivered on 18th July 2025)*

Representation:

Mr. Ayatsi appearing for the Appellants

(Shapley Barret & Co. Advocates)

Mr. Gathuku appearing for the 1st Respondent

(Joseph Gathuku & Co. Advocates)

Mr. Kimei appearing for the 3rd and 4th Respondents

(The Attorney General)

JUDGMENT OF THE COURT

A. INTRODUCTION

[1] This appeal dated 29th August, 2025, is brought pursuant to Article 163(4)(a) of the Constitution of Kenya, 2010. The appellant, Base Titanium Limited, challenges the judgment of the Court of Appeal at Mombasa, delivered on 18th July, 2025, which affirmed the ruling of the Environment and Land Court at Kwale, that had struck out the appellant's objection of its jurisdiction, by holding that the said Court, had jurisdiction to hear and determine the 1st respondent's petition, concerning alleged environmental violations arising from mining operations in Kwale County

[2] The gravamen of the appeal is whether, in light of Articles 162(2), 162 (3) and 159(2)(c) of the Constitution 2010, read together with Sections 13 (4) of the Environment and Land Court Act,2011, Section 155 of the Mining Act, 2016 and Section 3(3) of the Environmental Management and Coordination Act (EMCA),1999, the Environment and Land Court, had original jurisdiction to hear the 1st respondent's petition, or whether, such jurisdiction lay in the first instance with the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs.

B. FACTUAL BACKGROUND

[3] The dispute originates from mining activities undertaken by the appellant, Base Titanium Limited, in Kwale County, pursuant to a

mining licence issued in/or about 2013, by the 3rd respondent, Commissioner of Mines and Geology. The appellant was

licensed to mine and extract titanium and related products for export and processing.

[4] The 1st respondent, Michael Kiswili, acting on his own behalf and on behalf of other residents of the affected area, alleged that the appellant commenced and conducted its mining operations without undertaking a proper Environmental Impact Assessment (EIA) and, without adequate public participation, contrary to the Constitution and the Environmental Management and Coordination Act,1999. Further, that the mining activities caused environmental degradation, water pollution, excessive noise, and adverse health effects to residents of Mavumo "B" Village, Msambweni, Kwale County.

[5] On the basis of the alleged violations, the 1st respondent sought declaratory and restorative reliefs, including declarations that the residents' right to a clean and healthy environment under Article 42 of the Constitution, had been violated, orders for environmental restoration, and the revocation of the appellant's EIA licence and mining licence.

C. LITIGATION HISTORY

i. Proceedings at the Environment and Land Court

[6] The 1st respondent instituted **ELC Petition No. 3 of 2021** dated 18th March, 2021, and sought the following reliefs;

i. *A declaration that the residents of Mavumo "B" Village, Msambweni, Kwale County have a right to a clean and healthy environment as guaranteed under Article 42 of the Constitution.*

ii. *A declaration that the mining activities undertaken by the respondents have violated and continue to violate the*

petitioners' right to a clean and healthy environment.

iii. *An order directing the respondents to immediately stop all mining activities pending compliance with the provisions of the Environmental Management and Coordination Act, No. 8 of 1999.*

iv. *An order directing the respondents to restore the environment to its original status or to the nearest possible state prior to the commencement of the mining activities.*

v. *An order directing the respondents to undertake a comprehensive Environmental Impact Assessment and public participation exercise in accordance with the law.*

vi. *Costs of the Petition.*

vii. *Any other or further relief that this honourable court may deem fit and just to grant*?

[7] The 1st respondent averred that the petition was anchored on constitutional violations, specifically Articles 42, 69 and 70 of the Constitution, and that the Environment and Land Court had original jurisdiction under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act, to hear and determine disputes relating to the environment and enforcement of environmental rights. The 1st respondent further contended that, statutory dispute resolution mechanisms under the Mining Act could not oust or limit the Court's constitutional mandate.

[8] In response, the appellant filed a replying affidavit sworn on 27th April, 2021. The appellant averred that it was lawfully licensed to carry out mining operations, pursuant to a valid mining licence issued under the Mining Act, and that it had fully complied with all statutory and regulatory requirements, including environmental obligations. The

appellant maintained that it had conducted Environmental Impact Assessments, obtained the requisite approvals from the National Environment

Management Authority, and continuously complied with licence conditions and monitoring requirements.

[9] Crucially, the appellant raised a jurisdictional objection, via an application dated 28th April, 2021, contending that under Section 155 (b) of the Mining Act, disputes arising from mining operations, including claims relating to environmental harm and compensation, fall within the original jurisdiction of the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs. It was the appellant's position that the Environment and Land Court only has appellate jurisdiction under Section 157 of the Mining Act, and that the petition was therefore prematurely and improperly before the court.

[10] The 3rd respondent, also filed a Preliminary Objection, dated 14th September, 2021, raising a jurisdictional issue that, the 1st respondent had failed to exhaust the mandatory internal dispute resolution mechanisms available under Section 129 of EMCA, that the ELC had no jurisdiction to determine the issues raised in the petition by dint of Section 9(2) and (3) of the Fair Administration Action Act, 2015 and Article 159 (2) of the Constitution and therefore, the petition was a nullity and a waste of the court's time.

[11] In a ruling delivered on 10th February, 2022, ELC *(Dena, J.)* held that it had original jurisdiction to hear and determine the petition, because the petitioners were seeking a declaration that their rights to a clean and healthy environment had been denied, and that they therefore had a right of redress under Article 162 (2) (b) of the Constitution as read together with Section 13 (2) and (3) of the Environment and Land Court Act. On its jurisdiction to determine issues raised under the Mining Act, the court held that it had original jurisdiction to determine disputes relating to environment, the use of,

occupation and title to land, and that it had the mandate to determine applications for redress for denial or violation of rights and fundamental

freedoms relating to environment and land. The jurisdictional objections were accordingly dismissed.

ii. Proceedings at the Court of Appeal

[12] Aggrieved by the ruling of the Environment and Land Court, the appellant lodged **Civil Appeal No. E142 of 2022** at the Court of Appeal, Mombasa. The appeal was premised on the following grounds of appeal:

a) *The learned Judge erred in law in holding that the Environment and Land Court had original jurisdiction to hear and determine the Petition contrary to Section 155 of the Mining Act, 2016.*

b) *The learned Judge erred in law by failing to appreciate that Parliament, pursuant to Article 162(2) and (3) of the Constitution, limited the jurisdiction of the Environment and Land Court in mining disputes to appellate jurisdiction only.*

c) *The learned Judge erred in law by disregarding the mandatory alternative dispute resolution mechanism provided under Section 155 of the Mining Act.*

d) *The learned Judge erred in law in failing to apply Article 159(2)(c) of the Constitution on promotion of alternative dispute resolution mechanisms.*

e) *The learned Judge erred in law by assuming jurisdiction over a dispute that was statutorily reserved for determination by the Cabinet Secretary for Mining.*

f) *The learned Judge erred in law by misinterpreting Section 13(4) of the Environment and Land Court Act.*

[13] In its judgment of 18th July, 2025, the Court of Appeal held that the predominant purpose of the petition, was the enforcement of the right to a clean and healthy environment, and that therefore, the Environment and Land Court correctly found that it had jurisdiction to determine the issues before it. The court further held that Section 155 of the Mining Act did not oust the constitutional jurisdiction of the Environment and Land Court. Consequently, the appeal was dismissed.

iii. Proceedings at the Supreme Court

[14] Undeterred, the appellant has filed this instant appeal before this Court on grounds that the learned Judges of the Court of Appeal erred in law by:

- ***i.*** *Misinterpreting and misapplying Articles 162(2), 162(3) and 159(2)(c) of the Constitution;*
- ***ii.*** *Holding that the Environment and Land Court has original jurisdiction to hear and determine disputes arising from mining operations contrary to Section 155 of the Mining Act, 2016;*
- ***iii.*** *Failing to appreciate that Parliament, pursuant to Article 162(3) of the Constitution, limited the jurisdiction of the Environment and Land Court in mining disputes to appellate jurisdiction only;*
- ***iv.*** *Erroneously applying the predominant purpose test in a manner that defeats the constitutional and statutory objectives of alternative dispute resolution;*
- ***v.*** *Violating the appellant's right to a fair hearing by subjecting it to proceedings before a court lacking original jurisdiction.*

[15] The appellant, therefore, seeks the following reliefs:

1. *That the Petition of Appeal be allowed;*
2. *A declaration that the judgment of the Court of Appeal dated 18th July*

   2025 violated the appellant's constitutional rights;
3. *An order setting aside the judgment.*

[16] In response, the 1st respondent filed a preliminary objection dated 15th September, 2025, on grounds that no certification has been granted by the Supreme Court or the Court of Appeal, and that a matter of general public importance is involved.

[17] The 1st respondent also filed a replying affidavit sworn by Michael Kiswili on 8th December, 2025, opposing the petition, wherein he contends, inter alia, that the Court of Appeal correctly applied the "predominant purpose test" to determine jurisdiction; that the petition before the ELC raises constitutional environmental rights under Articles 42, 69 and 70 of the Constitution, all of which fall within the original jurisdiction of the Environment and Land Court; that the Cabinet Secretary cannot grant declaratory reliefs for constitutional violations; and that Section 13(4) of the Environment and Land Court Act does not oust the court's original jurisdiction.

[18] The 3rd and 4th respondents filed a Notice of Grounds Affirming the Decision dated 20th October, 2025, upon grounds that, the '*predominant purpose test*' as used in the judgment in the superior court below, is not an issue framed for determination, rather, a case analysis and case theory of the pleadings, facts and evidence presented before the court for determination.

D. SUBMISSIONS

i. Appellant's Submissions

[19] The appellant, in its submissions dated 8th January, 2026, in support of its petition, submits that this Court has jurisdiction to hear and determine this appeal under Article 163 (4) (a) of the Constitution, as it involves the interpretation and application of Article 162 (3) of the Constitution to the provisions of Section 155 of the Mining Act. The

appellant argues that the dispute is predominantly a mining dispute under the Mining Act, and that original jurisdiction lies with the Cabinet

Secretary under Section 155 of the said Act while the Environment and Land Court, only has appellate jurisdiction under Section 13(4) of the Environment and Land Court Act and Section 157 of the Mining Act. The appellant further asserts that the Court of Appeal violated the exhaustion doctrine, and Article 159(2)(c) of the Constitution, by bypassing the alternative dispute resolution mechanism under the Mining Act. It further alleges that the Court of Appeal, violated the appellant's right to a fair hearing under Article 50 of the Constitution, by introducing and relying on the "predominant purpose test" without submissions from the parties. The appellant relies on cases including ***Mutanga Tea & Coffee Company Ltd Vs Shikara Limited & Another*** (2015) eKLR; ***Geoffrey Muthinja & Another Vs Samuel Muguna Henry & 1756 Others*** (2015) eKLR; and ***Nur Olow Farah Vs Muda Arale Farah & another*** [2021] eKLR.

[20] In its rejoinder dated 30th January, 2026, the appellant reiterates that the appeal is one under Article 163 (4)(a) of the Constitution. On the main petition, the appellant reiterates that the Cabinet Secretary has original jurisdiction under Section 155 of the Mining Act, to hear the said dispute, and determine whether the appellant, had violated the 1st respondent's rights to a clean and healthy environment and, to grant consequential reliefs as pleaded. Further, that constitutional reliefs are unnecessary where suitable alternative dispute resolution exists and is adequate, and that the ELC can only exercise appellate jurisdiction, after the alternative dispute mechanism process has been exhausted.

ii. 1st Respondent's Submissions

[21] The 1st respondent in their submissions dated 16th October, 2025, in support of the preliminary objection, submit that the appeal before this Court does not touch on the interpretation or application of the

Constitution, and that neither has the matter before Court been certified under Article 163 (4)(b), therefore rendering the appeal before the Supreme Court null and void for non-compliance with the requisite

legal provisions. Citing ***Lawrence Nduttu & 6000 Others Vs Kenya Breweries Limited & Another*** (Petition 3 of 2012) [2012] KESC 9 (KLR) for the proposition that an appeal to the Supreme Court must involve the interpretation or application of the Constitution.

[22] In opposing the appeal, the 1st respondent in their submissions of 15th January, 2026, maintain that the petition before the ELC raises core constitutional issues regarding the right to a clean and healthy environment under Article 42 of the Constitution, which fall within the original jurisdiction of the Environment and Land Court under Section 13(3) of the Environment and Land Court Act. Further, that the "*predominant purpose test*" was appropriately applied to determine jurisdiction, and that the Cabinet Secretary cannot adjudicate constitutional claims or grant declaratory reliefs. He relies on cases including; ***Nicholus Vs Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others*** (2023) KECA 34 (KLR)**;** ***Suzzane Achieng Butler & 4Others Vs Redhill Heights Investments Limited & Another*** (2016) KEHC 1313(KLR); ***Lydia Nyambura Mbugua Vs Diamond Trust Bank Kenya Ltd & Another*** (2018) KEELC 1599 (KLR).

E. ISSUES FOR DETERMINATION

[23] Upon appreciation of the parties' pleadings and submissions, the following are

the issues for determination by the Court:

a) Whether this Court has jurisdiction to hear and determine the appeal?

b) Whether the Court of Appeal erred in its decision of 18th July, 2025?

c) What orders are to be issued by this Court?

F. ANALYSIS

a) Whether this Court has jurisdiction to hear and determine this appeal?

[24] The question of jurisdiction is not a trifling matter to be glossed over in the rush towards substantive adjudication; rather, it is the very foundation upon which all judicial proceedings must firmly stand. If absent, the court is duty-bound to lay down its tools. The jurisdiction of this Court has been brought to question by the 1st respondent by way of preliminary objection dated 15th September, 2025, on grounds that no certification has been granted by the Supreme Court or the Court of Appeal, and that a matter of general public importance is involved.

[25] On its part, the appellant's position is that, this Court has jurisdiction under Article 163(4)(a) of the Constitution, which allows appeals as of right to the Supreme Court in all cases involving interpretation and application of the Constitution, as the appeal involves the interpretation and application of Article 162 (2)(b) and (3) of the Constitution, to the provisions of Section 155 of the Mining Act. Further, that it takes issue with the decision of the Court of Appeal which misinterpreted and misapplied Articles 162(2)(b), 162(3) and 159(2)(c) of the Constitution, by holding that the Environment and Land Court had original jurisdiction to hear and determine disputes arising from mining operations, contrary to Section 155 of the Mining Act, 2016.

[26] In ***Fahim Yasin Twaha Vs Timamy Issa Abdalla & 2 Others,*** [2015] KESC 20 (KLR), this Court stated that where an appeal involves a matter of constitutional interpretation and/or application, it signals access to the Supreme Court "as of right", and no form of authorization or leave from the Court is required. Therefore, in the matter before us, once we establish that there is an issue that involves a matter of

constitutional interpretation and/or application, it follows that the appellant will have the right of appeal before this Court.

[27] The contours of a matter falling within Article 163(4)(a) jurisdiction are now set out in a number of decisions of this Court. In ***Lawrence Nduttu & 6000 Others Vs Kenya Breweries Ltd & Another***, SC Petition No. 3 of 2012; [2012] eKLR,) and ***Joho & another Vs Shahbal & 2 others***, (Petition 10 of 2013) [2014] KESC 34 (KLR), this Court crystallized the test for jurisdiction under Article 163(4)(a) of the Constitution: it must be demonstrated that the issues in dispute involved a constitutional question that was subject of judicial determination by interpretation or application in the courts below.

[28] Applying that test to the present matter, we must advert to the nature of the issues from which this appeal has arisen, this is because, whether or not the jurisdiction of this Court under Article 163(4) (a) of the Constitution has been properly invoked, will depend on either the nature of the pleadings, the nature of the proceedings, the relief claimed, or the decision of the Court of Appeal being appealed against.

[29] From the record before us, we note that at the heart of this dispute, is the question whether, in light of Articles 162(2), 162 (3) and 159(2)(c) of the Constitution 2010, read together with Section 155 of the Mining Act, 2016 and Section 3(3) of the Environmental Management and Coordination Act (EMCA),1999, the Environment and Land Court, had jurisdiction to hear the respondent's petition, or whether, such jurisdiction lay in the first instance with the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs.

[30] A further perusal of the record and determination by the two superior courts below, leads to only one inescapable conclusion; the issues canvassed before them related to an interpretation and application of Article 162 (2) (b) of the Constitution. On its part, the ELC held that it had jurisdiction to hear and determine the petition,

because the petitioners were seeking a declaration that their rights to a clean and healthy environment had been denied, and that they therefore had a right of redress

under Article 162 (2) (b) of the Constitution as read together with Section 13 (2) and
(3) and of the Environment and Land Court Act. On the other hand, the Court of Appeal held that the ELC correctly found that it had jurisdiction to determine the issues before it, and that Section 155 of the Mining Act did not oust the constitutional jurisdiction of the ELC, under Article 162 (2) (b) of the Constitution.

[31] In ***John Florence Maritime Services Limited & another Vs Cabinet Secretary for Transport and Infrastructure & 3 others;*** SC Petition No. 17 of 2015; [2019] eKLR, we specifically held as follows:

> ***"As to what constitutes a matter involving interpretation and application of the Constitution, the conventional approach is that a particular provision of the Constitution must have been in issue for an interpretation and/or application from the High Court and the Court of Appeal…"***

[32] In light of the foregoing, and consistent with this Court's jurisprudence, we are persuaded that the appeal falls within the ambit of Article 163(4)(a) of the Constitution, and therefore the Court has jurisdiction to entertain it. Consequently, the objection as to the jurisdiction of the Court is, for these reasons, overruled.

[33] Be that as it may, we must address the issue of counsel, acquainting themselves with the jurisprudence of this Court. We say so, not out of a desire to reprimand, but as a caution to all counsel appearing before this Court. During the highlighting of submission on 12th March, 2026, when counsel for the 1st respondent was asked to clarify on his preliminary objection, counsel submitted that a party moving this Court for an appeal, is required to rely on both provisions

under Article 163 (4) (a) and 163 (4) (b) of the Constitution. This is an incorrect position, and we must point out that this Court has numerous decisions on the said issue.

b) Whether the Court of Appeal erred in its decision of 18th July, 2025?

[34] The appellant has faulted the manner in which the Court of Appeal, interpreted Article 162 (2)(b) of the Constitution, thereby affirming the jurisdiction of the ELC to determine the 1st respondent's petition, and implores this Court to find that the issues raised before the ELC, ought to have been raised before the Cabinet Secretary for determination, in light of Section 155 of the Mining Act, 2016. What this Court must now establish, based on arguments by the parties is whether, in upholding the judgment of the ELC, the Court of Appeal misapplied and misinterpreted Article 162 (2)(b) of the Constitution.

[35] The Constitution of Kenya sets out the Environment and Land Court's

jurisdiction under Article 162(2) and (3) in the following terms:

"Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land".

[36] To this end, Parliament, in its wisdom, enacted the Environment and Land Court Act, which establishes the Environment and Land Court (ELC) as the specialized forum for the adjudication of environment and land-related disputes. From the preamble of the Act, it mandates the Court to deal on all matters emanating from the use, occupation and title of the land. Additionally, Section 13 of this Act, further outlines the jurisdiction of Environment and Land Court, as follows:

"1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and

with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

2. In exercise of its jurisdiction under Article 162(2) (b) of the Constitution, the Court shall have power to hear and determine disputes:

a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

b. relating to compulsory acquisition of land;

c. relating to land administration and management;

d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

e. any other dispute relating to environment and land.

3. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution."

[37] This statutory provision, in its breadth and clarity, leaves no room for conjecture. It vests the ELC with an expansive jurisdiction over all matters touching on land and the environment. The legislative intent is unmistakable: to create a judicial forum with the singular mandate and expertise to resolve disputes within this specialized domain.

[38] Having established the foregoing, a perusal of the pleadings will determine whether the dispute fell within the provisions of Section 13 of the Environment and Land Court Act or otherwise. Without wanting to belabour the point herein, the facts of this case are clear that, a violation of constitutional rights to a clean and healthy environment of

the residents of Mavumo “B” Village, Msambweni, Kwale

County, due to the mining activities by the appellant, was the integral part of the dispute before the ELC. To us, the dominant issue in this case was the impact of the mining activities undertaken by the appellant, on the 1st respondent's right to a clean and healthy environment.

[39] Ordinarily, pleadings give a court sufficient glimpse to determine whether violation of constitutional rights is the predominant purpose of the suit, and in our view, the jurisdiction of the ELC to deal with disputes relating to mining under Section 13 of the ELC Act, ought to be understood within that context. Though the 1st respondent's case against the appellant is largely with respect to the mining activities under the Mining Act, the ripple effect thereof is the subject of the alleged violation of their fundamental rights and freedoms. The issues are therefore intertwined.

[40] The appellant argues that the statutory provisions available on dispute resolution under Section 155 of the Mining Act, can be construed in a manner to oust the court's jurisdiction, to determine the issues in dispute, despite the nature of the grievance. For clarity, the said provision allows the Cabinet Secretary to inquire and determine the followings matters:

a) a dispute of the boundaries of an area held under a prospecting or mining right;

b) any wrongful act committed or omitted in the course of prospecting and mining operations, by any persons against any other person;

c) a claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes;

d) a claim to have any priority of water taken, diverted, used or delivered for mining purposes, as against any other person claiming the same; or

e) assessment and payment of compensation where provided for under this Act".

[41] However, having considered the reliefs sought at the ELC, we reiterate our earlier finding in this judgment that, the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution, as read with Section 4(2) of the Environment and Land Court Act. We say so because, the Cabinet Secretary has no jurisdiction to determine alleged violations of the Constitution, this is a preserve for the ELC. The right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the reasoning in ***William Odhiambo Ramogi & 3 others Vs Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties)*** [2020] eKLR, where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated:

> ***"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."***

[42] In conclusion, we find no error in the determination by the Court of Appeal, that the ELC, under Article 162 (2)(b) of the Constitution, as read together with Section 13 of the Environment and Land Court Act, has original jurisdiction to hear and determine issues related to Bill of Rights, associated with environment and land disputes in a petition presented before it. In ***Nicholus Vs Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others*** (Interested Parties) [2023] KESC 113 (KLR), we held that:

> "…***that the availability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. This is because the act of seeking constitutional relief is contingent upon the adequacy of an existing alternative means of redress. If the alternative remedy is deemed inadequate in addressing the issue at hand, then the court is not restrained from providing constitutional relief."***

[43] For this reason, we find no merit in the appeal. It is hereby dismissed, and for the avoidance of doubt, we affirm the judgment of the Court of Appeal. Having so found, and to ensure the appellant gets his day in court, we hereby declare that the petition filed before the ELC should proceed for determination on its merits.

G. COSTS

[44] Costs follow the event but are at the discretion of the Court. We are guided by the principles on the award of costs enunciated in ***Jasbir Singh Rai & 3 others Vs Tarlochan Singh Rai Estate of & 4 others***; SC Petition 4 of 2012; [2013] eKLR. The 1st respondent having been successful in the superior courts below and was awarded costs, we equally award him costs.

H. ORDERS

[45] Consequently, upon our conclusion above, we order that:

i. ***The Petition of Appeal dated 29th August, 2025 is hereby dismissed.***

ii. ***The petition filed before the ELC should proceed for determination on its merits.***

iii. ***The appellant shall bear the costs of this Appeal.***

iv. ***We hereby direct that the sum of Kshs. 6,000 deposited as security for costs upon lodging of this appeal be refunded to the appellants.***

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this **15th** day of **May** 2026.

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P.M MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT OF KENYA

....

S.CWANJALA **N. NDUNGU**
JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

....

I. LENAOLA **W. OUKO**
JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA