



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Oduthe & 5 others v Joreth Ltd & 6 others (Environment & Land Petition
E023 of 2023) [2025] KEELC 718 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 718 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION E023 OF 2023

MD MWANGI, J

FEBRUARY 20, 2025

**IN THE MATTER OF ARTICLES 62(1), (2) & (3), ARTICLE 22 & 258, AND
258 & ARTICLE 60(1) (A) OF THE CONSTITUTION OF KENYA, 2010**

AND

SECTION 12,14, & 150 OF THE LAND ACT

BETWEEN

FRANCIS ODUTHE 1ST PETITIONER
RICHARD OTECH 2ND PETITIONER
PETER OKAL OTAK 3RD PETITIONER
JASPER OBADO OUNA 4TH PETITIONER
BEATRICE MAKOKHA 5TH PETITIONER
FRANCIS OOKO OTUDE 6TH PETITIONER

AND

JORETH LTD 1ST RESPONDENT
RAFIKI ENTERPRISE LTD 2ND RESPONDENT
BERKSHIRE HOLDINGS LTD 3RD RESPONDENT
OBELISK LTD 4TH RESPONDENT
THE NATIONAL LAND COMMISSION 5TH RESPONDENT
THE REGISTRAR OF TITLE 6TH RESPONDENT
NAIROBI CITY COUNTY GOVERNMENT 7TH RESPONDENT



RULING

{In respect of the Preliminary Objection by the 7th Respondent dated 8th January,2024 on the premise that the Petition herein offends the doctrine of exhaustion}.

Background

1. The preliminary objection by the 7th Respondent is premised on 4 grounds, namely
 - a. That the honorable court lacks jurisdiction to hear this matter as a court of first instance in view of the doctrine of exhaustion.
 - b. That from a mere cursory perusal of the Petition, it can be deduced that the Petitioners' grudge is a complaint into an alleged present or historical injustice which by law should be addressed to the 5th Respondent pursuant to Article 67(2) (e) of *the Constitution* as read with Section 5(1) (e) of the *National Land Commission Act*, No.5 of 2012.
 - c. That the Petition is premised on non-existence law; to wit Section 12,14 and 1590 of the *Land Act* 2010 as cited by the Petitioner.
 - d. That the Petition is incompetent, fatally defective and incurable and bad in law for want of a supporting affidavit and as such ought to be struck out.

Courts directions

2. The court's directions were that the preliminary objection be canvassed by way of written submissions. Only the 7th Defendant/Objector complied by filing its submissions dated 31st October, 2024. The Petitioners did not submit on the Preliminary objection. The court notes that the Petitioners only appeared once out of the eight times the matter has been listed for mention before it. The court has had the opportunity to read and consider the submissions by the Objector which went far beyond the points raised in the preliminary objection.

Issues for determination

3. The sole issue for determination is whether the preliminary objection is merited.

Analysis and Determination

4. The preliminary objection by the 7th Respondent is premised on the doctrine of exhaustion. The doctrine dictates that 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 before the grievance is presented to the court.
5. The Court of Appeal in the case of Geoffrey Muthinja & another -vs- Samuel Muguna Henry & 1756 others [2015] eKLR, held as follows concerning the doctrine of exhaustion;

“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.”

6. The exhaustion doctrine therefore 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 vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court stated that:

“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 Karume [1992] KLR 21 in the following oft-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.”

7. In this case, the 7th Respondent opines that the Petitioners' grievance is a complaint into an alleged historical injustice which by law should be addressed to the 5th Respondent, the National Land Commission (NLC) pursuant to Article 67(2)(e) of *the Constitution* as read with Section 5(1)(e) of the *National Land Commission Act*, No.5 of 2012. The 7th Respondent submits that NLC is established and mandated to, ‘initiate investigations, on its own initiative or on a complaint, into present or historical injustices, and recommend appropriate redress.’
8. The 7th Respondent refers to the decision in the case of Kariuki Muigua -vs- National Land Commission (2017) eKLR, where the court affirmed that the NLC is the first port of call for grievances relating to land injustices and other land disputes under its mandate.
9. Having carefully perused the petition filed herein, the court agrees with the 7th Respondent as to the nature of the grievance by the Petitioners in this matter. Accordingly, the dispute ought to have been presented before the NLC as provided by *the Constitution* and the Statute.
10. Accordingly, the court finds and holds that the preliminary objection by the 7th Respondent is merited and upholds it. The petition in this matter violates the doctrine of exhaustion and is hereby struck out with costs to the 7th Respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20TH DAY OF FEBRUARY 2025



M.D. MWANGI

JUDGE

In the virtual presence of -

Mr. Wekesa for the 7th Respondent/Objector

N/A by the 1st – 6th & 8th Respondents and the Petitioners

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

