



**Murusi & 17 others v County Government of Marsabit & 3 others; National
Land Commission & another (Interested Parties) (Environment & Land
Petition 007 of 2021) [2024] KEELC 5374 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND PETITION 007 OF 2021
PM NJOROGE, CK YANO & CK NZILI, JJ
JULY 19, 2024**

BETWEEN

LERUK MURUSI	1ST PETITIONER
LECHEKU ARIGELE	2ND PETITIONER
LEADO STEPHEN LTERIOS	3RD PETITIONER
L'TETIAN LERUPES	4TH PETITIONER
JIMMY LENEEPE	5TH PETITIONER
JAMES MARLENI	6TH PETITIONER
LPIRIKON NEEPE	7TH PETITIONER
PATRICK KURAKI	8TH PETITIONER
SAMUEL LOIBARBAN	9TH PETITIONER
FRANCIS LEADUMA	10TH PETITIONER
HON. DANIEL BURCHA	11TH PETITIONER
HON. ASUNTA	12TH PETITIONER
LENJODODO MAIDAT LOLBALANGA	13TH PETITIONER
LETEYON NURE	14TH PETITIONER
IMARIATON LOIBALANGA	15TH PETITIONER
STEPHEN LESOROH GAMBARE	16TH PETITIONER
STEVEN TIMBOR	17TH PETITIONER
THE RENDILLE PROFESSIONAL ASSOCIATION	18TH PETITIONER



AND

THE COUNTY GOVERNMENT OF MARSABIT 1ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES 2ND RESPONDENT
THE CABINET SEC. MINISTRY OF DEFENCE 3RD RESPONDENT
THE HON. ATTORNEY GENERAL 4TH RESPONDENT

AND

THE NATIONAL LAND COMMISSION INTERESTED PARTY
THE KENYA WILDLIFE SERVICE INTERESTED PARTY

RULING

1. This ruling concerns a Preliminary Objection filed by Mr Wachira Nguyo, Deputy Chief State Counsel, Attorney General’s Office, dated 28th day of July, 2022. On 23/1/2023 the court directed that the Preliminary Objection be heard contemporaneously with the Main Suit.
2. The Preliminary Objection reads as follows;
 1. The petition is an intergovernmental land dispute between Ministry of Lands, Kenya Wildlife Service, Ministry of Defence, County Government of Marsabit and National Land Commission on ownership of the KARARE-SONGA land.
 2. The nature of this suit is one that should be guided by the express provisions of Article 6(2) of *the Constitution* of Kenya, 2010. The Article provides that Governments at the National and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation by avoiding litigation.
 3. Article 189 (4) of *the Constitution* of Kenya provides that the National Legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanism including negotiation, mediation and arbitration.
 4. Pursuant to Article 189 referred above, Parliament enacted *Intergovernmental Relations Act*, 2012 which lays down the framework for cooperative, intergovernmental relations and resolution of intergovernmental disputes.
 5. Section 3 of the *Intergovernmental Relations Act* provides that the National and County Governments shall take all reasonable measures to resolve disputes amicably and apply and exhaust the mechanisms for alternative dispute resolution provided under the Act or any other legislation before resorting to judicial proceedings.
 6. This suit negates the doctrine of exhaustion; i.e. where a statute creates a procedure in specified manner, the rule is that performance cannot be enforced in any other manner before exhausting the procedure provided in statute and that the *Intergovernmental Relations Act* Section 30-35 and Article 189 (4) of *the Constitution* outlines the procedures to address intergovernmental disputes.



7. The petition is premature because the Petitioner has not exhausted the dispute resolution mechanisms under *the Constitution* and the *Intergovernmental Relations Act*, thus rendering the doctrine of exhaustion irrelevant.
3. The Preliminary Objection was canvassed by way of written submissions.
4. The main argument by the Preliminary Objection's proponent, the Attorney General, was that the dispute in issue in this case was an Inter-Governmental Dispute which should be subjected to resolution by way of the procedure provided for by the *Intergovernmental Relations Act*. This position was supported by the other Respondents and the Interested Parties.
5. The Petitioners opposed the Preliminary Objection. They said that they were individuals affected by the purported allocation of the suit land to the Ministry of Defence. This made the Preliminary Objection to be a dispute between Citizens and the Government, its mentioned agencies, and the County Government of Marsabit.
6. This court has carefully considered the positions taken by the parties. This court is of the opinion that the apposite dispute is not an Intergovernmental Dispute. It is a dispute between named citizens and the government, its named agencies and the County Government of Marsabit.
7. In the circumstances, we issue the following orders:
 - a. This Preliminary Objection is hereby dismissed.
 - b. Costs concerning this Preliminary Objection shall follow the event and are awarded to the Petitioners.

DELIVERED IN OPEN COURT AT ISIOLO THIS 19TH DAY OF JULY, 2024 IN THE PRESENCE OF:

Court Assistant: Balozi/Tupet/KananuKatwa Kigen for 8th to 18th Petitioners together with Miss Makena Mbogo (present virtually).

Nelima absent for 1st to 7th Petitioners.

Birik absent for 1st Respondent.

Yusuf holding brief for Mugira for the 2nd and 3rd Respondent (Virtually).

Yusuf holding brief for Kimathi for the 4th Respondent.

Haji absent for 1st Interested Party.

Petitioners represented by Christine Dokhole, Leruk Murusi and Joseph Leruk (MCA) member of the 17 Petitioners.

HON. JUSTICE PETER MUCHOKI NJOROGE – PRESIDING JUDGE

HON. JUSTICE CHARLES KIMUTAI YANO – JUDGE

HON. JUSTICE CHRISTOPHER KYANIA NZILI - JUDGE

