



**Kiagi v Kanmark Limited (Land Case E092 of 2024)
[2025] KEELC 605 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E092 OF 2024
LL NAIKUNI, J
FEBRUARY 14, 2025**

BETWEEN

PAUL ONYANGO KIAGI PLAINTIFF

AND

KANMARK LIMITED DEFENDANT

RULING

I. Introduction

1. Before this Honourable Court for its determination is the Notice of Preliminary objection by Kanmark Limited, the Defendant herein dated 19th November, 2024. The objection has challenged the Notice of Motion application dated 15th October, 2024 brought by Paul Onyango Kiagi, the Plaintiff herein.
2. Upon service of the Notice of Preliminary objec

II. The Notice of Preliminary objection by the Defendant

3. The Defendant brought an objection on the jurisdiction of the Honourable Court to hear the Plaintiff's Notice of Motion application on the following grounds:-
 - a. This Honourable Court only has appellate jurisdiction to hear and determine appeals from the proceedings of the National Environment Tribunal established pursuant to Section 125[1] of The Environment Management and Co-Ordination Act ['EMCA'].
 - b. Section 130 of The EMCA found the Appellate jurisdiction of this Honourable Court and under the doctrine of exhaustion, the Plaintiff was not only obliged to disclose the challenge made before the National Environment Tribunal but also follow the laid down Statutory Procedures and processes including not abusing the Court process.



- c. These proceedings are misconceived and are only intended to embarrass either this Honourable Court or the National Environment Tribunal or, alternatively, influence the outcome of the matters before it.

III. Submissions

4. On 9th December, 2024 while the Parties were present in Court, they were directed to have the Notice of Preliminary Objection dated 14th November, 2024 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 31st January, 2025 a ruling date was reserved on 7th February, 2025 by Court accordingly.

A. The Written submissions by the Plaintiff/ Respondent to the Defendant's Preliminary Objection dated 19th November, 2024

5. The Plaintiff/Respondent through the Law firm of Messrs. Matata & Mwabonje Advocates LLP filed their written submissions dated 26th November, 2024. Mr. Matata Advocate commenced their submissions by stating that this suit was instituted by way of a Plaint dated 15th October 2024 which sought the following reliefs:-
 - a. An injunction restraining the Defendant by herself, agents, employees, successors in title and heirs from interfering in anyway with the ongoing construction on the parcel of land known as 1724/1/MN situated in Nyali, Mombasa County.
 - b. An injunction restraining the Defendant by herself, agents, employees, successors in title and heirs from inciting neighbors and writing to any government agencies alleging that the Plaintiff did not follow the law in getting approvals for the building plans on the parcel of land known as 1724/1/MN situated in Nyali, Mombasa County.
 - c. Costs of this suit.
6. The Learned Counsel submitted that the Defendant in response filed a preliminary objection stating that this Honourable Court does not have jurisdiction to handle this suit since this suit ought to have been filed at the National Environment Tribunal (Hereinafter referred to as "The NET").
7. On the legal analysis, the Learned Counsel submitted that the jurisdiction of the NET is set out under the provision of Section 129 of The Environment Management and Co-ordination Act ('EMCA') which states as follows:-
 - (1) 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 persons 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 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.
8. According to the Learned Counsel submitted that the jurisdiction of the Environment and Land Court is set out in under the provision of Section 13 of the [Environment and Land Court Act](#) which states 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 inland; 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](#).
 - (4) In addition to the matters referred to in subsections (1) and (2) the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
 - (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (f) restitution;
 - (g) declaration; or
 - (h) costs.



9. From the reading of Section 129 (2) of the Environment Management and Co - ordination Act it is clear that The NET jurisdiction is only limited to handling appeals from the decisions of the Director General, the authority or committees of the authority or its agents. A cursory glance at the Plaint filed herein and the orders sought it is clear that the issues raised therein are not within the jurisdiction of the NET. That the Plaintiff herein does not seek to challenge any decision of the Director General, the authority or its committees or agents. That the issues raised in the Plaint were not issues that the Tribunal has jurisdiction over as stated under the provision of Section 129 (1) of The Environment Management and Co-ordination Act (EMCA).
10. Further the Learned Counsel submitted that on the other hand the Plaint raises issues that fall squarely on the jurisdiction of this Honourable court. That the Plaintiff had clearly stated in the Plaint that the Defendant had written to several government agencies citing corruption on the part of the Plaintiff including allegation of acquiring Mombasa County Government building plans approval without following the law. The Plaintiff had clearly stated that the Defendant has been inciting neighbors to stop the development. This was a matter that does not fall under the jurisdiction of The NET and also it's a matter of fact that can only be proved in a full trial.
11. The Learned Counsel averred that the Plaintiff in this suit did not seek to stop the defendant from filing suit against him which is its constitutional right. The Plaintiff seeks the court's protection against any illegal means that the Defendant might try and use to stop the development. That it was their humble submissions that the subject matter in this suit was different from the one at The NET. The Environment and Land court in the case of "John & 8 others – Versus - National Environment Management Authority & 3 others [2023] KEELC 18375 (KLR)" stated as follows:-

“To my mind, the decisions that can be subjected to and which falls under the Jurisdiction of National Environment Tribunal under Section 129 (2) of the Environment Management and Coordination Act, 1999; are those decisions that are taken by the said Bodies created under the Act, but which relates to their statutory mandates and not otherwise.”

12. The Learned Counsel relied on the case by Environment and Land Court in the case of:- "Kirimi & another – Versus - Kenafric Industries Ltd & 4 others [2022] KEELC 2568 (KLR)" stated as follows:-

“First and foremost, it is imperative to note and observe that National Environment Tribunal, which is established pursuant to the provisions of Section 125 of the EMCA Act, 1999, only handles appeals arising from the decisions of NEMA and same does not have original mandate and/or jurisdiction to deal with a matter to which no decision has hitherto been made by NEMA.

To be able to appreciate and understand the scope, extent and tenor of the Jurisdiction of National Environment Tribunal, it is imperative to reproduce the provisions of Section 129 of EMCA Act which provides as hereunder:

129. Appeals to the Tribunal:

- (1) Any person who is aggrieved by-
 - a) the grant of a licence or permit or a refusal to grant a license or permit. Or the transfer of a license or permit, under this Act or its regulations:
 - b) the imposition of any condition, limitation or restriction on the persons 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.'

My reading of the foregoing provision and which is fortified by the sub-heading, denotes that National Environment Tribunal only has appellate mandate over decisions of NEMA and not otherwise.

13. The Court further stated that:-

“Be that as it may, I wish to point out that the scope and extent of the Jurisdiction of the Tribunal has hitherto attracted Judicial pronouncement and in this regard, I adopt and endorse the decision of the Court in the case of National Environment Management Authority & 3 others - Versus - Maraba Lwatingu Residents Association & 505 others [2020] eKLR, where the court stated as hereunder; “It will be seen from the provisions of EMCA, which I have set out above, that the jurisdiction of the Tribunal is to hear appeals from decisions of NEMA. NEMA is established by Section 7 of EMCA, and its mandate, as provided by Section 9 of EMCA, is to exercise general supervision and co - ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment. Part of this mandate is to grant Environmental Impact Assessment (EIA) licences, for under Section 58 of EMCA, no person should proceed with a project before first obtaining an EIA licence. NEMA can of course grant or decline to issue an EIA licence. It may be that a person is aggrieved by this decision, and the reason that NET was created, was to provide an avenue for a person who wishes to challenge the decision of NEMA. This is done in the form of an appeal against the decision of NEMA. The Tribunal can confirm, set aside, or vary such decision. If a person is aggrieved by a decision of the Tribunal, the statute provides that he can pursue a final appeal to the High Court, which provision must now be read to mean the Environment and Land Court. Under Section 129(1) of the *Environmental Management and Co-ordination Act* the National Environment Tribunal (NET) is empowered to hear and determine appeals arising from persons aggrieved by decisions of National Environmental Management Authority (NEMA), such as the issuance of a license.”

14. The Learned Counsel argued that in this instant suit was not aggrieved by any decision of the Director General, the authority, its committees or agents. The plaintiff had raised issues of illegal interference by the Defendant to try and stop the development. That it was their humble submissions that this suit did not in any way interfere with the matter at the Tribunal since it raised different issues completely.
15. In conclusion, the Learned Counsel contended that the NET lacked jurisdiction to hear this matter and that the only court with original jurisdiction is this court. That the orders sought in the Plaintiff could only be granted by this Honourable Court. Thus it was their humble prayer that the preliminary objection be dismissed with costs to the Plaintiff.



IV. Analysis and Determination

16. I have considered the Notice of Preliminary Objection by the Defendant and the submissions herein, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
17. To reach an informed, fair and reasonable decision, the Honourable Court has crafted and three (3) issues for determination from the filed Notice of Preliminary Objection. These are: -
 - a. Whether the Preliminary Objection dated 14th November, 2024 meets the threshold of an objection based on Precedents and Law.?
 - b. Whether the Notice of Preliminary objection is merited?
 - c. Who bears the Costs of the Notice of Preliminary objection dated 14th November, 2024.

Issue No. a). Whether the Preliminary Objection dated 14th November, 2024 meets the threshold of an objection based on Precedents and Law.?

18. Under this Sub – heading, the Honourable Court will decipher on the substratum of the matter is whether the objection raised pure points of law. In determining this instant Notice of Preliminary Objection, the Court will first consider what amounts to a Preliminary Objection and then Juxtapose the said description herein and come up with a finding on whether what has been raised herein fits the said description.
19. According to the Black Law Dictionary a Preliminary Objection is defined as being:

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
20. The above legal preposition has been made graphically clear in the now famous case of “Mukisa Biscuits – Versus - Westend Distributor Ltd [1969] EA 696”, the court observed that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. ”
21. This statement of the law has been echoed time and again by the courts: see for example, “Oraro – Versus - Mbaja [2007] KLR 141”.
22. The same position was held in the case of “Nitin Properties Ltd – Versus - Jagjit S. Kalsi & another Court of Appeal No. 132 of 1989[1995-1998] 2EA 257” where the Court held that;

“A preliminary Objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is the exercise of Judicial discretion.”
23. Similarly in the case of “United Insurance Company LTD – Versus - Scholastica A Odera Kisumu HCC Appeal No. 6 of 2005(2005) LLR 7396”, the Court held that;

“A preliminary Objection must be based on a point of law which is clear and beyond any doubt and Preliminary Objection which is based on facts which are disputed cannot be used



to determine the whole matter as the facts must be precise and clear to enable the Court to say the facts are contested or disputed.”

24. Therefore from the above holdings of the Courts, it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere. See also the case of “In the matter of Siaya Resident Magistrate Court Kisumu HCCMisc. App No. 247 of 2003” where the Court held that;

“ A Preliminary Objection cannot be raised if any facts has to be ascertained.”

25. I have further relied on the decision of “Attorney General & Another – Versus - Andrew Mwaura Githinji & another [2016] eKLR” as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alia:-

- (i) A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
- (ii) A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
- (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

26. Taking into account the above findings and holdings of various Courts on what amounts to a preliminary Objection. Now turning to the in the instant case. Essentially, the Defendant herein has based its objection on one issue which is the jurisdiction of the Honourable Court to hear this suit as per the Plaint and Notice of Motion application dated 15th October, 2024. Undoubtedly, I am satisfied that an issue of Jurisdiction of Court in the given circumstances borders on matters of pure points of law. Thus, issue must be dealt with in limine.

Issue No. b). Whether the Notice of Preliminary objection is merited.

27. Under this Sub title the Court shall examine whether the Notice of Preliminary objection is merited. As stated above, an objection to the jurisdiction of the court has been cited as one of the preliminary objections that consists a point of law. Indeed the locus classicus case on the question of jurisdiction is the celebrated case of “The Owners of Motor vessel Lillian ‘S’ -Versus - Caltex Kenya Limited. [1989] KLR 1” where the Court held:

“By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given...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 pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

28. Jurisdiction means a courts power to decide case or issue a decree. In Kenya, the Environment and Land Court is a statutory creation by *the Constitution* of Kenya under the provision of Article 162 (b). Here, the Courts are vested it with original and unlimited jurisdiction. From the preamble of the ELC Act, the jurisdiction of the court is defined as “.....a Superior court to hear and determine disputes relating to the environment and the use and occupation of, and the titles to, land and to make provisions for its jurisdiction functions and powers and for connected purposes.....”

29. The Supreme Court in the case of “Samuel Kamau Macharia – Versus - Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011”, observed 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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings... 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.”

30. Having determined that the Preliminary Objection by the Defendant is based on pure points of law, it therefore behooves this Court to consider and determine whether or not it has jurisdiction to entertain the instant proceedings.

31. Let be begin by analyzing whether or not the Plaintiff was required to exhaust the dispute resolution mechanism under EMCA prior to filing this suit. In the case of the “ELC (Malindi) in the Kharisa Kyango – Versus - Law Society of Kenya”. Additionally, still on the same point, in the case of “County Government of Migori – Versus - I N B Management IT Consultant Limited (2019) eKLR” whereby court being faced with an objection regarding jurisdiction, analyzed the law and observed as follows:-

“10- The jurisdiction point raised by the Respondent herein clearly meets the foregone criteria being a pure point of law. That jurisdiction is everything is a well settled principle in law. My Lordship Ibrahim, JSC in Supreme court of Kenya Civil application No 11 of 2016-“Hon (Lady) Justice Kalpana H Rawal Versus Judicial Service Commission and others when in demystifying jurisdiction quoted from the decision in Supreme court of Nigeria supreme case No 11 of 2012- “Ocheja Immanuel Dangama – Versus - Hon. Atoi Aidoko Aliaswan and 4 others where Walter Samuel Nkanu Onnoghen, JSC and expressed himself as follows;-

“.....it is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity deed on arrival and of no legal effect whatever that is why an issue of jurisdiction is granted and fundamental in adjudication and has to be dealt with first and foremost.....”



32. Guided by the doctrine of “Stare Decisis”, this very Court has held before in the case of: “Mary Musuki Mudachi & another – Versus - Anthony Muteke Mudachi & 2 others; Elijah K. Kimanzi & 6 others (Interested Parties) [2021] eKLR” that:-

“While I fully concur and associate myself with the ration made out under Pheonex of EA Assurance Limited case (Supra) my interpretation of the ratio on jurisdiction was where a case for instance of the Commercial or running down or Succession or employment and labour related and so forth was instituted before the Environment and Land Court or the vice versa then clearly that stated case becomes a nullity of jurisdiction and it’s the one that cannot be salvaged by neither consent of parties, the Oxygen principles or the Overring Objectives or the prepositions found under Article 159 of *the Constitution* of Kenya. The instant case is extremely distinguishable from what was envisaged under that decision of the Court of Appeal. For these very reason, therefore, it is completely wrong for the Defendants to emphatically state that the Environment and Land Court at Mombasa has no jurisdiction to hear and determine this case. The court is clothed with the legal jurisdiction to hear and determine the case.”

33. Additionally, the Jurisdiction of the NET is provided for under the provision of Section 129 of the *Environmental Management and Co-ordination Act* provides that: -

Appeals to the Tribunal

- (1) Any person who is aggrieved by—
- (a) a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
 - (b) the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder
 - (c) the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
 - (d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
 - (e) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he 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 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.
- (3) Upon any appeal, the Tribunal may—
- (a) confirm, set aside or vary the order or decision in question;
 - (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
 - (c) make such other order, including an order for costs, as it may deem just.



- (4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.
34. In the case of “Patrick Musumba – Versus - National Commission & 4 others Nairobi [2016] eKLR”, the court relied on the Court of Appeal decision in the case of:- “Republic – Versus - NEMA Ex parte Sound Equipment Limited [2011] eKLR” where the Court made it clear that;
- “challenges to Environmental Impact Assessment study report and/or Environmental Impact Assessment Licenses shall be made to the National Environment Tribunal established under section 125 of Environment Management and Coordination Act. The tribunal should have been given the first opportunity and option to consider the matter. The Tribunal is the specialized body with capacity to minutely scrutinize the Environmental Impact Assessment study report as well as the licences”.
35. There is a reason why such Tribunals were established and provided for in law. Where there is dispute mechanism provided for then parties must exhaust the same before moving to courts as was held in the case of “Samson Chembe Vuko – Versus - Nelson Kilumo & 2 Others [2016] eKLR”, that: -
- “It has been said time without number, that whenever an Act of Parliament provides for a clear procedure or mechanism of redress, the same ought to be strictly followed.”
36. Though this being an issue of law, the Court is compelled to extrapolate the facts of the case based on the filed pleadings, In the Plaintiff by the Plaintiff, the Plaintiff contends he is in the process of erecting residential apartments and commercial rental space on the suit property; further the Defendant according to the Plaintiff has been against the project from inception directly and indirectly by inciting other neighbors to oppose the project. According to the Plaintiff, the Defendant has written to several government agencies by itself and through lawyers with the intention of stopping the project.
37. Ideally, before the Plaintiff started the construction he strictly followed the law and procedure in being granted approvals for the building. According to him he strictly adhered to the law and followed the procedure in being issued with the EIA License. No objection was raised at the opportune moment. I find that the Plaintiff ought not to have invoked the jurisdiction of NET under the provision of Section 125 and 129 (3) of Environment Management and Coordination Act before moving this court.
38. From the provision under Section 13 above, the ELC has original and appellate jurisdiction to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources. It also provides that the court shall have the jurisdiction to hear any other disputes relating to environment and land.
39. This suit was instituted by way of a Plaintiff dated 15th October 2024 which sought the following reliefs:-
- a. An injunction restraining the defendant by herself, agents, employees, successors in title and heirs from interfering in anyway with the ongoing construction on the parcel of land known as 1724/1/MN situated in Nyali, Mombasa County.
 - b. An injunction restraining the defendant by herself, agents, employees, successors in title and heirs from inciting neighbors and writing to any government agencies alleging that the plaintiff did not follow the law in getting approvals for the building plans on the parcel of land known as 1724/1/MN situated in Nyali, Mombasa County.
 - c. Costs of this suit.



40. It is clear that the aforementioned reliefs cannot all be granted by the NET. Coupled with this, the EIA License was not the issue in contention between the parties evidently from the Plaint. For these reasons, I am of the view that there are special circumstances in this case that warrant the filing of the Plaint in Court as EMCA would not be able to provide an adequate and efficacious remedy. Consequently, the right forum is the Environment and Land Court which has unlimited original and appellate jurisdiction in environment and land matters. For this reason I find the Notice of Preliminary Objection is not only baseless, unfounded but also unmerited. Therefore, the objection must fail.

Issue No. c). Who bears the Costs of the Notice of Preliminary objection dated 14th November, 2024

41. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR” and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR”, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

42. In the present case, the Plaintiff shall have the costs of the Notice of Preliminary objection dated 14th November, 2024.

V. Conclusion and Disposition.

43. Ultimately in view of the foregoing detailed and expansive analysis to the application, the Court arrives at the following decision and make the orders below:-

- a. That the Preliminary objection dated 14th November, 2024 be and is found to lack merit thus it is hereby dismissed.
- b. That for expediency sake the Notice of Motion application dated 15th October, 2024 to be disposed off by way of written submissions as follows:-
 - i. The Defendant/Respondent granted 7 days leave to file and serve replies to the application.
 - ii. The Plaintiff/Applicant granted 14 days leave to file and serve further affidavit on issues of law raised from the responses & submissions, if need arises thereof.
 - iii. Thereafter upon service, the Defendant/Respondent be granted 14 days leave to file and serve Submissions.
 - iv. The Honourable Court to deliver its ruling on 9th April, 2025.
- c. That the Plaintiff shall have the costs to be in the cause.

It is so ordered accordingly.

RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 14TH DAY OF FEBRUARY 2025.



**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

M/s. Kalekye, the Court Assistant;

M/s. Mboya Advocate holding brief for Advocate for the Plaintiff.

Mr. Ondego Advocate holding brief for Mr. Sanjiv Khagram Advocate for the Defendant.

