



Gor & another v County Government of Homabay & 8 others; County Director of Environment (Interested Party) (Environment & Land Petition E001 of 2024) [2024] KEELC 14204 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEELC 14204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND PETITION E001 OF 2024
GMA ONGONDO, J
NOVEMBER 15, 2024**

BETWEEN

EVANCE OTIENO OLOO GOR 1ST PETITIONER

MICHAEL KOJO OTIENO 2ND PETITIONER

AND

COUNTY GOVERNMENT OF HOMABAY 1ST RESPONDENT

GOVERNMENT OF HOMABAY 2ND RESPONDENT

COUNTY EXECUTIVE MEMBER FOR LANDS AND HOUSING 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

COUNTY ATTORNEY 5TH RESPONDENT

COUNTY PENSION FUND 6TH RESPONDENT

COUNTY ASSEMBLY OF HOMABAY 7TH RESPONDENT

CLERK COUNTY ASSEMBLY OF HOMA-BAY 8TH RESPONDENT

SHIV CONSTRUCTION CO. LIMITED 9TH RESPONDENT

AND

COUNTY DIRECTOR OF ENVIRONMENT INTERESTED PARTY



RULING

1. The petitioners/applicants lodged an application by way of notice of motion dated 29th July 2024 (The motion) seeking temporary injunction, among other orders against the 1st, 2nd, 3rd and 9th respondents simultaneously with the petition of even date.
2. The 1st, 2nd, 4th and 5th respondents opposed the application by a notice of preliminary objection dated 20th August 2024 on the grounds, inter alia, lack of this court's jurisdiction over the motion and the petition.
3. The 9th respondent filed a statement of grounds of opposition dated 10th October 2024 to the motion and the petition.
4. The 2nd petitioner who appears in person informed the court that the 1st petitioner who also appears in person, is undertaking an examination and generated an application that the notice of preliminary objection and the motion be heard together. Also, that order number 4 for temporary injunction sought in the motion, be granted as it would be necessary and not be prejudicial herein.
5. Mr Wilberforce Akello learned counsel for the 1st, 2nd, 3rd and 5th respondents opposed the prayer for order number 4 in the application to the effect that the jurisdiction of this court in respect of the entire matter is raised in the preliminary objection. That the same be heard by written submissions on priority being guided by the Court of Appeal decision in *Kakuta Hamisi-vs-Peris Pesi Tobiko and others* (2013) eKLR. That there is no response to the preliminary objection.
6. Further, counsel Mr Wilberforce Akello instructed by Opar learned counsel for the 7th and 8th respondents informed the court that counsel Opar is indisposed. That thus, he sought 21 days from this date for the 7th and 8th respondents to file and serve responses in support of the preliminary objection.
7. Ms Kithunka learned counsel for the 4th respondent is in support of the preliminary objection to take precedence over all other matters herein.
8. Ms M Akello instructed by Otieno learned counsel for the 6th respondent stated that the 9th respondent's grounds of opposition not served on the 6th respondent. She implored the court to hear the preliminary objection first by written submissions and sought seven days from this date to file and serve submissions on it.
9. Mr Kigen learned counsel for the 9th respondent undertook to serve the grounds of opposition forthwith on other parties not served. He urged the court to hear the preliminary objection on priority basis herein.
10. The interested party aware of this date in view of the proceedings of the last court session, is absent in court today.
11. In that regard, is the petitioners' prayer meritorious?
12. The petitioners have sought temporary injunctive order in the motion.
13. The jurisdiction of this court to handle this petition in the first instance, is under challenge by way of the preliminary objection.
14. It is established law that jurisdiction is everything and without it, a court cannot make one more step; see *Owners of the Motor Vessel 'Lillian S'-vs-Caltex Oil (Kenya) Ltd* (1989) KLR 1



15. Furthermore, it is trite law that lack of jurisdiction renders a court's decision void as opposed to being avoidable; see *Republic-vs- Karisa Chengo and 2 others* (2017) eKLR.
16. This court is guided by, inter alia, Articles 48, 50 (1) and 159 (2) (b) and (e) of *the Constitution* of Kenya 2010 regarding access to justice, fair hearing and administration of justice without delay and undue regard to procedural technicalities.
17. In the circumstances, this court has to hear the parties and make a determination on the issue of jurisdiction raised in the preliminary objection which has to take precedence over all other matters including the petitioners' motion in this petition; see Kakuta Hamisi case (supra).
18. Thus, the petitioners' application that the motion and the preliminary objection be entertained simultaneously, is devoid of merit. The application is hereby disallowed.
19. In the ends of justice, I hereby order and direct that;
 - a. The 1st, 2nd, 3rd and 5th respondents' preliminary objection dated 20th August 2024 to take precedence over all other matters including the petitioners' application dated 29th July 2024 to be held in abeyance pending the outcome of the preliminary objection in the present petition.
 - b. The 9th respondent's grounds of opposition dated 10th September 2024 be served on the other parties herein forthwith.
 - c. The 7th and 8th respondents' counsel who is reportedly indisposed, to file and serve responses to the preliminary objection within the next 21 days from this date.
 - d. The preliminary objection be heard by way of written submissions.
 - e. Therefore, the 1st, 2nd, 3rd and 5th respondents' submissions duly filed herein be served on the other respondents, the petitioners and interested party within the next three days from this date.
 - f. The petitioners, the other respondents and the interested party to file and serve submissions within 21 days from the date of service of the 1st, 2nd, 3rd and 5th respondents' submissions.
 - g. The preliminary objection is fixed for 10th February 2025 to confirm compliance and for further directions.
20. It is so ordered.

DATED and DELIVERED at HOMA BAY this 14th day of November 2024.

GEORGE M. A ONG'ONDO

JUDGE

PRESENT;

2nd applicant in person

Mr. Wilberforce Akello learned counsel for the 1st, 2nd, 3rd and 5th respondents and instructed by Opar learned counsel for the 7th and 8th respondents

Ms. Kithunka learned counsel for the 4th respondent

Ms. M Akello instructed by Otieno learned counsel for the 6th respondent

Mr. Kigen learned counsel for the 9th respondent



Mr. T. Luanga, court assistant

