



**Gitau & 28 others v Water Resource Authority & another; Chege  
& 29 others (Interested Parties) (Environment & Land Case  
E009 of 2023) [2024] KEELC 13720 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E009 OF 2023**

**JG KEMEL, J  
DECEMBER 9, 2024**

**BETWEEN**

**JOSEPH MUGWE GITAU ..... 1<sup>ST</sup> PLAINTIFF  
JECINTA MUGUE KIMANI ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS KURIA NJAGI ..... 3<sup>RD</sup> PLAINTIFF  
ESTATE OF LATE JACOB GITAU ..... 4<sup>TH</sup> PLAINTIFF  
FRANCIS GATHUMBI ..... 5<sup>TH</sup> PLAINTIFF  
JOSEPH KAMORE ELIJAH ..... 6<sup>TH</sup> PLAINTIFF  
SIMON MBURU GITHUA ..... 7<sup>TH</sup> PLAINTIFF  
LAWRENCE G. GITAU ..... 8<sup>TH</sup> PLAINTIFF  
DAVID KARANJA NJAGI ..... 9<sup>TH</sup> PLAINTIFF  
JOHN NJENGA NJORA ..... 10<sup>TH</sup> PLAINTIFF  
MICHAEL KAROGE ..... 11<sup>TH</sup> PLAINTIFF  
MICHAEL CHEGE NJOROGE ..... 12<sup>TH</sup> PLAINTIFF  
FRANCIS KAMAU KAMAU ..... 13<sup>TH</sup> PLAINTIFF  
JOSEPH NGUGU ..... 14<sup>TH</sup> PLAINTIFF  
JOSEPH KABUE GITAU ..... 15<sup>TH</sup> PLAINTIFF  
GRACE NJOKI NJOROGE ..... 16<sup>TH</sup> PLAINTIFF  
MONICE NYARUIRU ..... 17<sup>TH</sup> PLAINTIFF  
PAUL MUNE ..... 18<sup>TH</sup> PLAINTIFF**



PETER NJOROGE MBURU ..... 19<sup>TH</sup> PLAINTIFF  
 SAMUEL IKUA GITURA ..... 20<sup>TH</sup> PLAINTIFF  
 LEAH NYAMBURA NJAGI ..... 21<sup>ST</sup> PLAINTIFF  
 MARTIN THAIRU NJAGI ..... 22<sup>ND</sup> PLAINTIFF  
 STEPHEN WAINAINA NJAGI ..... 23<sup>RD</sup> PLAINTIFF  
 FULL GOSPEL CHURCH GITUMBUA LC ..... 24<sup>TH</sup> PLAINTIFF  
 EGOSKAM (EA) LTD ..... 25<sup>TH</sup> PLAINTIFF  
 FRANCIS MBUGUA ..... 26<sup>TH</sup> PLAINTIFF  
 JAMES KARANJA ..... 27<sup>TH</sup> PLAINTIFF  
 SALOME WANGUI MBUGUA ..... 28<sup>TH</sup> PLAINTIFF  
 GEORGE NGIGI NJENGA ..... 29<sup>TH</sup> PLAINTIFF

AND

WATER RESOURCE AUTHORITY ..... 1<sup>ST</sup> DEFENDANT  
 NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT

AND

JOSEPH GITAU CHEGE ..... INTERESTED PARTY  
 ESTATE OF FRANCIS K. MACHARIA ..... INTERESTED PARTY  
 ESTATE OF BEATRICE WANJIRU KARIMI ..... INTERESTED PARTY  
 ESTATE OF CLETUS MUNWANJA KARIMI ..... INTERESTED PARTY  
 ESTATE OF JOSEPH MUNDIA KARIMI ..... INTERESTED PARTY  
 ESTATE OF FRANCIS KARIMI WAMBUI ..... INTERESTED PARTY  
 ESTATE OF JOSEPH MUNDIA KARIMI ..... INTERESTED PARTY  
 PETER NG'ANG'A WAWERU ..... INTERESTED PARTY  
 GEORGE MUNGAI MUKIRI ..... INTERESTED PARTY  
 NAOMI WANJIKU NJOROGE ..... INTERESTED PARTY  
 ELIAS NJOROGE WAWERU ..... INTERESTED PARTY  
 MOSES KIGOTHO GATHUI ..... INTERESTED PARTY  
 PETERSON WAWERU WANGARI ..... INTERESTED PARTY  
 PETER MUNIU NGUGI ..... INTERESTED PARTY  
 PAUL NG'ANG'A KITHUMBA ..... INTERESTED PARTY  
 PETER MAINA KIGO ..... INTERESTED PARTY  
 ELIZABETH WACHUKA KAMAU ..... INTERESTED PARTY  
 DANIEL C. MUCHAI ..... INTERESTED PARTY



<b>HUMPHREY NGUNGI WAWERU .....</b>	<b>INTERESTED PARTY</b>
<b>EVANSON WAWERU NGIGI .....</b>	<b>INTERESTED PARTY</b>
<b>ELIJAH MWANGI NJOROGE .....</b>	<b>INTERESTED PARTY</b>
<b>NJOROGE KARIUKI .....</b>	<b>INTERESTED PARTY</b>
<b>JANET WAMBUI KAGWI .....</b>	<b>INTERESTED PARTY</b>
<b>JOHN KIHUMBA MBUGUA .....</b>	<b>INTERESTED PARTY</b>
<b>GRADYS WANGARI MIGWI .....</b>	<b>INTERESTED PARTY</b>
<b>JOHN NJENGA KICHUMBA .....</b>	<b>INTERESTED PARTY</b>
<b>PALAK STEEL MILL LTD .....</b>	<b>INTERESTED PARTY</b>
<b>PALAK INTERNATIONAL LIMITED .....</b>	<b>INTERESTED PARTY</b>
<b>PALAK INTERNATIONAL TRADING LTD .....</b>	<b>INTERESTED PARTY</b>
<b>AVINA MIHIR PATEL, RAVEENA MIHIR PATEL, AASHNI MIHIR PATEL &amp; MAADHAV MIHIR PATEL .....</b>	<b>INTERESTED PARTY</b>

## RULING

1. The Plaintiffs/Applicants filed the instant Motion dated 17/7/2023 seeking Orders That;
  - a. Spent.
  - b. Pending the hearing and determination of this Application, this Honorable Court be pleased to order the Defendant whether by its employees, agents and/or servants be restrained by way of temporary injunction from demolishing the Plaintiffs/Applicants' buildings and or developments on the parcels of land known as Kiambu / Lari/393, Kiambu / Lari/394, Kiambu / Lari/535, Kiambu / Lari/537, Kiambu / Lari/1453, Kiambu / Lari/1454, Kiambu / Lari/1455, Kiambu / Lari/1456, Kiambu / Lari/1457, Kiambu / Lari/1458, Kiambu / Lari/1459, Kiambu / Lari/1460, Kiambu / Lari/1461, Kiambu / Lari/1462, Kiambu / Lari/1463, Kiambu / Lari/2272, Kiambu / Lari/2981, Kiambu / Lari/2982, Kiambu / Lari/2984, Kiambu / Lari/2986 and Kiambu / Lari/2987 (hereinafter referred to as the suit properties) or marking the buildings and/or developments or in any other way whatsoever interfering with the Plaintiffs/Applicants' right to the suit property.
  - c. Pending the hearing and determination of the main suit herein, this Honorable Court be pleased to order the Defendant whether by its employees, agents and/or servants be restrained by way of temporary injunction from demolishing the Plaintiffs/Applicants' buildings and or developments on the parcels of land known as Kiambu / Lari/393, Kiambu / Lari/394, Kiambu / Lari/535, Kiambu / Lari/537, Kiambu / Lari/1453, Kiambu / Lari/1454, Kiambu / Lari/1455, Kiambu / Lari/1456, Kiambu / Lari/1457, Kiambu / Lari/1458, Kiambu / Lari/1459, Kiambu / Lari/1460, Kiambu / Lari/1461, Kiambu / Lari/1462, Kiambu / Lari/1463, Kiambu / Lari/2272, Kiambu / Lari/2981, Kiambu / Lari/2982, Kiambu / Lari/2984, Kiambu / Lari/2986 and Kiambu / Lari/2987 (hereinafter referred to as the suit properties) or marking the buildings and/or developments or in any other way whatsoever interfering with the Plaintiffs/Applicants' right to the suit property.



- d. Pending the hearing and determination of this Application, this Honorable Court be pleased to issue an order to compel the Defendant to officially invite the Plaintiffs/Applicants herein for public participation sessions and publish of the Kenya Gazette with regards to the Public acquisition of the Plaintiffs/Applicants suit property.
  - e. Pending the hearing and determination of the main suit herein, this Honorable Court be pleased to issue order to compel the Defendant to officially invite the Plaintiffs/Applicants herein for public participation sessions and publish of the Kenya Gazette with regards to the Public acquisition of the Plaintiffs/Applicants suit property.
  - f. Pending the hearing and determination of this Application, this Honorable Court be pleased to issue order to compel the Defendant to withdraw the already written report with regard to the description and status of suit property and the same be prepared afresh after public participation has been taken place.
  - g. Pending the hearing and determination of this Application, this Honorable Court be pleased to issue order to compel the Defendant to withdraw the already written report with regard to the description and status of suit property and the same be prepared afresh after public participation has been taken place.
  - h. The County commander in charge of Kiambu County be directed to ensure enforcement of the orders granted by this Court.
  - i. Costs of this application be provided for.
  - j. Any other order that the Court deems fit to grant.
2. The application is based on the grounds on the face it which are reiterated in the Supporting Affidavit of even date sworn by Joseph Mugwe Gitau on behalf of all Applicants. He deponed that the Applicants are the registered owners of the suit properties as enumerated in prayer b) above as evidenced by copies of title deeds annexed as JMG-2a – 2x respectively. That the Applicants learnt of the Defendant’s intention from a circular aimed at declaration of protected areas in the Standard Newspaper of 12/5/2023 seeking public comments on the same. That they were not invited to give their comments in any public participation and any meetings purported to have been held, did not consist of the registered owners of the suit properties. He averred that the suit properties are private properties acquired through loans having been demarcated as a settlement scheme since 1964. That the Applicants lodged their grounds of objection via email on 10/6/2023 but the said objections did not elicit any reaction from the Defendants. That they are apprehensive that in the event of compensation, the awards might be unfair and not commensurate to the actual values of their properties because the same would have been based on a falsified report and in disregard of their objections hence the Application.
3. In opposing the application, the 1<sup>st</sup> Respondent filed its Replying Affidavit sworn on 6/10/2023 by John N. Kinyanjui, the Water Resources Assessment & Monitoring Manager. He averred that the 1<sup>st</sup> Respondent is designated by Section 6 of the *Water Act*, 2016 as the national government’s agent responsible for regulating the management and use of water resources in the country. He outlined its mandate under Section 12 of *Water Act* (hereinafter the Act) and the power to regulate the use of land under Article 66 of the *Constitution* of Kenya. That Lari swamp measuring approx. 244.66 Ha is one of the main sources of water for Ruiru River and overtime it has experienced encroachment, degradation from pollution and risks destruction if not protected as a catchment area.



4. To that end he avowed that the 1<sup>st</sup> Respondent conducted a survey of the swamp in and around 2019 and earmarked Lari swamp for conservation proposes – See report dated 11/3/2020 annexed as JMG-3C in the Applicant’s Supporting Affidavit. That based on the findings, stakeholders’ consultative forums were held between 3/5/2023 and 11/5/2023 where it was unanimously agreed that the swamp be protected – see JNK1 copies of the attendance lists. That members of the public were also invited to share their views on the proposed protection measures as per JMG-3a which views were received and well considered -see JNK2 copies of the comments received and a legal notice (JNK3) on guidelines of the area to be gazetted as a protected area. That the management guidelines do not imply change of ownership or compulsory acquisition of land but a management control on the use of land to ensure water resource quality under Sections 22 and 23 of the Water Act. That in the event of compulsory acquisition, due process has to be followed as outlined under the Land Act. He urged the Court to dismiss the application with costs.
5. In rebuttal, the Plaintiffs filed a Supplementary Affidavit sworn on 17/10/2023. It was deponed- that the word “Lari Swamp” is misplaced as it alienates the title holders of Lari stakeholders despite their ownership for over 60 years now. They denied encroaching the land as stated by the 1<sup>st</sup> Respondent and refuted any description terming the land as a catchment area. Further they denied any public participation taking place and if at all it was done, it was done in unknown venues. That their objections against the newspaper advert of 12/6/2023 were not considered and maintained that their land is not a swamp as run off and rain water only flows thereon seasonally.
6. The 2<sup>nd</sup> Defendant filed its Grounds of Objection dated 10/10/2023 and contended that;
  - a. The Application is premature and an abuse of Court process as it offends the provisions of Section 121 of the Water Act 2016 and Regulation 132 (5) of the Water Resources Regulation 2021.
  - b. This Court lacks jurisdiction to entertain the application in light of the alternative dispute resolution mechanism established under the Water Act thereof.
  - c. The orders sought are incapable of enforcement as against the 2<sup>nd</sup> Defendant
  - d. The Court’s jurisdiction has been prematurely invoked under the doctrine of exhaustion.
7. Contemporaneous to filing its Grounds of Opposition, the 2<sup>nd</sup> Defendant raised a Preliminary Objection of even date challenging the Court’s jurisdiction to entertain the suit on the basis that the application and the suit offends the provisions of Section 121 of the Water Act and Regulation 132(5) of the Water Resources Regulations, 2021. The Court was urged to strike out the suit with costs.
8. On 11/10/2023, directions were taken and parties agreed to prosecute both the Application and Preliminary Objection by way of written submissions. I have read and considered the respective submissions on record.
9. The firm of Hannah Njuguna Co. Advocates filed submissions dated 23/10/2023 and 8/11/2024 on behalf of the Plaintiffs. Reiterating the guiding principles for granting interlocutory injunctions as set down in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, it was submitted that the Applicants’ land is not a swamp in light of its definition under Section 2 of the Water Act. That public participation was not carried out and instead the 1<sup>st</sup> Respondent considered views and objections of Athi Water Resource user Association as opposed to Lari stakeholders. That having satisfied the preconditions in *Giella* case (*supra*), they urged the Court to grant the application as drawn.



10. Opposing the Preliminary Objection the Plaintiffs argued that this Court is duly vested with jurisdiction to hear the suit by virtue of Article 162 (2)(b) of the Constitution of Kenya and Section 13 Environment and Land Court Act. They emphasized that the doctrine of exhaustion can be exempted in light of the threats to ownership of their land.
11. On the other hand, the 1<sup>st</sup> Defendant through Ms Tacey Makori Advocate, submitted that the Plaintiffs have not met the threshold for granting injunctive reliefs. It contended that Lari swamp is one of the main sources of water for Ruiru River and an important water conservation area serving the greater Nairobi County and its environs and the action by the 1<sup>st</sup> Respondent is well within their mandate and the law.
12. In a similar fashion the 2<sup>nd</sup> Defendant through its Counsel Ms Matilda Kisengese filed submissions dated 17/10/2023. It submitted that the application does not disclose what injury has been occasioned through the omission or commission of the 2<sup>nd</sup> Defendant herein. That the due process for compulsory acquisition of land has not been initiated and therefore there is no cause of action against it. That the instant claim is not ripe to call for judicial intervention and the Application is an abuse of Court process.
13. Regarding the Preliminary Objection, the 2<sup>nd</sup> Defendant relied on Section 121(1) of the Water Act and Water Resources Regulations 2021 (WRR) on the jurisdiction of the Water Tribunal which is now fully operational to determine disputes of this nature. Citing the case of Mukisa Biscuits and the Doctrine of Exhaustion, the 2<sup>nd</sup> Defendant argued that this Court cannot assume jurisdiction it lacks.
14. For a Preliminary Objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit. See the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
15. Applying the above tests, the 2<sup>nd</sup> Respondent raised a Preliminary Objection impugning this Court's jurisdiction to entertain this suit as filed. It is trite that jurisdiction goes to the root of a matter and as such it is a pure point of law. In the case of celebrated case of Owners of Motor Vessel 'Lilian S' v Caltex Oil Kenya Ltd [1989] eKLR it was stated thus;

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
16. In Jamal Salim v Yusuf Abdulahi Abdi & Another Civil Appeal No. 103 of 2016 [2018] eKLR the Court of Appeal stated:

‘Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another v Ulinzi Sacco Society Limited* [2002] 1 KLR 577, as follows;

  - 1) ....
  - 2) The jurisdiction either exists or does not ab initio ...



- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.’

17. The jurisdiction of this Court flows from Article 162 of the Constitution of Kenya and further amplified by Section 13 Environment and Land Court Act. Article 162 of the Constitution of Kenya states as follows;

“ 162. System of Courts

- (1) The superior Courts are the Supreme Court, the Court of Appeal, the High Court and the Courts referred to in clause (2).
- (2) 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.”

18. Section 13 of the Environment and Land Court Act elaborately provides for the jurisdiction of the Court that;

“ 13. Jurisdiction of the Court

- (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.”



19. A glean of the Plaintiff dated 17/7/2023 filed herein the Plaintiffs claim to be the registered owners of the suit land parcels listed in para. 6 therein. That they acquired the said parcels after demarcation as a Settlement Scheme in 1964. That on 12/5/2023 they came across an advert on Standard Paper titled ‘invitation For Public Comments On Proposed Declaration Of Protected Areas’ to which they strongly objected to for want of consultation. They accuse the 1<sup>st</sup> Defendant of initiating compulsory acquisition without their knowledge or consent. That efforts to reach out to the 1<sup>st</sup> Defendant on the said acquisition bore no fruit forcing them to log into the 1<sup>st</sup> Defendant’s website where they come across two documents names; ‘The Lari Swamp 2010’ and the ‘Management Guidelines For Gazettment Of Lari Swamp’ which they insist they did not participate in their formulation. Ultimately the Plaintiffs opted to file the instant suit seeking inter alia permanent injunction against the Defendant from interfering with their land and an order to compel the Defendant to call the Plaintiffs for public participation sessions.

20. The key question here is whether the jurisdiction of this Court is prematurely invoked. The 1<sup>st</sup> Respondent argues that the correct forum is the Water Tribunal. That Section 121 (1) and (2) of the Water Act 2016 clearly spells out the jurisdiction of the Tribunal as follows:

“ 121. Jurisdiction of the Tribunal

- (1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.
- (2) In addition to the powers set out in subSection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.”

21. The first set of disputes to be lodged at the Water Tribunal relate to appeals against decision of the Cabinet Secretary, the Authority or Regulatory Board. Under Section 2 of Water Act the authority means the Water Resources Authority established under Section 11 thereto while the Regulatory Board means the Water Services Regulatory Board established under Section 70.

22. The functions and powers of the Authority are provided for in Sections 12 and 13 (2) of the Water Act that;

“ 12. The functions of the Authority are to—

- (a) formulate and enforce standards, procedures and Regulations for the management and use of water resources and flood mitigation;
- (b) regulate the management and use of water resources;
- (c) enforce Regulations made under this Act;
- (d) receive water permit applications for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;



- (e) collect water permit fees and water use charges;
- (f) determine and set permit and water use fees;
- (g) provide information and advice to the Cabinet Secretary for formulation of policy on national water resource management, water storage and flood control strategies;
- (h) coordinate with other regional, national and international bodies for the better regulation of the management and use of water resources; and
  - (i) advise the Cabinet Secretary generally on the management and use of water resources

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- (2) Without prejudice to the generality of subSection (1), the Authority shall have the power to-
  - (a) source and receive funding for the activities of the Authority;
  - (b) collect, analyze and disseminate information on water resources;
  - (c) monitor compliance by water users with the conditions of permits and the requirements of the Act;
  - (d) issue permits for inter-basin water transfer; and
  - (e) delegate regulatory functions to the basin water resource committees provided for under Section 25.”

23. The *Water Act* at Part VI outlines the Dispute Resolution Mechanism envisaged under the Act. Section 119 (1) establishes the Water Tribunal. The Tribunal determines disputes touching on water resources or water services in accordance with Section 121 of the *Water Act* which states;

“ 121.

- (1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.
- (2) In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.”



24. Section 2 of *Water Act* defines a water resource to mean;
- ‘Any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground, and includes sea water and transboundary waters within the territorial jurisdiction of Kenya.’
25. Section 2 of the *Water Act* also defines the Land and Environment Court to mean the Land and Environment Court as established under Article 162 (2) of the *Constitution*. Where a person is aggrieved by a decision of the Tribunal, they can pursue an appeal within twenty-one days from the date of that decision, to the Environment and Land Court on an issue of law in light of Section 124 of the *Water Act*.
26. The Plaintiffs’ claim touches on the suit land ownership; whereas the 1<sup>st</sup> Defendant terms the suit land area as a swamp, the Plaintiffs vehemently deny such and insist that the water that flows on their land is seasonal. The copy of the newspaper advert marked JMG-3a expresses an intention by Water Resources Authority to gazette named areas as protected areas including Lari swamp.
27. The 1<sup>st</sup> Defendant admitted that it conducted a survey of the swamp in 2019 and earmarked Lari swamp for conservation proposes. That this action was aimed at ensuring sustainable use of the Kikuyu Springs Aquifer and by extension Nairobi Aquifer. That based on the findings, stakeholders’ consultative forums were held where it was unanimously agreed that the swamp be protected and members of the public were also invited to share their views on the proposed protection measures as per JMG-3a which views were received and well considered -see JNK2 copies of the comments received and a legal notice (JNK3) on guidelines of the area to be gazetted as a protected area. Consequently the 1<sup>st</sup> Defendant submitted that the public was accorded an opportunity to be heard on the aforesaid protection measures which then culminated in the publication of the final Management Guidelines. The 1<sup>st</sup> Defendant emphasized that the Management guidelines do not imply change of ownership or compulsory acquisition of land but a management control on the use of land to ensure water resource quality under Sections 22 and 23 of the *Water Act*.
28. From the forgoing set of facts, I am of the view that the rival issues raised by the parties herein fall within the ambit of the Water Tribunal’s jurisdiction by dint of Section 121 (1) above namely decision by the Authority. The gist of the Applicant’s case is informed by the public notice JMG-3a issued by the Water Resources Authority in the Standard Newspaper of 12<sup>th</sup> May 2023.
29. Has the jurisdiction of this Court been properly invoked? The answer is easily discernible from the following pronouncements. The Court of Appeal in *Kibos Distillers Limited & 4 Others v Benson Ambuti & 3 Others* [2020] eKLR laid down the following principle relevant to the issue of jurisdiction as follows;
- “ Even if a Court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legitimately been mandated to hear and determine a dispute.”
30. The Supreme Court of Kenya in *Benson Ambuti Atega v Kibos Distillers Ltd & 5 Others* [2020] eKLR emphasized that, where appropriate, the superior Courts should remit the dispute to the relevant bodies for adjudication.
31. The Supreme Court in *Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties)* [2023] KESC 113 (KLR) in allowing a Petition that challenged the Environment and Land Court and Court of Appeal findings that Environment and



Land Court lacked jurisdiction to hear multifaceted claims including constitutional violations, the Supreme Court inter alia held that the alternative dispute resolution mechanism under the [Energy Act](#) could not adequately remedy the appellant's grievances which revolved on violation of his constitutional rights. In this case the Plaintiff before Court does not allege any constitutional violations and in light of the decision in *Kibos (supra)*, the Court is of the view that the issues raised herein fall within the jurisdiction of the Water Tribunal.

32. In the end the Preliminary Objection is merited and it is upheld. The Plaintiffs' Motion for temporary injunction is thus moot for consideration.
33. Consequently the suit filed on the 17/7/2023 be and is hereby struck out as the jurisdiction of the Court has been improperly (prematurely) invoked.
34. I make no orders as to costs.
35. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9<sup>TH</sup> DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Ms. Njuguna for 1<sup>st</sup> – 28<sup>th</sup> Plaintiffs

1<sup>st</sup> and 2<sup>nd</sup> Defendants – Absent

1<sup>st</sup> – 30<sup>th</sup> Interested Parties - Absent

Court Assistants – Phyllis

