



Mwakazi & 67 others v Tavevo Water and Sewerage Company; Water Services Regulatory Board (Third party) (Petition E010 of 2024) [2025] KEHC 8863 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEHC 8863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E010 OF 2024
AN ONGERI, J
FEBRUARY 28, 2025**

**IN THE MATTER OF ALLEGED THREAT OF CONTRAVENTION OF ARTICLES
2, 10, 27, 33, 47, 174(C) AND 232 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

MICHAEL MWAKAZI & 67 OTHERS PETITIONER

AND

TAVEVO WATER AND SEWERAGE COMPANY RESPONDENT

AND

WATER SERVICES REGULATORY BOARD THIRD PARTY

RULING

1. The 1st Respondent filed a Notice of Preliminary Objection (NOPO) dated 13th January 2025 as follows:-
 - i. ThatT this Honourable Court lacks the jurisdiction to hear and determine the issues raised in this Petition as the appropriate forum for disputes relating to water tariffs, regulatory compliance, and service provision is the Water Tribunal, established under Section 119 of the [Water Act](#), 2016.
 - ii. ThatT the Petitioners have failed to exhaust alternative dispute resolution mechanisms provided under the [Water Act](#), including:-
 - a. Lodging a formal complaint with the Water Services Regulatory Board (WASREB) under Section 72(1) of the [Water Act](#).
 - b. Filing an appeal or complaint before the Water Tribunal as provided under Section 121 of the Act.



2. The parties filed submissions as follows in the Notice of Preliminary Objection.
(Julie please summarize the same here as follows:
1st Respondents/Applicant in the NOPOThe Petitioner's submissionsThe 2nd Respondent's submissions
3. The sole issue for determination is whether this court has jurisdiction to hear this petition.
4. The 1st Respondent/Applicant submitted that the right forum for this case is the Water Tribunal under Section 121 of the Water Act, 2016.
5. The Petition dated 29th August 2024 is seeking several orders against the Petitioners including a declaration that the introduction of 75% sewerage levy by the company to be charged on top of the Petitioner's water bills did not follow the right procedure in coming up with the said levy as prescribed by the law.
6. The Petitioner also seeking a declaration that Gazette Notice No. 10544 published by the Respondent in the Kenya Gazette introducing the subject levy/tariff is invalid/null and void.
7. Section 121 of the Water Act, 2016 provides as follows:-

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.
8. I find that this suit offends the doctrine of exhaustion. In *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, the Court of Appeal stated that:

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 fora of last resort and not the first port of call the moment a storm brews...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 the Courts. The ex parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.

9. I uphold the Notice of Preliminary Objection and strike out the suit.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF FEBRUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-



Court Assistant: Maina

