



Kamau v Nairobi City County Assembly & another (Petition E512 of 2024) [2025] KEHC 12463 (KLR) (13 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

PETITION E512 OF 2024

AB MWAMUYE, J

AUGUST 13, 2025

IN THE MATTER OF DEFENCE OF THE CONSTITUTION

AND

IN THE MATTER OF CONTRAVENTION OF ARTICLES 2, 3, 10, 19, 20, 21, 22,23,24, 25, 27, 28, 35, 42, 43 (1), 69, 70, 129, 165, 258, AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF LACK OF SOLID WASTE DISPOSAL BINS AND CONTAINERS IN NAIROBI COUNTY

BETWEEN

JOHN KAMAU PETITIONER

AND

NAIROBI CITY COUNTY ASSEMBLY 1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT

JUDGMENT

1. The Petitioner, who is a dedicated environmentalist and a resident of Nairobi County, has approached this court vide Petition dated 24th September 2024, seeking the following orders: -



- a. A declaration does hereby issue that the Respondents herein have violated the fundamental rights of Nairobi County residents as envisioned under Articles 24, 25, 28, 35, 42, 43 (1) (a) and 69 of *the Constitution*.
 - b. A mandatory order does hereby compel the Respondents to install dustbins at all bus stops and streets in both commercial and residential areas ideally within 50 meters of each other.
 - c. A mandatory order does hereby compel the Respondents to install waste segregated bins with one for recyclables, compostable waste, hazardous material, and general garbage each.
 - d. A mandatory order does hereby compel the Respondents to collectively work together to eradicate all dumpsites in Nairobi County with regular garbage collection.
 - e. That an order do issue directing the 1st Respondent to form a supplementary budget allocation towards mitigation and implementation of proper solid waste management systems in Nairobi County.
 - f. Costs be provided for.
 - g. Any other relief that this court will be pleased to grant in the circumstances.
2. In support of the Petition, the Petitioner filed a supporting affidavit dated 24th September, 2024 to which he averred that he conducted a survey within Nairobi County and observed that Nairobi County lacks enough solid waste disposal bins and containers due to a failure on the part of the Respondents to execute their duties thus exposing the residents to various health risks specifically those from low-income areas where illegal open dumpsites have emerged.
 3. The Petitioner contends that the limited trash cans and containers around the county are damaged, poorly maintained, and are rarely emptied, thus making it difficult for the residents to separate their trash according to recyclables, organic waste, hazardous, and general waste.
 4. Further, it is averred that Nairobi City has seen an upsurge of litter on the roads, streets, and other public spaces, an act which the petitioner contends has made the City lose its luster and visual appeal and no longer attractive to tourists. Additionally, the petitioner argues that this has forced him and other residents of community-based organizations and private entities to combat the garbage menace by collecting and disposing of trash independently, despite paying taxes and other rates meant to facilitate the Respondents' roles in ensuring a clean and healthy environment.
 5. Furthermore, the Petitioner contends that the lack of proper and adequate waste garbage disposal bins has resulted in environmental degradation, such as flooding. Moreover, it is averred that the Respondents have not done enough civic education to the general public on the importance of waste bins and have further not provided sufficient supervisory action over the lack of disposal bins.
 6. According to the Petitioner, the Respondents' act has violated the Constitutional rights of Nairobi County residents under Articles 27, 28, 35 and 42, the Nairobi City County Waste Management Act, Article 11 of the International Covenant on Economic, Social and Cultural Rights, and Article 25 of the Universal Declaration of Human Rights by failing to afford the Nairobi County Residents a clean and healthy environment.
 7. In opposing the Petition, the 1st Respondent filed a Replying Affidavit sworn by Edward O. Gichana on 21st November, 2024 together with a Preliminary Objection dated 2nd December, 2024 and averred that this Honourable Court lacks jurisdiction to hear and determine the matter as the issues raised



are within the jurisdiction of the Environment and Land Court under Article 162 (2) (b) of *the Constitution*.

8. The 1st Respondent also averred that the assertion made by the Petitioner, indicating that the Respondents have not fulfilled their Constitutional obligation to safeguard the residents' right to a clean and healthy environment, is false, untrue, and unfounded.
9. It was deponed that several motions tabled before it have been approved, and there are various incentive measures to ensure the enforcement of the Nairobi City County Solid Waste Management Act, 2015. Additionally, it has made efforts to ensure there is speedy implementation of Section 22 of the Nairobi City County Solid Waste Management Act, 2015.
10. The 1st Respondent avers that it has made robust efforts to convert illegal waste dumpsites, for instance, Komarock Canal and Kangemi Cemetery, into recreational grounds. Also, other areas within Nairobi County, such as Kamukunji Grounds, Eastleigh First Avenue, and Spine Road in Kayole, are currently subject to reclamation efforts as directed and enforced by the 2nd Respondent.
11. It was also deponed that the 2nd Respondent organizes and sensitises the public to participate in county-wide monthly clean-ups, which are held on the first Saturday of every month in all electoral wards. Furthermore, it was averred that the Respondents, through legislative motions and enforcement measures, have collaborated with the public, businesses, and relevant stakeholders to maintain cleanliness and provide suitable waste disposal bins throughout Nairobi City.
12. It is the 1st Respondent's case that the Petition is an afterthought and an abuse of court process by the Petitioner, who has failed to witness and engage in the progressive initiatives, as well as the actions taken by the Respondents to in realization of Kenya's environmental pillar plans under Vision 2030, which entails putting up adequate effective waste disposal bins in the city. The 1st Respondent, therefore, urged this Honourable Court to dismiss the petition and application with costs.
13. The 2nd Respondent opposed the Petition vide a Replying Affidavit sworn by Jared Mboroy on 17th March, 2025, and averred that the Petition has no merit and is an abuse of Court process as the Petitioner's claims are false and baseless.
14. It was averred that the 2nd Respondent is and has always been committed to improving waste management infrastructure within Nairobi City. Furthermore, it is still working collaboratively through legislative motions with the 1st Respondent in ensuring that the residents of Nairobi County enjoy a clean and healthy environment.
15. Further, the 2nd Respondent argues that it has partnered with private service providers and community-based organizations to support the waste collection and disposal efforts, which have also ensured that there are adequate public awareness campaigns to educate residents on the importance of proper waste management.
16. It was also averred that in September 2024, during the country protests by the Gen Z, the waste management system within the County was greatly affected as a result of vandalism of the waste litter bins, which prompted the County Officials to initiate a procurement process of acquiring new bins, which was approved and the contract was awarded to Falcon Signs Limited to supply and install new waste litter bins within the County.
17. The 2nd Respondent argued that it has at all times been committed to ensuring a clean and healthy environment. It thus argues that the Petition is premature and urges this Honourable Court to dismiss the Petition and Application with costs.



18. The Petition was canvassed by way of written submissions and in compliance, the Petitioner and the 1st Respondent filed their respective submissions.

Petitioner's Submissions

19. The Petitioner filed his written submissions dated 6th February 2025 and submitted through his counsel that the respondents have denied the residents of Nairobi their constitutional right to a clean and healthy environment by failing to provide effective and adequate waste disposal systems, which is evident by the heaps of waste littering the streets of central business district, and the indiscriminate dumping of waste on the doorsteps of residents in Korogocho, Saika, and Dandora. The Petitioner argued that these acts pose a significant peril to the lives of the residents and jeopardize the future of subsequent generations in those areas, thus contravening the provisions of Articles 42 and 69 (1) (a) of *the Constitution*, the *Environmental Management and Co-ordination Act*, 1999 as well as Article 12(2) (a) of the International Covenant on Economic, Social and Cultural Rights.
20. Counsel for the Petitioner submitted that the Respondents have breached the provisions of Section 4 of the Nairobi City County Waste Management Act by abdicating their duty, leaving private and independent players to address the solid waste issue. Further, the Respondents have failed to provide disposal bins and containers in the city and have also failed to prioritize fiscal budgetary resources for the impending environmental crisis. It was further argued that the 1st Respondent has failed to exercise its oversight role over the executive organs and officers, thus violating the provisions of Article 185.
21. It was submitted that by allowing residents in various areas, such as Korogocho, Saika, and Dandora, to live next to heaps of waste has violated their constitutional rights under Articles 28 and 27 by deliberately dumping waste in those areas due to their vulnerability and perceived status as fringe and “second-class” citizens. Reliance was placed in the decisions in ANN v Attorney General (Petition 240 of 2012) [2013] KEHC 6004 (KLR) (Constitutional and Human Rights) (14 June) (Judgement) M Ngugi, S v Makwanyane and Another (CCT3/94) [1995] ZACC 3 and Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria – 155/96.
22. Counsel for the Petitioner submitted that the Respondents have failed to disseminate public information to the residents of Nairobi County, thus violating the Provisions of Article 35, Sections 87 (a), 94, and 95 of the *County Governments Act*, 2012. Counsel argued that the purported Komarock Beautification should have been communicated through the county radio station, television, website, and daily newspapers, which are official public communication and not through a blog, as the same is not a county channel and thus urged this Honourable Court to allow the Petition as prayed.

1ST RESPONDENT'S SUBMISSIONS

23. The 1st Respondent opposes the Petition and denies all claims raised by the Petitioner. It contends that this Honourable Court lacks jurisdiction to determine the matter as it falls within the Jurisdiction of the Environment and Land Court as prescribed by Article 162 and Section 13 of the *Environment and Land Court Act*.
24. It was also submitted that the Petition is unmerited as it fails to meet the established threshold for a Constitutional Petition as required by law. Relying on Anarita Karimi Njeru v Republic (1979) eKLR, Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR, and Koyiet v Kereiya & 3 others [2022] KEELC 3313 (KLR), it was argued that the Petitioner has merely cited Constitutional and statutory provisions but has failed to demonstrate how the legal provisions have been violated by the Respondents.



25. Regarding whether the environmental rights enforcement requires immediate or progressive realization, counsel submitted that the right to a clean and healthy environment must align with the principle of progressive realization. Counsel argued that the environmental initiatives, such as waste segregation systems, the eradication of dumpsites, and the installation of bins, require significant financial resources, planning, and public participation, which cannot be done overnight and immediate implementation would strain the limited county resources thereby disrupting other essential services.
26. Counsel further argued that relitigating the issue of progressive realization, the Petitioner is inviting the court to revisit a matter that was already determined by the apex court and urged this Honourable Court to find the issue unmerited. In support of this argument, counsel relied on the authority of *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 Others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] KESC 34 (KLR), in which the Supreme Court stated that “The issue of what constitutes the progressive realization of a socio-economic right has therefore been long settled...”
27. In conclusion, counsel urged this court to dismiss the Petition with costs since it is not based on proper legal grounds and fail to meet the threshold required for constitutional petitions.

Issues For Determination

28. From the averments in the Petition, the affidavits and submissions presented by counsel for the parties, the emerging issues for determination are:
 - a. Whether this Court has the jurisdiction to determine this matter
 - b. Whether the Petitioner has established a violation of Constitutional rights.

Analysis And Determination

Whether this Court has the jurisdiction to determine this matter

29. The Respondents contend that this Honourable Court lacks the jurisdiction to entertain the Petition as framed, given that it primarily concerns environmental matters to a clean and healthy environment.
30. It is trite that the issue of jurisdiction should be determined at the earliest time possible. In *Owners of the Motor Vessel “Lillian”(S) versus Caltex Oil (Kenya) Ltd* [1989] KLR1, it was held as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had 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.

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance 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 had cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristic. 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 a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

31. 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 the 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 inactions 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.”

32. Article 162 of *the Constitution*, as read with section 13 of the *Environment and Land Court Act*, expounds on the jurisdiction of the ELC. Section 13 of the ELCA elaborately provides for the jurisdiction of the ELC 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 in land; and

(e) any other dispute relating to environment and land.”

33. Article 162(2)(b) of *the Constitution* establishes the ELC to hear disputes relating to the environment, use, occupation, and title to land.

34. Article 165(5)(b) of *the Constitution* explicitly states that the High Court shall not have jurisdiction over matters falling within the jurisdiction of the ELC.

35. The Respondents argue that the instant Petition falls squarely within the jurisdiction of the ELC. The nature of the claim, including waste management, provision of bins, and alleged environmental degradation, squarely falls within the scope of this specialised court.



36. In *Republic v Chengo & 2 others* [2017] KESC 15 (KLR), the Supreme Court emphasised that courts of equal status under Article 162(2) are distinct and exclusive in their jurisdiction. The Supreme Court thus stated: -

“In addition to the above, we note that pursuant to article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the Employment and *Labour Relations Act* and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of courts, with *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

37. This Court, being a constitutional court under Article 165, cannot arrogate to itself jurisdiction conferred upon the ELC merely because constitutional violations are alleged. *The Constitution* established the ELC precisely to deal with environmental issues, including the protection and enforcement of rights under Article 42.
38. The Petitioners’ invocation of constitutional rights does not transform an environmental grievance into a constitutional one within the exclusive jurisdiction of this Court. The Petitioners’ cause of action relates to service delivery in waste management, which falls within the purview of the county executive and is appropriately redressed through the mechanisms provided in the Environmental Management and Coordination Act and the ELC.
39. Specialized courts exist for a purpose, and allowing parties to bypass them by couching grievances in constitutional language undermines judicial structure. The Petitioner’s contention that the matter involves dignity and equality is incidental and does not elevate the claim into a constitutional dispute. The real contest lies in administrative actions concerning waste collection and public sanitation.
40. Moreover, Section 13(3) of the *Environment and Land Court Act* specifically empowers the ELC to determine constitutional matters relating to the environment. The ELC is competent to enforce constitutional rights relating to its mandate. Therefore, even if the Petitioner allege violations of Articles 27, 28, 35 and 42, the ELC remains the appropriate forum to examine the interplay between those rights and environmental degradation.
41. The separation of jurisdiction ensures efficiency, specialization, and coherent jurisprudence. If every environmental service delivery complaint could be elevated to a constitutional claim, it would render the ELC redundant and flood this Court with matters beyond its institutional mandate. Article 165(5) (b) of *the Constitution* expressly limits this Court’s jurisdiction where *the Constitution* or legislation confers jurisdiction upon another court, as is the case here.
42. It is also worth noting that the Petitioner has not demonstrated why the ELC would be unable or unwilling to adjudicate his claim effectively. There is no evidence of exceptional circumstances warranting deviation from the prescribed judicial forum. This Court must therefore guard against the dilution of jurisdictional clarity by declining to hear matters that are statutorily and constitutionally within the sphere of another court.



43. The ELC has the necessary expertise, tools, and mechanisms to assess scientific, policy, and technical aspects of environmental management, including waste disposal. In contrast, this Court's jurisdiction is geared toward broad constitutional interpretation, not detailed environmental adjudication. Therefore, this Court lacks jurisdiction under Article 165(5)(b) to determine this matter.

Whether the Petitioner has established a violation of Constitutional rights.

44. The Petitioner assert that their rights to a clean environment, equality, dignity and access to information have been violated due to the alleged failure of the Respondents to provide sufficient waste bins, collection services and inform the public through proper channel concerning the purported Komarock Beautification. The Petitioner has not demonstrated how the alleged waste accumulation in certain neighbourhoods constitutes deliberate discrimination, violation of dignity, or access to information. There is no evidence of a targeted policy to exclude low-income communities from waste services or the dumping of waste in those areas. The Petitioner ought to have demonstrated with specificity how the alleged constitutional rights were violated as underscored in *Anarita Karimi Njeru v Republic* (1979) eKLR.

45. Moreover, and in addition to jurisdictional ouster and the finding that the Environment and Land Court is vested with jurisdiction and not the High Court, the Petitioner has not adduced evidence or expert reports linking the alleged accumulation of waste to health hazards or environmental degradation. The Respondents have demonstrated that waste management policies are in place and are being progressively implemented based on population dynamics, resource allocation, and urban planning challenges. Consequently, the Petitioners have failed to prove a violation of Articles 27, 28, 35, and 42 of *the Constitution*.

46. From the foregoing, this Honourable Court finds the petition lacks merit and also for want of jurisdiction, the Petition is dismissed in its entirety with no orders as to costs.

Orders accordingly. File closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF AUGUST, 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner – Mr. Festus Onyango h/b Ms. Dorcas Mwai

Counsel for the 1st Respondent – Mr. Shdrack Wambui

Counsel for the 2nd Respondent – No appearance

Court Assitant- Ms. Lwambia

