



**Muranga South Water and Sanitation Company v Muranga Municipality
& 3 others; Ngigi (Interested Party) (Miscellaneous Application
E013 of 2022) [2024] KEHC 6056 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS APPLICATION E013 OF 2022**

J WAKIAGA, J

MAY 28, 2024

BETWEEN

MURANGA SOUTH WATER AND SANITATION COMPANY APPLICANT

AND

MURANGA MUNICIPALITY 1ST RESPONDENT

MURANGA COUNTY GOVERNMENT 2ND RESPONDENT

MURANGA WATER AND SANITATION 3RD RESPONDENT

WATER SERVICES REGULATORY BOA 4TH RESPONDENT

AND

LAMECK MUIRURI NGIGI INTERESTED PARTY

RULING

1. On the 12th September 2022 the Applicant took out chamber summons for order of certiorari to quash the decision of the Respondents to review the Muranga Municipal Water Boundaries and an *order of Mandamus* to compel the Respondents to reinstate the Applicant as the water service provider in Maragua area.
2. In response to the said application, the 3rd Respondent took out a notice of preliminary objection on jurisdiction to wit that the cause of action belonged to the province of water tribunal established under Section 119 of the [Water Act](#) 2016 as read with Section 121(1) and (2) thereof and that a person aggrieved by the decision of the Tribunal may within twenty one days from the date of the decision appeal to the Land and Environment Court as per Section 124 of the [Act](#).



Submissions

3. On behalf of the 3rd Respondent, it was submitted that Section 98 of the [Water Act](#) 2016 grant the regulatory Board authority to vary the areas of the water service provision and licensee aggrieved by an order made under the act may appeal to the tribunal established under Section 119 of the [Act](#) and that a person aggrieved by the decision of the tribunal is entitled to appeal to the Environment and Land Court which has jurisdiction under the provisions of Section 13(4) of the [Environment and Court Act](#). In support of this contention reference was made to the case of [Augustin Michael Murandi & 2 others v Nolturesh Loitoktok Water and Sanitation Co Ltd](#) [2017] e KLR.
4. It was contended where there is a clear procedure for redress provided by an act of parliament or [the Constitution](#), that procedure should be strictly followed as was held in [Speaker of the National Assembly v Njenga Karume](#) and confirmed in [Fredrick Mworira v District Land Adjudication officer Tigania West /East & 3 others](#) [2016] eKLR and [R v Independent Electoral and Boundaries Commission & others Ex Parte Nasa](#).
5. On behalf of the Applicant, it was submitted that the Applicant was properly before the Court as the same was challenging the decision to remove it from providing water services and in support referenced was made to the case of [Republic v Commissioner of Cooperatives Development Ex Parte Paul Manwa & 3 others](#) [2022] e KLR.

Determination

6. The only issue for determination is whether the dispute herein is subjected to the provisions of the [water Act](#) and if so whether this Court has jurisdiction on the same
7. From the pleadings herein, it is clear that the Applicant is challenging the decision of the Respondents to review the Muranga Municipal Water Boundaries' which falls within the preview of the [Water Act](#) 2016 under Section 98 and that the Applicant if aggrieved by the said decision should have approached the Tribunal established under the [Act](#).
8. I am therefore in agreement that whereas the Court has un limited jurisdiction, the Applicant should have exhausted the procedures provided for under the said Act and therefore this Court has no jurisdiction to hear the matter in the first instant.
9. It is also clear from the reading of the [Water Act](#) that the Court is the Environment and Land Court, so that even if I was wrong in declining jurisdiction on the basis of the doctrine of exhaustion, the orders sought by the Applicants herein should have been sought from the said Court which is a Court of equal status with this Court.
10. It therefore follows that this Court is not clothed with the subject matter jurisdiction as was stated in the case of [Augustin Michael Murandi](#) (*supra*) where the Court correctly held that the dispute falls with the Jurisdiction of the Water Tribunal and should not be elevated to a judicial Review matter in the first instance and even if it was then the relevant Court is not this Court.
11. I therefore allow the Preliminary objection herein and being alive to the provisions of Article 159 of the [Constitution](#) and stay the proceedings herein pending the filing of the complaint with the water tribunal with no orders as to cost.

DATED SIGNED AND DELIVERED AT MURANGA THIS 28th DAY OF MAY 2024

J. WAKIAGA

JUDGE



In the presence of :

No appearance by the Petitioner

Mr. Kiroko Ndegwa for 3rd Respondent

Mr. Ndiritu for the Applicant

