



THE SUPREME COURT OF KENYA

BASE TITANIUM LIMITED VS MICHAEL KISWILI AND 3OTHERS

SC. PETITION NO. E040 OF 2025

DATE OF JUDGMENT: 15TH MAY 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: The Court dismisses the Petition.

Background

The dispute originates from mining activities undertaken by the appellant, in Kwale County, pursuant to a mining licence issued in/or about 2013, by the 3rd respondent, Commissioner of Mines and Geology. The appellant was licensed to mine and extract titanium and related products for export and processing. The 1st respondent, acting on his own behalf and on behalf of other residents of the affected area, alleged that the appellant commenced and conducted its mining operations without undertaking a proper Environmental Impact Assessment (EIA) and, without adequate public participation, contrary to the Constitution and the Environmental Management and Coordination Act, 1999. It further alleged that, the mining activities caused environmental degradation, water pollution, excessive noise, and adverse health effects to residents of Mavumo “B” Village, Msambweni, Kwale County.

On the basis of the alleged violations, the 1st respondent filed a Petition at the Environment and Land Court, seeking declaratory and restorative reliefs including declarations that the residents’ right to a clean and healthy environment under Article 42 of the Constitution, had been violated, orders for environmental restoration, and the revocation of the appellant’s EIA licence and mining licence. The appellant however, challenged the jurisdiction of the ELC, and insisted that the dispute ought to have been heard by the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs. The trial court, affirmed its jurisdiction to hear and determine the petition, on grounds that the petition raised issues of violations of constitutional rights including the right to a clean and healthy environment. Aggrieved, the appellant filed an appeal at the Court of Appeal,

which upheld the decision of the trial court. Undeterred, the appellant filed the present appeal at the Supreme Court.

The Supreme Court framed the following issues for determination:

- a) *Whether this Court has jurisdiction to hear and determine the appeal?*
- b) *Whether the Court of Appeal erred in its decision of 18th July, 2025?*
- c) *What orders are to be issued by this Court?*

Upon consideration, the Supreme Court has dismissed the Petition for the following reasons:

1. **Issue 1:** The Court affirmed its jurisdiction to hear and determine in this matter.
2. **Issue 2:** Having considered the reliefs sought at the ELC, the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution, as read with Section 4(2) of the Environment and Land Court Act. The Cabinet Secretary has no jurisdiction to determine alleged violations of the Constitution, this is a preserve for the ELC. The right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. The Court affirmed the decision of the Court of Appeal.
3. **Issue 3:** The petition filed before the Environment and Land Court to proceed for determination on its merits.

Accordingly, the Supreme Court grants the following orders:

- i. ***The Petition of Appeal dated 29th August, 2025 is hereby dismissed.***
- ii. ***The petition filed before the ELC should proceed for determination on its merits.***
- iii. ***The appellant shall bear the costs of this Appeal.***

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