



REPUBLIC OF KENYA



Abdulla & another v Mwachiramba & 2 others (Environment and Land Case E043 of 2024) [2025] KEELC 5830 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E043 OF 2024**

**LL NAIKUNI, J
JULY 14, 2025**

BETWEEN

BAKARI BEJA ABDULLA 1ST PLAINTIFF

MWAHUI JOGA 2ND PLAINTIFF

AND

MWAHUI MWACHIRAMBA 1ST DEFENDANT

JOSEPHINE MWANGI 2ND DEFENDANT

RONALD BEJA MUNYIKA 3RD DEFENDANT

RULING

I. Introduction

1. Before the Honourable Court for its determination is the Notice of Preliminary Objection dated 23rd May, 2025 raised by Mwahui Mwachiramba, the 1st Defendant/ Applicant herein.

II. The objection by the 1st Defendant/Applicant

2. The objection was based on the following grounds:-
 - a. That the present suit offends the provision of Section 30 of the *Land Adjudication Act*, Cap. 284 Laws of Kenya which prohibits any person from instituting or any court from entertaining any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this *Act*.



- b. That the proviso to Section 30 (1) of the *Land Adjudication Act*, Cap 284 Laws of Kenya further enacts that for a suit to be sustained for an interest in land in an adjudication section the suing party must first secure/ obtain the written consent of the adjudication officer.
- c. That consequently this Honourable lacks the requisite jurisdiction to hear and determine the present suit in light of the express provision of Section 30 (1) of the *Land Adjudication Act*, Cap. 284 Laws of Kenya and should therefore down its tools as a matter of course.

III. The responses by te Plaintiff/Respondent

3. The Plaintiff/Respondent responded to the Preliminary Objection dated 23rd May, 2025 through filing of a Replying Affidavit sworn and dated on 26th May, 2025 by Bakari Beja Abdulla. He deposed that: -
 - a. He was the 1st Plaintiff in this case with the consent from his Co – Plaintiff to swear this Affidavit and therefore competent to swear this Affidavit.
 - b. This suit was filed on 3rd June, 2024.
 - c. The suit property was an inheritance between the Plaintiffs and the 1st 2nd & 3rd Defendants who were engaged in an illegal activity of selling of the suit property to unsuspecting members of the public and share the proceeds whereupon the beneficiaries had been left out from the proceeds of their inheritance.
 - d. Therefore, the Plaintiffs filed the suit for purposes of preserving the suit property pending distribution to all beneficiaries and those who bought the land illegally should be evicted and/ or vacated forthwith.
 - e. By the time of filing this suit, the land had not been Adjudicated. For this reason, they were not obliged to obtain a consent from the Adjudication Officer before to filing this suit.
 - f. The dispute of the parties was not a matter for the Adjudication. This was because already the Adjudication Officers had adjudicated the family land. Further, they had issued them with no. 999 nearing the name of the 1st Plaintiff on behalf of the family and/or beneficiaries.
 - g. The existing dispute was one on sharing of the family property among all the beneficiaries of the estate. Indeed, the adjudication officers had taken cognizance of this case by issuing a consent to the parties to proceed with the family dispute with a view of attaining a final settlement.
 - h. Thus the filed Preliminary Objection herein was unnecessary. The Defendants were just wasting Court's time. Therefore, it should be dismissed with costs.

IV. Submissions

4. On 27th May 2025 while all the parties were present in Court, they were directed to have the preliminary objection disposed of by way of written submissions. Pursuant to that, only the 1st Defendant/ Applicant obliged. Unfortunately, by the time of penning down this Ruling, the Honourable Court was not able to access the submissions by the Plaintiff/ Respondent and the 2nd, 3rd and 4th Defendants herein.
5. The court reserved the 14th July 2025 for delivery of the ruling on its own merit.



A. The Written Submissions by the 1st Defendant/Applicant

6. The Learned Counsels for the 1st Defendant through the Law Firm of Messrs. B. Njoki Chege filed their written submissions dated 17th June 2025. M/s. Njoki Advocate commenced by stating that the submission by the 1st Defendant/Respondent would be dealing only one main issue for determination. This is whether the Honourable Court has the requisite jurisdiction to hear and determine the suit.
7. The Learned Counsel submitted that the Plaintiffs had not demonstrated before the court that they had obtained a written consent from the Kinango District Land Adjudication Officer before instituting the present suit. They further stated that the suit was fatally defective for non-compliance with the provision of Section 30 (1) of the *Land Adjudication Act*, Cap. 284 (Hereinafter referred to as “The Act”). The lack of written consent from the Kinango District Land Adjudication Officer divested this Honourable Court of the requisite jurisdiction to entertain this suit. Therefore, it followed and in light of the authorities cited here up, that the present suit was therefore a nullity.

V. Analysis and Determination

8. I have keenly considered the objection raised through the Notice of Preliminary Objection dated 23rd May 2025 by the 1st Defendant herein, the written submissions, the authorities cited, the relevant provisions of the *Constitution* of Kenya, 2010 and statutes.
9. In order to reach at an informed, reasonable and fair decision on the matter, the Honourable Court wishes to be guided by the following three (3) issues for its determination. These are: -
 - a. Whether the objection raised by the 1st Defendant through the Notice of Preliminary Objection dated 23rd May 2025 meets the threshold founded in Law and precedents.
 - b. Whether the 1st Defendant is entitled to the relief sought from filed Notice of Preliminary Objection dated 23rd May 2025
 - c. Who will bear the Costs of the Objection?

Issue No. a) Whether the objection raised by the 1st Defendant through the Notice of Preliminary Objection dated 23rd May 2025 meets the threshold founded in Law and precedents.

10. Under this sub – heading, the Honourable Court will through case law critically examine the concept of preliminary objection. To begin with, it is imperative to start off by setting out what was a proper meaning of a preliminary objection. According to the *Black's Law Dictionary* a preliminary objection is defined as:

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
11. In the case of:- “*Nitin Properties Limited v Singh Kalsi & Another* [1995] eKLR” the court stated thus: -

“A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.’
12. Similarly, the Tanzanian Court of Appeal sitting in Dar es Salaam, in the case of:- “*Karata Ernest & others v Attorney General* (Civil Revision No 10 of 2020) [2010] TZCA 30 (29 December 2010)”,



(Luanda, JA, Ramadhani, CJ, Rutakangwa, JJA), expounded the issue of preliminary objections in a more exhaustive manner as follows: -

“At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only "consists of a point of law which has been pleaded, or which arises by clear implication out of the pleading obvious examples include: objection to the jurisdiction of the court; a plea of limitation; when the court has been wrongly moved either by non-citation or wrong citation of the enabling provisions of the law; where an appeal is lodged when there is no right of appeal; where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by a patently incurably defective copy of the decree appealed from; etc. All these are clear pure points of law. All the same, where a taken point of objection is premised on issues of mixed facts and law that point does not deserve consideration at all as a preliminary point of objection. It ought to be argued in the "normal manner" when deliberating on the merits or otherwise of the concerned legal proceedings.’

13. The Court in the now famous case of:- “*Mukisa Biscuits Manufacturing Co Limited (supra)*” described a preliminary objection as hereunder; -

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.’

Sir Charles Newbold, JA in the same case stated that: -

‘A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.’

14. Additionally, the Supreme Court addressed its mind on this issue in the case of: “*Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others* [2015] eKLR” and stated:-

“Thus, a Preliminary Objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.”

15. Arising from the above, it is clear that a preliminary objection should raise pure points of law and which are argued on the assumption that all facts are correct. However, a preliminary objection cannot be raised if any facts has to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion.
16. In the instant case, the preliminary objection herein questions this court’s jurisdiction to handle this matter. It is well settled that jurisdiction is the backdrop against with the court is mandated to engage in determination of any matter brought before it, without it the court has no business proceeding with the matter. On this legal position, the Court of Appeal stated in the case of:- “Nakuru Civil Appeal



No. 119 of 2017 *Public Service Commission & 2 Others v Eric Cheruiyot & 16 Others consolidated with Civil Appeal No. 139 of 2017 County Government of Embu & Another v Eric Cheruiyot & 15 Others* (unreported)” in a decision rendered on 8th February, 2022 expressed itself on the doctrine of jurisdiction in general as follows:

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “*Words and Phrases Legally Defined*”, Volume 3 at Page 113 defines court jurisdiction as follows: By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the 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 kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. 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”.

17. The preliminary objection in this matter is founded on the notion that the Plaintiffs herein have failed to exhaust the internal dispute resolution mechanism under the provision of Section 30 of the *Land Adjudication Act*, Cap. 284. Consequently, the suit is unmerited having been instituted in a court devoid of jurisdiction to hear and determine it. Thus, I discern that the issue of jurisdiction is an issue of law. As such the preliminary objection is properly raised.

Issue No. b) Whether the Defendant is entitled to the relief sought from filed Notice of Preliminary Objection dated 23rd May 2025

18. Having satisfied myself that the preliminary objection on the point of locus standi is properly raised, I will embark on the merits of the said preliminary objection. Legally speaking, the *Act* was assented on 26th June, 1968 and its commencement date was 28th June, 1968~. The *Act* is the law that governs provides a framework for the ascertainment and recording of land rights and interests in Trust land. It outlines the procedures for identifying and registering land ownership, particularly within adjudication areas, to ensure clarity and security of land tenure. The main purposes of the *Act* is to formally recognize and document land ownership within designated areas; to resolve disputes related to land ownership and boundaries; to create a clear and legally recognized record of land rights for individuals and groups within the adjudicated section. All these processes concerning land under the adjudication regime provides for lodging of complaints where more than one person lays a claim to a specific parcel of land.
19. The preamble of the *Act* holds that it was to deal with all matters of the land adjudication and the persons who are ordinarily residents of the delineated adjudication section. From the very onset, the Honourable Court strongly and proudly so that this is one of those few legislation on land matters in Kenya that has such a well elaborated and established internal dispute resolution mechanisms. From the provisions of Sections 1 to 30 of the *Act*, it provides for the declaration of the adjudication are by the Minister for Lands (Sections 3 & 5); the appointment of the Land Adjudication Committee comprising of elders appointed from within the area (Section 6); composition of the adjudication



register comprising of person who are ordinarily residents of the area based on birth, tribe, clan or customary lineage, the demarcation and allocation; the appointment of the Arbitration Board (Section 7); the claims and attendance (Section 13); the process of demarcation, allocation of interests and rights to land and preparation of the records and register (Sections 14 to 25); raising of objections to adjudication register (Section 26); Finalisation of the adjudication register (Section 27) and action by the Chief Land Registrar – issuance of title deeds to the registered members (Section 28) and then Appels (Section 29). Based on the above, therefore, the registered person in the adjudication register and the area list, have the rights and interests go through the process of adjudication. These includes ascertainment and registration of the said rights and interests. The process culminates in the issuance of the title deed.

20. The elaborate resolving mechanisms through well established “Quasi – Judicial” legal structures such as Adjudication Committees, Arbitration Board. The disputes are in form of objections raised by an aggrieved party. The provision of Section 19 (2) and (3) of the [Act](#) state as follows:-

- “(2) If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide.
- (3) The recording officer shall rectify the forms in accordance with any decision which the adjudication officer, the committee or the board may make in accordance with this *Act*.”

26. A party dissatisfied with the decision of the Adjudication Committee may prefer the dispute to the Arbitration Board for determination under the provision of Section 21 (3) of the [Act](#) which provides that: -

“Any person named in or affected by a decision of the committee who considers the decision to be incorrect may, within fourteen days after the decision, complain to the executive officer of the committee, saying in what respect he considers the decision to be incorrect.”

21. The Appeal lodged before the Minister under the provision of Section 29 of the [Act](#). It provides that the decision by the Minister is final. The provision of Section 29 of the [Act](#) provides that: -

“Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by— delivering to the Minister an appeal in writing specifying the grounds of appeal; and sending a copy of the appeal to the Director of Land Adjudication and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final”.

27. Therefore, it is expected that the disputes should end there. However, arising from the operation of the [Act](#), a party may only move High Court under two grounds. Firstly, whereupon there has been a violation or threat or breach of the fair administration action in the process of the hearing the Appeal by the Minister. For instance, an aggrieved party may seek for prerogative writs in form of Judicial Review in form of “Certiorari”, “Mandamus” or “Prohibition” under the common law as provided for under Sections 8 and 9 of the *Law Reforms Act*, Cap.and Order 53 of the [Civil Procedure Rules](#), 2010 and in the recent development of jurisprudence as provided for in the omnibus provision of the Articles 22, 23 and 47 of the [Constitution](#) of Kenya, 2010 and “The [Fair Administrative Act](#), Act of.....



28. Secondly, the other way to seek legal remedy by an aggrieved party emanating from the land adjudication process as stipulated from the Act, is the provision of Section 30 of the Act. It provides that: -

- “(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act. [Rev. 2012] Land Adjudication CAP. 284 L5 - 17 [Issue 1]. (Emphasis is mine).
- (2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.
- (3)

29. To support the Court on this legal position, I seek refuge from the case of: “Mohamed Ahamed Khalid (Chairman) and 10 others v Director of Land Adjudication & 2 others (2013) eKLR where Angote J held: -

“The law that was applicable for the ascertainment of land rights and interests over trust land is the *Land Adjudication Act* Cap 284. The said Act has an elaborate mechanism of appeal in the event an individual is aggrieved by the decisions of the land adjudication and settlement officer, the land adjudication committee, the land arbitration board and the Minister’s appeal committee. Indeed, before the Director signs the certificates of finality, the *Land Adjudication Act* provides that the adjudication register must be published which shall be followed with the hearing, determination and implementation of objections in respect to the Adjudication register. The Petitioners have not shown by way of evidence that the adjudication register in respect of the suit property was ever published and that they raised objections in respect to the matter in which the adjudication process was carried out. Considering that the *Land Adjudication Act*, Cap. 284 has an elaborate procedure on how complaints arising from the planning, demarcation and surveying of Trust Land are supposed to be dealt with, it is my view that this court cannot substitute the established bodies which are supposed to deal with these complaints. The Petitioners can only move this court for declaratory orders and judicial review orders, or by way of an ordinary suit, once they have exhausted the mechanisms that the law has put in place.”

30. Similarly, the Court of Appeal in the case of:- “Speaker of National Assembly v Karume (1992) KLR 21” held that: -

“Where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly be adhered to since there are good reasons for such special procedures.”



31. Further, in the case of:- “*International Centre of Policy and Conflict & 5 Others v The Attorney General & 4 Others* [2013] eKLR” as was cited in the case of “*Diana Ketbi Kilonzo & Another v IEBC & 10 Others* [2013] eKLR” it was stated: -
- “An important tenet of the concept of the rule of law is that this court before exercising its jurisdiction under Article 165 of the *Constitution* in general must exercise restraint. It must first give an opportunity to the relevant constitutional bodies or state of organs to deal with the dispute under the relevant provision of the parent statute. If the court were to act in haste, it would be presuming bad faith or inability by that body to act. ...Where there exists sufficient and adequate mechanism to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanisms have been exhausted”
32. With regard to the provision of Section 30 (1) of the *Act*, I have noted the interpretation of the Court Appeal in respect of when the consent should be sought in the case of:- “*Bhaijee & another v Nondi & another* (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment).” It is to the effect that the consent is condition precedent and must predate the filing of the intended suit.
33. The other limb of the objection raised is based on the principle of exhaustion. It is contended that the jurisdiction of this court has been wrongly and prematurely invoked in relation to issues for which specific and exclusive procedures have been prescribed. The court is aware of the numerous court decisions where it has been held that where there are existing mechanisms provided under statute for resolution of disputes then this must be exhausted. See the Supreme Court of Kenya holding in the case of “*Bernard Murage v Fine Serve Africa Limited & 3 others* [2015] eKLR.
34. The gist of the preliminary objection is that the consent of the Land Adjudication officer was not obtained prior to the filing of these proceedings.
35. In an attempt to refute this objection, the Plaintiff filed a Replying Affidavit dated 9th June, 2025 by Bakari Beja Abdulla whereby he deponed that they filed this suit on 3rd June, 2024. He stated that the property, the subject of this suit, is an inheritance between the Plaintiffs and the 1st and 2nd and that the 3rd Defendant engaged in an illegal activity of selling of the suit property to unsuspecting members of the public and share the proceeds whereupon the beneficiaries have been left out from the proceeds of their inheritance. By the time of filing this suit, the land had not been Adjudicated and therefore we were not obliged to obtain a consent from the Adjudication section before filing the suit. Secondly, the dispute of the parties is not a matter for the Adjudication since the Adjudication Officers have adjudicated the family land and issued us with no. 999 nearing the name of the 1st Plaintiff on behalf of the family and/or beneficiaries. The dispute existing to the sharing of the property with all the beneficiaries of the estate to the adjudication have okayed this case by issuing a consent to the parties to proceed with the family dispute and find their own way to share the suit property.
36. According to the above averments from the Replying affidavit, under Paragraph 5 (five) there is an annexure of a consent from Mr. Davis M. Njeru the Sub County Land Adjudication and Settlement Officer Kinango sub-county. The said consent is issued to Mr. Bakari Beja Abdallah on 5th June 2025. In the same affidavit of Mr. Bakari Beja Abdallah under paragraph 2 (two) depones and admits that this suit was filed on 3rd June, 2024. Clearly, the consent was issued after the suit was filed.
37. Based on the foregoing circumstances, I discern that this suit was filed in total breach of the requirements of the provision of Section 30 (1) of the *Act* which is couched in mandatory terms.



Consequently, I authoritatively conclude that the preliminary objection has merit and the suit is hereby struck out.

Issue No. c) Who will bear the Costs of the Objection?

38. It is now well established that the issue of Costs is the discretion of Courts. Costs is the award that a party is granted at the conclusion of a legal action or proceeding in any litigation process. According to the *Black Law Dictionary*, “Cost” is defined to mean,

“the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. By the events, it means the results or outcome of any legal action or proceedings thereafter.

39. Further, these legal principles were upheld in the Supreme Court case of “*Jasbir Rai Singh v Tarchalans Singh*, (2014) eKLR” and the Court of Appeal cases of “*Cecilia Karuru Ngayu v Barclays Bank of Kenya & Ano.* (2016) eKLR” the Courts held:-

“.....the basic rule on attribution of costs is that costs follow the event.....it is well recognized that the principles costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in presenting or defending the case”.

40. In the instant case, the Preliminary objection raised by the 1st Defendant has succeeded on the fundamental threshold of such an objection in law. Thus, the objection is hereby allowed. It follows that the 1st Defendant is entitled to the costs thereof.

VI. Conclusions & Disposition

41. Consequently, upon causing an in-depth analysis to the framed issues herein, the Honourable Court on Preponderance of Probabilities and the balance of convenience reaches at the following findings. These are: -

- a. That the Notice of Preliminary Objection dated 23rd May, 2025 be and is hereby found to be merited and thus the suit filed by the Plaintiffs herein vide a Complaint dated 3rd June, 2024 is struck out.
- b. That the costs of the Preliminary objection together with the costs to the suit are hereby awarded to the 1st, 2nd & 3rd Defendants jointly and severally.

It is ordered accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....14th DAY OFJULY2025

.....

**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT AT KWALE.**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.



- b. M/s. Njoki Advocate for the 1st Defendant.
- c. No appearance for the 1st & 2nd Plaintiffs.
- d. No appearance for the 2nd & 3rd Defendants.

