



Kitere v Rift Valley Water Works Development Agency & another (Environment & Land Case 16 of 2020) [2023] KEELC 16361 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 16 OF 2020
CG MBOGO, J
MARCH 23, 2023**

BETWEEN

LERASUNA OLE KITERE PLAINTIFF

AND

RIFT VALLEY WATER WORKS DEVELOPMENT AGENCY ... 1ST DEFENDANT

NAROK WATER & SEWERAGE COMPANY LIMITED 2ND DEFENDANT

RULING

1. Before this court for determination is a notice of intention to raise a preliminary objection as raised by the 1st defendant in paragraph 11 and 12 of its statement of defence dated April 23, 2020 in objection to the entirety of the suit on the following grounds: -
 - a. The court lacks jurisdiction over claims herein as the dispute herein is a boundary dispute as to the demarcation of the boundary of the plaintiff's land and the riparian reserve over Enkare Narok river.
 - b. The boundary dispute that forms the foundation of the present suit should be determined by the land registrar and not the honourable court.
2. On the November 16, 2022, this court directed the parties to address it on the issue of jurisdiction and file written submissions on the same.
3. The 1st defendant filed written submissions dated January 23, 2023. On whether this court has jurisdiction to hear this suit, the 1st defendant submitted that section 18 (2) of the [Land Registration Act](#) prohibits this court from entertaining any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in the section.
4. The 1st defendant further submitted that the same provision provides in mandatory terms that the dispute should be submitted to the Land Registrar in the first instance. The 1st defendant relied on the



cases of *Azzuri Limited versus Pink Properties Limited* [2018] eKLR and *Willis Ochola versus Mary Ndege* [2016] eKLR.

5. The 1st defendant submitted that where the law has given a legal obligation to a department of government, it is important for the court to let that department proceed to meet the legal obligations as it is in this case.
6. The plaintiff did not file written submissions.
7. I have considered the preliminary objection and the written submissions filed by the 1st defendant and the issue for determination is whether this court has jurisdiction to hear and determine the suit.
8. The threshold for preliminary objections is now well settled and there would be no reason to reinvent the wheel. Courts have held that a preliminary objection deals with purely points of law and where facts are not disputed. Where the court has to look outside the case for evidence to establish the facts presented, then this falls under a case where a full hearing has to be conducted to disprove certain facts. In *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors ltd* (1969) EA 696, the court stated as follows: -

“So far as I’m 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.”

This was followed up by the judgment of Sir Charles Newbold in the same case:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. 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 nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”

9. In the case of *Lemitei Ole Koros & another v Attorney General & 3 others* (2016) eKLR, Munyao J stated as follows:

“Where facts are not contested, the court is able to make a determination of law on the preliminary objection, but where facts are in contest, then automatically, the issue falls out of the ambit of a preliminary objection. It would be improper for a court to make a contested determination of fact within a preliminary objection.”

10. I have perused the plaint dated July 28, 2020. Paragraph 14 of the plaint reads as follows: - “The plaintiff’s claim against the defendant either jointly or severally is therefore for a declaration that without the plaintiff’s express consent, knowledge, participation or authority, their actions are in violation of his constitutional rights and unfair administrative action prejudicial to his proprietary interest.”
11. Paragraph 15 of the plaints further reads, “It is also the plaintiff’s claim against the defendants that as an affected party, the plaintiff is entitled to full disclosure of material information and a commensurate compensation for his loss and damage”.
12. Based on the foregoing paragraphs as contained in the plaint, there is no direct claim of an issue of boundary as raised by the 1st defendant. It is not clear on what basis the preliminary objection is founded. A plain reading of the plaint does not point directly to a boundary dispute that would



immediately call for the attention of the Land Registrar to hear and determine as is required under section 18 (2) of the *Land Registration Act*.

13. Section 13 (2) of the *Environment and Land Court Act* grants this court jurisdiction to hear and determine disputes-
- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, mineral 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. (emphasis supplied)
14. Arising from the above, I find that paragraph 11 and 12 of the 1st defendant's statement of defence does not qualify for a preliminary objection and it is hereby dismissed. I make no orders as to costs. Mention on April 5, 2023 before the deputy registrar for pre-trial directions and fixing of a date for hearing. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 23RD DAY OF MARCH, 2023.

HON. MBOGO C.G.

JUDGE

23/3/2023.

In the presence of:

CA:T.Chuma

