



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ISIOLO

PETITION NO.006 OF 2021

ABDIRAHMAN OSMAN & 164 OTHERS

(Suing on their own behalf and on behalf of residents of Merti sub county,

Chari ward and Cherab ward in Isiolo County).....PETITIONERS

-VERSUS-

NORTHERN RANGELANDS TRUST & 8 OTHERS.....RESPONDENTS

RULING

1. The 1st Respondent's Notice of Preliminary Objection (PO) raises two main questions for determination by this court. There are:
 - a) Whether the Court should assume Jurisdiction in respect of the Petition without giving the prescribed statutory first instance dispute resolution mechanisms a chance, and
 - b) Whether if the Court assumes first instance jurisdiction, the petitioner meets the prescribed threshold and should proceed for hearing on merits.
2. The parties canvassed the Preliminary Objection by way of written submissions.
3. I have very carefully read the submissions proffered by the parties in support of their veritably diametric assertions. In my view many of the issues canvassed by the parties should be canvassed in the main petition.
4. A Preliminary Objection is a serious matter. If it succeeds, it has the effect of dismissing the suit in toto. It is for this reason that a Preliminary Objection is prescribed to raise a pure point or pure points of law.
5. I have considered the authorities proffered by the parties in support of their assertions. They are all good authorities in their facts and circumstances. BUT no two cases are congruent to a degree of Mathematical exactitude in their facts and circumstances. The facts and circumstances of every case must be considered.
6. As demonstrated by the parties' extensive submissions, the issue of Jurisdiction of this court invites arguments and explanations. This renders it due to the facts and circumstances of this case NOT to be a pure point of Law. I have made the same conclusion regarding whether if the court assumes first-instance jurisdiction, the petition meets the prescribed threshold and should proceed for hearing on merits.
7. In the Circumstances I find that this Preliminary Objection does not raise pure points of Law.
8. I issue the following orders:
 - a) *This Notices of Preliminary Objection is hereby dismissed.*
 - b) *Costs shall be in the cause.*
 - c) *Directions on 30/5/2022*

DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF MARCH, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Nyasani h/b Makaka for the Petitioners

Ashava h/b for the 1st to 6th repondents.

HON. JUSTICE P. M. NJORGE

JUDGE