



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sankoyan v Sapura (Environment & Land Case 14 of 2020)  
[2025] KEELC 3215 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3215 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 14 OF 2020**

**MD MWANGI, J**

**APRIL 4, 2025**

**BETWEEN**

**ALBERT SANKOYAN ..... PLAINTIFF**

**AND**

**NJANGA OLE SAPURA ..... DEFENDANT**

**RULING**

(In respect to the preliminary objection by the Defendant dated 29<sup>th</sup> August 2019 challenging the jurisdiction of this court under Section 18 of the Land Act, on the premises that the dispute between him and the Plaintiff is a boundary dispute).

**Background.**

1. The preliminary objection by the Defendant is dated 29<sup>th</sup> August 2019. It is premised on two main grounds, namely;
  - I. The Defendant holds that;
    - a. The Honourable Court has no jurisdiction under the law in that;
      - i. The Plaintiff filed a fresh suit instead of an appeal
      - ii. This is a case of boundary dispute under the jurisdiction of the Land Registrar for hearing and determination under the provisions of Section 18(1) of the Land Act No. 6 of 2012.
    - b. The Plaintiff ought to have filed an appeal at the High Court against and or challenging the decision of the Land Registrar on 28<sup>th</sup> March, 2006 and as per the ruling by the Land Registrar but instead filed a fresh suit in 2016 ten (10) years down the line. The suit before this Honourable Court is therefore misconceived, incompetent, incurably



defective, and bad in law, an abuse of the due process of law and should be struck out with costs.

- c. Further, the suit before this Honourable Court is caught up by laches being that the Plaintiff ought to have filed an appeal thirty (30) days after the decision of the Land Registrar but instead brought it to court over a ten (10) year period. The Plaintiff therefore sat on his rights.

II. That this suit does not raise an reasonable cause of action against the Defendant as the same is scandalous, frivolous and vexatious reason being that the Plaintiff re-lodged a complaint over the same issues and subject matter before the Kajiado Land Disputes Tribunal which was dismissed on 13<sup>th</sup> August 2009 clearly showing he is a habitual litigant. The suit should therefore be struck out forthwith under Order 2 rule 15 of the Civil Procedure rules, 2010.

2. The Plaintiff interestingly filed a replying affidavit sworn on 14<sup>th</sup> October 2019, in response to the preliminary objection asserting that the dispute was indeed referred to the Registrar of Lands in compliance with Section 18 (1) of the *land Act* No. 6 of 2012. However, despite the fact that the dispute was determined on 28<sup>th</sup> March 2006, he did not agree with the determination prompting the filing of this suit. He insists that this court has the jurisdiction to entertain the suit.
3. On 6<sup>th</sup> February 2005, this court with the concurrence of the parties directed that the preliminary objection be canvassed by way of written submissions. Both parties complied and filed their respective submissions which now form a part of the record of this court.

#### **Submissions by the parties.**

4. On his part, the Defendant filed submissions dated 28<sup>th</sup> February 2025. He submits that he pursued the boundary dispute between him and the Plaintiff with the Land Registrar Kajiado under the then Section 21 (2) of the Registered *Land Act* (repealed). The Land Registrar heard the land dispute and made his determination on 28<sup>th</sup> March 2006. Instead of appealing to the High Court, the Plaintiff instead, re-lodged the dispute with the Kajiado Land Disputes Tribunal but the complaint was dismissed on 13<sup>th</sup> August 2009 since it was unprocedural. The Defendant asserts that the Plaintiff is trying to pursue an appeal through the backdoor by filing this suit.
5. The Defendant submits that under Section 18 (2) of the *Land Registration Act*, this court is barred from entertaining any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with that Section. The Defendant cites the decision in the case of *George Kamau Macharia -vs- Devka Limited* (2019) eKLR, where the court emphasized that Section 18 (2) of the *Land Registration Act* gives the mandate to the Land Registrar to resolve boundary disputes of land with general boundaries.
6. The Defendant submits that the Section 150 of the repealed Registered *Land Act* provides a well-defined appellate mechanism for any party aggrieved by a decision, refusal, or determination made by a Land Registrar, or the Chief Land Registrar. Appeal from the decision of the Land Registrar was to the Chief Land Registrar then to the High Court.
7. The Defendant has further submitted that the Plaintiff's suit is time-barred elaborating on point 1 (c) of his preliminary objection. Whereas an aggrieved party was allowed only thirty (30) days to appeal from the decision of the Land Registrar, the Plaintiff filed this suit ten (10) years after the determination and served the Defendant with it 4 years after filing it. Even if the Plaintiff's suit were to be treated to be an appeal, it was filed way after the statutory timelines. It is time –barred and an abuse of the process of court.



8. The Plaintiff's submissions on the other hand are dated 4<sup>th</sup> March 2025. The Plaintiff terms the Defendant's preliminary objection as incompetent since the provisions of the law relied on are erroneous. He submits that Section 18 (1) of the *Land Act* does not deal with boundary disputes, it is Section 18 (1) of the *Land Registration Act* that does. The Plaintiff further submits that the preliminary objection by the Defendant does not qualify as such. It does not meet the threshold set out in the case of *Mukisa Biscuits Manufacturing Company Limited –vs- West End Distributors Limited* (1969) E.A. 696.
9. The Plaintiff avers that what the Defendant ought to have done was file a substantive application to afford him a chance to produce the factual evidence and allow the Plaintiff an opportunity to respond likewise. Further the Plaintiff terms the preliminary objection incompetent since the Defendant is relying on repealed legislation.
10. Finally, the Plaintiff submits that his suit is not time-barred, since it was instituted in 2016, a period less than 12 years since the decision was passed in relation to his rights.

### Issues for determination

11. The major issue for determination arising from the submissions by the parties is whether the Defendant's preliminary objection meets the threshold set out in the Mukisa Biscuits case. Dependent on the finding on the 1<sup>st</sup> issue, the next one would be whether it is merited.

### Determination

12. The Court of Appeal of East Africa in the case of *Mukisa Biscuit Manufacturing Company Limited –vs- West End Distributors Limited* (1969) E.A. 696, had this to say of a preliminary objection (per Law JA, as he then was);

“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit , examples are 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 suit to refer the dispute to arbitration.”
13. In the Nairobi High Court Constitutional Petition No. E260 of 2021 *Boniface Akusala & Another – vs- Law Society of Kenya and 12 others* (unreported), the court reiterated that,

“The validity of any preliminary objection is gauged against the requirement that it must raise pure points of law capable of disposing of the suit at once. It is therefore mandatory for a court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence.”
14. Ojwang J (as he then was) captured it more aptly in the case of *Oraro –vs- Mbaja* (2005) KLR 141, where stated that,

“A preliminary objection correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claim to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary



objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection.”

15. Having carefully considered the Defendant’s preliminary objection under consideration, I find the same blurred, in fact almost completely obscured by factual details. It at one point talks of a decision of the Land Registrar then on another point about the decision of the Kajiado District Land Disputes Tribunal. Ultimately, it cites the wrong legislation on land boundary disputes. The Defendant attempts to correct the error in his submissions where he rightly refers to Section 18 (1) of the [Land Registration Act](#). His submissions to a large extent comprise of factual narrations on the dispute with the Plaintiff in an attempt to bring out the points of law.
16. I fully agree with the Plaintiff that the objections by the Defendant should have been raised in form of an application supported by an affidavit to allow him bring forth the evidence and afford the Plaintiff an opportunity to respond appropriately.
17. That said, I will avoid going into the merits of the objections by the Defendant in order not to prejudice their application should they choose to file one to allow the court make a determination of the otherwise pertinent issues on jurisdiction and time-bar.
18. I therefore dismiss the preliminary objection but make no orders as to costs.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4<sup>TH</sup> DAY OF APRIL 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Ochieng for the Defendant/Objector

Mr. Maina for the Plaintiff

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

