



**Kairu v Kairu (Environment and Land Appeal E035 of 2022)
[2025] KEELC 3126 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E035 OF 2022**

JO OLOLA, J

APRIL 3, 2025

BETWEEN

JUSTUS MACHARIA KAIRU APPLICANT

AND

PRISCILLA MUMBI KAIRU RESPONDENT

JUDGMENT

Background

1. This is an Appeal arising from the Ruling of the Hon. E. Kanyiri PM as delivered on 29th November, 2022 in Karatina ELC. Case No. E022 of 2021.
2. In the matter before the Lower Court, Priscilla Mumbi Kairu (the Respondent herein) had filed a Notice of Motion application dated 7th March, 2022 wherein she sought for an order that the court be pleased to enjoin the Land Registrar and the Land Surveyor Nyeri County as Interested Parties in the suit.
3. In Support of the said application, the Respondent who was the Defendant in the said suit filed an Affidavit stressing that it was necessary for the two to be enjoined to participate in the proceedings so that they could rectify and ascertain the boundaries of land parcel Numbers Kirimukuyu/ Mutathini/1125; 1126 and 1127.
4. Justus Macharia Kairu (the Appellant herein) was opposed to the grant of the orders sought. In his undated Replying Affidavit filed on 17th March, 2022, the Applicant raised what he termed as his Preliminary Objection to the application objecting to the same on grounds which can be summarised as follows:-
 - i. That the Trial Court lacked jurisdiction to hear the application as it offends the express provisions of Section 18 and 19 of the [Land Registration Act](#), No. 3 of 2022;



- ii. That the orders sought can only be issued in an application for Judicial Review or an Appeal; and
 - iii. That the application should be struck out for being filed prematurely, that it was statute barred and an abuse of the Court process.
5. Having heard the application and the response thereto and in his Ruling delivered on 29th November, 2022, the Learned Trial Magistrate proceeded to dismiss the Preliminary Objection.
 6. Aggrieved by the said determination, the Appellant lodged a Memorandum of Appeal dated 9th December, 2022 urging this court to set aside the Ruling on some nineteen (19) grounds which can be summarised as follows:
 1. That the Learned Trial Magistrate erred in law and fact in failing to observe that the court lacked jurisdiction to hear the application;
 2. That the Learned Trial Magistrate erred in enjoining the interested Parties without any support of Statute or Court order;
 3. That the Learned Magistrate misdirected herself by acting as an advocate for the Defendant contrary to the Rule of Law; and
 4. That the Learned Magistrate erred in law and in fact in failing to consider the Appellants submissions.
 7. This being a first Appeal, this court has the duty to re-evaluate the evidence before the trial court as well as the Ruling appealed against and to arrive at its own independent judgment on whether or not to allow the Appeal. A first Appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusion about it, bearing in mind that it did not have the opportunity of seeing and hearing witnesses first hand [See *Selle & Another –vs- Associated Motor Boat C. Ltd and Others* (1968) EA 123].
 8. I have accordingly carefully perused the Record of Appeal as filed herein together with the impugned Ruling delivered on 22nd November, 2022. I have similarly perused the submissions as filed by both the Appellant and the Respondent.
 9. The Ruling which is the subject of this Appeal was the result of an application dated 7th March, 2022 filed by the Respondent seeking to enjoin the District Surveyor Nyeri County and the District Land Registrar Nyeri County as interested parties in the suit. In response to the said application, the Appellant filed a 26 – paragraphed undated Replying Affidavit. At Paragraphs 3 to 24 of the said Affidavit (Page 24 to 26 of the Record), the Appellant raised what he refers to as “the Preliminary Objection” wherein he objected to the jurisdiction of the court to hear the dispute on account that the application offended the express provisions of Sections 18 and 19 of the *Land Registration Act* No. 3 of 2012.
 10. At paragraph 6 of the said Objection the Appellant asserted that both the application and the suit were premature and incompetent for offending the said provisions. That position is repeated severally in the subsequent paragraphs of the so-called Replying Affidavit.



11. Try as much as I could, I was unable to see how a Preliminary Objection can be raised within what is said to be a Replying Affidavit, more so by the Plaintiff who has instituted the suit. As was stated in the off-cited case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors Ltd (1969) 696

“ ... a preliminary objection consists of a pure 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.”
12. Arising from the foregoing, I was unable to see how a Plaintiff who had himself filed the suit could be heard to raise an objection in which as we have seen at Paragraph 6 of the same, he urges the court to strike out the suit for being premature and incompetent.
13. From the material placed before the court, the Respondent herein had not filed any Counter Claim which the Appellant could request to have struck out and it was clear to me that the matters raised as a preliminary objection at Paragraphs 3 to 24 of that Replying Affidavit were misconceived and without any basis.
14. As it were, the application that was before the court was an application for joinder of parties. The court had not been called upon to determine a boundary dispute which would be the reserve of the Land Registrar under Sections 18 and 19 of the [Land Registration Act](#) and the submissions that the court lacked the jurisdiction to entertain the application was similarly misguided and without any basis in law.
15. In the premises herein, I was not persuaded that the trial court could be faulted for dismissing the so-called Preliminary objection as filed by the Appellant. The result is that the Appeal lacks any basis and I dismiss the same with costs to the Respondent.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 3RD DAY OF APRIL, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Justus Macharia Kairu the Appellant in person
- c) Ms. Priscilla Mumbi Kairu the Respondent present in person

