



**Mbae (Suing as the Legal Representative of M’Nkanata M’Njiima)  
v Tharaka Nithi County Government (Environment & Land Case  
E001 of 2022) [2022] KEELC 2742 (KLR) (15 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2742 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND CASE E001 OF 2022**

**CK YANO, J**

**JULY 15, 2022**

**BETWEEN**

**GLADYS KAINDA MBAE ..... PLAINTIFF**

**SUING AS THE LEGAL REPRESENTATIVE OF M’NKANATA M’NJIIMA**

**AND**

**THARAKA NITHI COUNTY GOVERNMENT’ ..... DEFENDANT’**

**RULING**

1. Before me for determination is the notice of preliminary objection dated 15<sup>th</sup> February, 2022 seeking to have the Plaintiff’s suit dismissed on the grounds that:
  - i. This Honourable court lacks jurisdiction (in the first instance) to entertain this suit given the provisions of Article 159(2)(c) of the Constitution and Section 30 of the Land Adjudication Act, Chapter 284 of the Laws of Kenya.
  - ii. The suit, as presented, is premature, bad in law, incompetent and an abuse of court process.
  - iii. Such other grounds as shall be adduced at the hearing hereof.
2. The objection was canvassed through written submissions. The Defendant filed their submissions dated 9<sup>th</sup> May, 2022 on 10<sup>th</sup> May, 2022 while the Plaintiff filed hers dated 11<sup>th</sup> May, 2022 on 18<sup>th</sup> May, 2022.

**Defendant’s submissions**

3. The Defendant submitted that it seeks the dismissal of the Plaintiff’s suit dated 12<sup>th</sup> January 2022 on account of the Court lacking the requisite jurisdiction to hear and determine the same and further seeks the costs of the suit.



4. The Defendant submitted that in common English, ‘jurisdiction’ denotes the authority or power to hear and determine judicial disputes, and that before a court can be seized of a matter, it must satisfy itself that it has the authority to hear it and make a determination.
5. The Defendant submitted that if a court proceeds to hear a dispute without jurisdiction, the result will be a nullity ab initio, and any determination made by such a court will be amenable to being set aside.
6. The Defendant cited the Supreme Court position that reiterated that a Court must only exercise the jurisdiction conferred on it as held in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR by noting: -

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

7. The Supreme Court in the Samuel Kamau Macharia case (Supra), referred to its earlier decision In the Matter of the Interim Electoral Commission, Constitutional Application Number 2 of 2011 and stated;

“Where the Constitution exhaustively provides for the jurisdiction of a Court of Law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

8. The Defendant stated that its Notice of Preliminary Objection is founded on Article 159 (2(c) of the *Constitution* of Kenya, 2010 and Section 30 of the *Land Adjudication Act*, Chapter 284 of the Laws of Kenya.
9. The Defendant further averred that there is a pending appeal regarding all those parcels known as Mwimbi L. East Magutuni/1225 and Mwimbi L. East Magutuni/1774 under Section 29 of the *Land Adjudication Act* Chapter 284 of the Laws of Kenya.
10. The Defendant cited the provisions of Article 159 (2(c) of the *Constitution* of Kenya 2010 which provides that, “In exercising Judicial Authority, the courts and tribunals shall be guided by alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3)”, and Section 30 of the *Land Adjudication Act* which provides, “(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. (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.”
11. The Defendant also cited section 29 of the *Land Adjudication Act* which provides that:
  - (1) 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—



- (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and
  - (b) 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.
- (2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
- (3) When the appeals have been determined, the Director of Land Adjudication shall—
- (a) alter the duplicate adjudication register to conform with the determinations; and
  - (b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
- (4) Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public officer by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”
12. The Defendant submitted that following the above-cited provisions of law, the interest in all those parcels known as Mwimbi L. East Magutuni/1225 and Mwimbi L. East Magutuni/1774 is still under Adjudication as evidenced by the copy of the latest Certificate of Official Search dated 25<sup>th</sup> November 2021.
13. The Defendant averred that the Adjudication was done but appealed against thus making it inconclusive and that Section 30 of The *Land Adjudication Act* is clear as to the procedure and what constitutes conclusion of adjudication.
14. The Defendant contends that the Plaintiff has not tabled any evidence to show that the Appeal after the Adjudication was lodged has been concluded, and that until the Adjudication is completed then the court lacks jurisdiction over the two parcels in question.
15. The Defendant relied on the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* (1989) KLR 1, where Justice Nyarangi of the Court of Appeal held as follows: -
- “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
16. The Defendant submitted that from the preceding, it follows that the objection is meritorious and implored the Honourable Court to find and hold that it does not have the requisite jurisdiction to hear and determine the Plaintiff’s suit as filed and award the defendant costs.



## Plaintiff's submissions

17. The plaintiff submitted that the preliminary objection is unmerited and ought to be dismissed with costs.
18. The Plaintiff submitted that the court is clothed with sufficient jurisdiction to hear the matter and that she has approached the court to cancel the names of the defendant from L. R No. Mwimbi/l East Magutuni/1714 and 1225 because the defendant obtained it fraudulently from the plaintiff.
19. The Plaintiff further submitted that the claim is premised on fraud and that under the [Land Registration Act](#) 2012, Section 26 (1) (a) the only way to challenge a first registration is either on the ground of fraud or where the certificate of title has been obtained illegally, unprocedurally or through a corrupt scheme.
20. The Plaintiff submitted that the Preliminary objection is not premised on any sound legal point and that the defendant quoted authorities that have no bearing to the issues raised in the suit.
21. The Plaintiff's contention is that Article 159 (2)(c) of the [Constitution](#) cannot be invoked in this suit as the provisions of law under which the suit is based is clear and no arbitration is required to know whether the land is fraudulently obtained or not. That only evidence can determine this.
22. The Plaintiff further contends that the land is past the adjudication process and the titles have already been issued since the adjudication process has been completed and that the land in this respect is now under the [Land Registration Act](#) and therefore, Section 30 of Cap 284 is inapplicable and that the plaintiff does not require any consent to file the suit herein.
23. The Plaintiff submitted that section 29 of Cap 284 does not apply in this case, adding that she is not aggrieved by the adjudication process, but is aggrieved by the fraud that occurred after the process leading to her land being stolen.
24. The Plaintiff contends that the Defendant's submissions calls for evidence to prove them, and once evidence is required to be adduced to prove a point in law, then the Preliminary Objection must fail. That this is because a Preliminary Objection must be such a point of law that once raised it does not require evidence to prove it and it must bring down the entire suit.
25. The Plaintiff submitted that in this case the preliminary objection is based on the point that the adjudication process is not over whereas the plaintiff alleges that the process is over and title deeds have been issued. The Plaintiff therefore submitted that the Preliminary Objection has no basis and should be dismissed with costs.

## ANALYSIS AND DETERMINATION

26. I have considered the submissions made and the authorities cited. The glaring issue arising for determination is whether this court has jurisdiction to deal with the matter. Matters touching on jurisdiction of the Court should be heard in limine and may be taken by the Court even suo moto. Without jurisdiction, the Court has no power to make one more step and must down its tools. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR. (supra)
27. In the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd* (1969) EA 696, it was held that:

“ A Preliminary Objection consists of a pure point of law which has been pleaded or which arises by clear implications out of pleadings and which if argued as a Preliminary Objection



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...A preliminary Objection is 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 has to be ascertained or if what is sought is the exercise of judicial discretion.”

28. At the outset, I find that this Preliminary Objection raises points of law. As already stated, the first ground is that the court lacks jurisdiction to entertain the suit by dint of the provisions of Section 30 of the *Land Adjudication Act*, Cap 284 Laws of Kenya. The second ground is that the suit, as presented, is premature, bad in law, incompetent and an abuse of the court process.
29. The court has already cited the provisions of Sections 29 and 30 of the *Land Adjudication Act* as submitted by the Defendant. The provisions of Article 159(2)(c) have also been referred to. It is the Defendant’s contention that the parcels known as Mwimbi/L. East Magutuni/1714 and 1225 are still under adjudication. That the adjudication was done but appealed against, thus making it inconclusive.
30. The subject matter in this suit are the said two parcels of land. In the plaint dated 12<sup>th</sup> January, 2022, the Plaintiff has pleaded inter alia, that at all material times, M’Nkanata M’Njiima (deceased) was the bona fide owner of the said parcels, and that the family of the deceased are in possession of the suit lands. The Plaintiff’s case is that the Defendant illegally and fraudulently grabbed the said parcels and registered the same in its name. The Plaintiff has listed particulars of fraud against the Defendant. The Plaintiff’s claim against the Defendant is for the cancellation of the name of the Defendant from the titles of the said parcels, and for the name of the deceased to be entered in their place. The Plaintiff has also made an alternative prayer for compensation.
31. In their statement of Defence dated 15<sup>th</sup> February, 2022 the Defendant avers that it did not acquire the two parcels illegally and or fraudulently. Although the Defendant has pleaded that there is a pending appeal regarding the suit properties, under Section 29 of Cap 284, the Plaintiff in her list of documents has exhibited a certificate of official search demonstrating that the parcels are already registered in the Defendant’s name. In this case, some facts are disputed. For instance, the allegation of fraud can only be determined upon hearing the matter and ascertaining the facts in order to arrive at a just determination.
32. This Court observes that disputes relating to the environment, ownership and use of, and title to land are the preserve of the Environment and Land Court as established by Article 162 (2) (b) of the *Constitution* of Kenya and the *Environment and Land Court Act*. Section 13 of the Environment and Land Court provides for the jurisdiction of the Court as follows: -

“13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162 (2) (b) of the of the Constitution, the Court shall have power to hear and determine disputes—
  - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals 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
3. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.
  4. In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.”
33. In light of the above, does the court have jurisdiction over this matter? From the pleadings and by virtue of Section 13 of the *Environment and Land Court Act*, it is my view that this court has the requisite jurisdiction over the matter herein. This is because the claim is based on alleged fraud over parcels of land which are already registered.
34. The upshot of this is that the Defendant’s preliminary Objection is not merited and same is dismissed with costs to the Plaintiff.
35. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 15TH DAY OF JULY 2022**

in the presence of:

CA: Martha

Muriithi h/b for Saluny for Respondent/Defendant

N/A for Kimathi Kiara for Plaintiff/Applicant

Plaintiff present in person

**C. K. YANO,**

**JUDGE.**

