



**Kardasi v Kakoro & 6 others (Environment and Land Case Civil Suit E028 of 2024) [2025] KEELC 5202 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT E028 OF 2024  
MD MWANGI, J  
JULY 10, 2025**

**BETWEEN**

**KATIMUA ENE MERIA KARDASI ..... PLAINTIFF**

**AND**

**BENSON LASITI KAKORO ..... 1<sup>ST</sup> DEFENDANT**

**MOSES MOOKE KAKORO ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH LEPAPA KAKORO ..... 3<sup>RD</sup> DEFENDANT**

**JAMES MEELI KAKORO ..... 4<sup>TH</sup> DEFENDANT**

**REUBEN SANE KAKORO ..... 5<sup>TH</sup> DEFENDANT**

**SACHA KAKORO ..... 6<sup>TH</sup> DEFENDANT**

**FRANCIS SAKUDA KAKORO ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

In respect of the preliminary objection by the Defendants dated 21st May 2024 challenging the jurisdiction of this court to entertain the case by the Plaintiff

1. This ruling is in respect of the preliminary objection by the Defendants is dated 21<sup>st</sup> May 2024. The Defendants have raised four points as follows;
  - a. That the subject matter of the instant suit is a boundary dispute and as such, the Honourable Court lacks jurisdiction to hear and determine the suit pursuant to the provisions of the Section 18 and 19 of the *Land Registration Act* and Regulations 40 and 41 of the *Land Regulations, 2017*.



- b. That the jurisdiction of the Honourable Court can only be invoked on appeal by a party who is aggrieved by the decision of the Land Registrar pursuant to the provisions of Regulation 40 (6) of the [Land Registration \(general\) regulations, 2017](#).
- c. That it is against the natural rules of justice and the right to be heard for the Plaintiff to seek orders against the Land Registrar who is not a party to the suit.
- d. That the Plaintiff lacks the locus standi to institute the instant suit as there is evidence that succession proceedings have never been done relating to the estate of Meria Kardas (deceased).

### **Court's directions.**

2. The directions by the court were that the preliminary objection by the Defendants be canvassed by way of written submissions. Both sides complied and filed their respective submissions. The court has had the opportunity to read and consider the submissions which form part of its record.

### **Issues for determination**

3. In framing the issues for determination, it is worth restating that a preliminary objection correctly understood must be a point of law which must not be blurred by factual details liable to be contested and to be proved through the process of evidence. Ojwang J (as he then was) rightly noted in the case of [Oraro –vs- Mbaja](#) (2005) KLR 141, that;

“Any assertion which claims 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. ...anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence”.

4. The preliminary objection by the Defendants is tabulated in form of four points. The 3<sup>rd</sup> and 4<sup>th</sup> points in my considered view do not meet the criterion set out in the case of [Oraro –vs- Mbaja](#) (*Supra*). The issue whether there were succession proceedings in the estate of Meria Kardas (deceased) is an issue that derives its foundation from factual information.
5. The issue that the Plaintiff has sought orders against the Land Registrar is a matter that can be addressed by invocation of the provisions of Order 1 rule 10 of the [Civil Procedure Rules](#) that empowers the court to order the joinder of any necessary party to a suit.
6. In my considered view, the only valid objection that should be entertained as a preliminary objection is on the question of jurisdiction of the court; whether the court has the jurisdiction to entertain the Plaintiff's suit. That is the only issue that the court will consider.

### **Analysis and determination.**

7. From the reading of the Plaintiff's submissions, it is not disputed that the subject matter of the suit is indeed a boundary dispute. The Plaintiff submits that the 'services of the Land Registrar have been exhausted'. He refers to a letter dated 15<sup>th</sup> march 2016 to support that assertion and submits that summons were indeed issued by the Land Registrar for all parties to attend. However, the report was not availed to him upon survey of the said property. The Plaintiff submits that he was dissatisfied by the decision of the Land Registrar and that is why he has approached this court.



8. Section 18 (2) of the *Land Registration Act* bars 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 in accordance with the section. The *Land Registration General Regulations* on the other hand give effect to the provisions of Section 18. Under rule 40 (1), an interested person is required to apply to the Land Registrar for ascertainment of a boundary in dispute in the prescribed form (form LRA 23 set out in the sixth schedule). It is only then that the Registrar is required to act by issuing a notice in form LRA 24, to all persons appearing in the register that may be affected or such other persons as he may deem necessary for resolution of the dispute.
9. From my reading of the plaint, the Plaintiff at paragraph 8 thereof asserts that he visited the County Commissioner on 12<sup>th</sup> August 2024 to lodge a boundary dispute. The County Commissioner allegedly wrote a letter to the Land Registry requesting for a site visit and determination of the boundary.
10. The County Commissioner under the law applicable to boundary disputes has not role whatsoever in the determination such disputes. I reiterate that a party who seeks the determination of a boundary dispute under the provisions of Section 18 (3) of the *Land Registration Act* must do so in the prescribed form. The Plaintiff did not do so. No wonder that no determination has been made by the Land Registrar.
11. Boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution as affirmed by the Court of Appeal in the case of *Azzuri Limited -vs- Pink Properties Limited* (2018) eKLR. The Court of Appeal in the said case asserted that;

“...it should be clear from the above that, we are in agreement with the learned judge’s conclusion that the dispute ought to have been heard by the land registrar as stated in the statute. Jurisdiction is everything. It has been said many times before that, without it, a court has no powers to make one more step, irrespective of the strength and nature of evidence in the parties’ possession”.
12. This court therefore lacks the jurisdiction to entertain this matter as presented by the Plaintiff. What the Plaintiff has brought before the court is not an appeal. The law, particularly Order 42 rule 1 of the *Civil Procedure Rules* is clear on the manner of lodging an appeal to this court.
13. In the case of *Oduor Ngoge -vs- Francis Ole Kaparo & Others*; SC Petition No. 2 of 2012 (2012) eKLR, the Supreme Court emphasized on the importance of respecting the hierarchy of the judicial system as one of the principles guiding the exercise of our jurisdiction under Articles 163(4)(a) of the *Constitution*.
14. Consequently, the suit by the Plaintiff is struck out with costs to the Defendants.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kipkirui for the Defendants

N/A by the Plaintiff

Court Assistant: Mpyoye

