



**Kyalo & 76 others v Director for Land Adjudication & Settlement & 4 others;
National Land Commission & 64 others (Interested Parties) (Environment &
Land Petition 1B of 2019) [2025] KEELC 3856 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3856 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND PETITION 1B OF 2019**

**AK BOR, J
MAY 9, 2025**

BETWEEN

**SAMUEL MULINGE KYALO & 76 OTHERS & 76 OTHERS & 76
OTHERS PETITIONER**

AND

**DIRECTOR FOR LAND ADJUDICATION & SETTLEMENT ... 1ST
RESPONDENT**

THE ATTORNEY GENERAL 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

THE COUNTY LAND REGISTRAR, EMBU COUNTY 4TH RESPONDENT

THE LAND REGISTRAR, MBEERE SOUTH 5TH RESPONDENT

AND

**THE NATIONAL LAND COMMISSION & 64 OTHERS & 64 OTHERS & 64
OTHERS INTERESTED PARTY**

RULING

1. The Respondents filed the preliminary objection dated 27/3/2023 on the ground that this court lacked jurisdiction to hear and determine the amended petition because the petitioners have not exhausted all the other available mechanisms laid down by statute before moving to the constitutional court.
2. The court directed parties to file and exchange written submissions which it has considered. The respondents urged that the preliminary objection met the legal threshold set out in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696 since jurisdiction is a pure point of



law that can be raised through a preliminary objection. They argued that the substance of the petition fell outside the purview of a constitutional petition because the petitioners had not exhausted other available mechanisms laid down by statute before moving the constitutional court. They added that the petition seeks to enforce rights falling under the *Land Adjudication Act* and that Section 26 of the *Land Adjudication Act* provided a clear dispute resolution mechanism requiring objections to the adjudication register to be made to the Land Adjudication Officer within 60 days, followed by an appeal to the Minister, if necessary. They averred that the petitioners had not demonstrated that they had exhausted those remedies and it followed that they were invoking the jurisdiction of this court improperly. They urged the court to dismiss the petition.

3. The petitioners submitted that the preliminary objection did not meet the threshold of a preliminary objection. They averred that from the objection, there were disputed facts as to whether or not the adjudication register had been closed. Further, that the doctrine of avoidance or exhaustion does not apply to this case because they are questioning the entire process of adjudication which was conducted and concluded and the register closed. They urged that *the Constitution* gives an individual the right to approach the court for protection of rights which are breached or threatened to be breached. It was their position that the process of adjudication having been closed, this was the only court to protect their rights.
4. The interested parties, John Francis Ngure and Benson Njogu Peter Mwangaria submitted that they are the legal proprietors of Mbeere/Wachoro/642 and 1325 that title deeds were issued to them on 7/10/2019 and 20/4/2017 respectively. They added that the suit land had been the subject of disputes in different courts of competent jurisdiction and that the disputes had been resolved. That the court in Wang'uru ELC Case no. 12 of 2019 granted John Francis Ngure an order of restriction against one of the petitioners in this matter after he proved that he was the registered owner of the land. They were apprehensive of losing their property and sought the court's protection. They invited the court to have regard to Articles 40(2) and (3), 60 and 159(2) of *the Constitution* in making its determination.
5. The issue for determination is whether the preliminary objection has merit. The circumstances in which a preliminary objection may be raised are well settled. A preliminary objection should raise 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.
6. For a preliminary objection to succeed, it must raise a pure point of law that does not require further evidence for its determination. If facts are disputed or require further proof, then the objection cannot be sustained.
7. The respondents' main objection is that this court lacks the jurisdiction to hear the petition. Jurisdiction is a pure question of law that can be raised in a preliminary objection.
8. The petitioners filed the petition on 13/3/2023 seeking several declarations and orders from the court in respect of several parcels of land in Wachoro, Karaba, and Riakanau adjudication sections. Their main contention is that they have been in possession of the disputed land for generations from where they have derived their livelihood. That during the adjudication process in 1978, the Director for Land Adjudication issued allotment letters in respect of the disputed land to people who were not residents, occupants or natives of the land. They also contended that the Director for Land Adjudication had proceeded with the process of registration of the suit lands and issued titles to persons who neither occupied nor neighboured the disputed land.
9. In their petition, they seek a declaration that they are entitled to have their respective land parcels in the specific sections registered in their names and a conservation order to restrain the respondents from



issuing title deeds to persons other than them. They also seek a permanent injunction to restrain the respondents or their agents from interfering with their ownership, occupation, or use of the land, and from issuing titles to other persons or evicting them from the land. They seek cancellation of the titles issued to the interested parties among other parties over the disputed land and a declaration that the registration of land in other persons' names violated the petitioners' constitutional rights under Articles 40, 47, and 61 of *the Constitution*. The other prayer which they seek is a declaration that the land constitutes community land or is held under native title under Article 63 (1) and (2) of *the Constitution* and an order directing the 3rd to 6th respondents to survey, adjudicate, register and issue titles to the petitioners and residents of the adjudication sections in terms of the current settlement patterns.

10. The respondents argued that the petitioners did not exhaust the statutory mechanisms available for resolving their dispute specifically under Section 26 of the *Land Adjudication Act* and that their petition runs afoul of the doctrine of exhaustion or avoidance. Section 26 of the Act provides that any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, stating in what respect he considers the adjudication register to be incorrect or incomplete. The adjudication officer considers any objection made to him under subsection (1) and after further consultation and inquiries as he thinks fit, he determines the objection.
11. Section 26 of the *Land Adjudication Act* provides a clear and mandatory dispute resolution mechanism. Any person aggrieved by the adjudication register is required to lodge an objection with the adjudication officer within sixty days from the date of publication of the notice of completion of the register. The adjudication officer is enjoined to consider such objections and make a determination after any further inquiries as he may deem necessary.
12. It is evident from the material before the court that the impugned adjudication process was concluded long ago making it impractical if not impossible for the petitioners to resort to the procedure prescribed by Section 26 of that Act. The doctrine of exhaustion is not absolute. Courts retain the discretion to intervene where the alternative remedy is unavailable, ineffective, or illusory. (See *Nyaga v Riimi* [2024] KEELC 13270 (KLR)). The doctrine of exhaustion or avoidance is a principle which encourages judicial restraint when parties seek recourse from the courts prematurely where a statutory dispute resolution mechanism exists.
13. The preliminary objection fails and is dismissed. Costs shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 9TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. F. Wanjala holding brief for Ms. E. Onsembe for the Applicant

Ms. NL. Chege holding brief for Mr. J. Kiongo for the Respondents

Ms. Muthoni Njuguna for the Interested Parties

Diana Kemboi- Court Assistant

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