



**Maingi (Suing as Legal Representative of Henry Maingi – Deceased)
v Attorney General & 3 others (Environment and Land Case
E007 of 2020) [2025] KEELC 5181 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5181 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E007 OF 2020**

**JO MBOYA, J
JUNE 25, 2025**

BETWEEN

**JOSEPH KIRUJA MAINGI PLAINTIFF
SUING AS LEGAL REPRESENTATIVE OF HENRY MAINGI – DECEASED**

AND

**THE HON ATTORNEY GENERAL 1ST DEFENDANT
DLASO KIGUCHWA ADJUDICATION SECTION 2ND DEFENDANT
LAND ADJUDICATION OFFICER KIGUCHWA ADJUDICATION
SECTION 3RD DEFENDANT
LAND REGISTRAR 4TH DEFENDANT**

RULING

1. The Plaintiff filed the instant suit vide Plaintiff dated 3rd December 2020; and which was thereafter amended on 3rd November 2022. The amended Plaintiff highlights the following reliefs:
 - i. An order compelling the 1st & 2nd defendants to rectify the adjudication records of land parcel No. 312 Kiguchwa Adjudication Section – Tigania East/ Kiguchwa/294 by reverting to the actual dimension of 17.78 but not 10.93 acres.
 - ii. An order that the 4th Defendant to rectify the Green Card of L.R No. 312 Kiguchwa Adjudication Section Tigania East Kiguchwa/294 to read the actual dimensions of 17.78 acres.
 - iii. Costs of the suit



- iv. Any other relief this Honourable Court may deem fit to grant.
2. The defendants herein duly entered an appearance and thereafter filed a statement of defence dated 15th July 2022. Furthermore, the defendants also filed a notice of preliminary objection dated 15th July 2022 and wherein the defendants contended that the suit beforehand contravenes the provisions of section 30 of the *Land Adjudication Act* Cap 284 Laws of Kenya. In addition, the defendants also contended that the court is devoid of jurisdiction.
 3. The matter herein came up on the 24th May 2025 when learned counsel for the defendants indicated that the preliminary objection had not been heard or disposed of. In this regard, learned counsel for the defendants sought directions as pertains to the hearing and disposal of the preliminary objection.
 4. Arising from the foregoing, the court issued directions to the effect that the preliminary objection be canvassed and or disposed off by way of written submissions. Moreover, the court proceeded and circumscribed the filing and exchange of the written submissions.
 5. The defendants filed written submissions dated 28th May 2025 and wherein the defendant has highlighted two [2] key issues namely; that the court is divested of the requisite jurisdiction to entertain the subject suit; and the suit is barred by the provisions of section 30 (1) of the *land adjudication act*, Chapter 284 laws of Kenya.
 6. Regarding the first issue, learned counsel for the defendants has submitted that the suit property arose from the adjudication process whereby the rights of the parties, the plaintiff not excepted, were determined in the manner prescribed under the act. Furthermore, it was submitted that the *Land Adjudication Act* establishes the mechanisms to be invoked and deployed by any person who is aggrieved by the decisions made thereunder.
 7. Additionally, it was submitted that where a party, the plaintiff herein included, felt that the records and or register of the adjudication was incorrect or did not contain the full details of the claimants property, it behooved the claimant to file an objection within the timelines prescribed under Section 26 of the *Land Adjudication Act*. However, in respect of the instant matter, it was submitted that the plaintiff herein did not lodge and or file any objection as pertains to [sic] the acreage now being adverted to at the foot of the instant suit.
 8. To the extent that the Plaintiff did not raise any issue touching on and or concerning the alleged incorrect acreage, the plaintiff herein is now said to be barred by the provisions of the *Land Adjudication Act* [supra].
 9. Secondly, learned counsel for the defendant has submitted that the instant suit seeks to invite the court to declare that the plaintiff was entitled to 17.78 acres and not 10.93 acres of land. In this regard, it has been posited that the suit touches on and or concerns interests of land under adjudication and hence it was incumbent upon the claimant to seek for and obtain the consent of the land adjudication officer. To this end, learned counsel has cited and referenced the provisions of section 30 (1) of the *Land Adjudication Act*.
 10. Arising from the foregoing, learned counsel for the defendants has invited the court to find and hold that the suit beforehand is misconceived and legally untenable. Furthermore, it has been posited that the court is divested of the requisite jurisdiction to entertain the suit.
 11. The Plaintiff herein was duly served with the written submissions on behalf of the defendants. However, when the matter came up for mention, it transpired that the plaintiff had not filed any written submissions.



12. Having considered the pleadings filed by the parties; having taken into account the preliminary objection and upon consideration of the written submissions on record, I come to the conclusion that the determination of the preliminary objection turns on two [2] key issues namely, whether the suit filed by the Plaintiff contravenes the provisions of section 30 (1) of the *land adjudication act* or otherwise; and whether the court is seized of the jurisdiction to grant the reliefs sought or otherwise.
13. Regarding the first issue, it is worthy to recall and reiterate that the Plaintiff's claim touches on and concerns the true acreage of plot No. 312 Kiguchwa Adjudication Section [now Tigania East/ Kiguchwa/294]. In particular, the plaintiff contends that the land adjudication department failed to correctly capture the true acreage of the suit property. To this end, it has been posited that the suit property ought to have been 17.78 acres but what was demarcated and recorded is shown to be 10.93 acres.
14. Arising from the foregoing, the plaintiff has now contended that the court ought to order and direct the 1st & 2nd defendant to rectify the adjudication record[s] and to [sic] reflect the correct acreage of the suit property as 17.78 acres.
15. What becomes apparent is that the plaintiff herein was aggrieved by the adjudication records and same is now before the court seeking to remedy what is said to be an error. The remedy/rectification [if any] will no doubt impact on the adjudication records and register.
16. To the extent that the actions sought to be taken will affect and or impact on the adjudication register, it was incumbent upon the plaintiff to seek and obtain the consent of the land adjudication officer. To this end, the provisions of section 30 (1) of the *Land Adjudication Act* are mandatory and instructive.
17. For ease of appreciation, the provisions of section 30 of the *Land Adjudication Act* are reproduced as hereunder;

Staying of land suits

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.
18. The significance of section 30 of the *land adjudication act* was elaborated upon by the Court of Appeal in the case of *Ole Pere & another v District Land Adjudication and Settlement Officer, Narok South & 24 others; Pere & another (Interested Parties)* (Civil Appeal 79 of 2019) [2025] KECA 113 (KLR) (24 January 2025) (Judgment) where the court stated and held thus;

Having concluded as herein above, we find no reason to determine the merits or otherwise of the appeal, save to underscore that the failure to obtain consent as required by Section 31 (1) of the *Land Adjudication Act* was fatal to the appellants' case because the mandatory requirements of the said Section cannot be cured by filing a constitutional petition as happened in this case.

19. Additionally, the Court of Appeal also addressed the import of section 30 (1) of *Land Adjudication Act* in the case of *Benjamin Okwaro Estika v Christopher Antony Ouko & another* [2013] eKLR

That being so, the mandatory requirements of Section 30 (1) had to be complied with i.e consent of the Land Adjudication Officer had to be obtained before filing a case in respect



of a dispute on land in that adjudication section or before the court could be clothed with jurisdiction to hear it.

20. My answer to issue number one [1] is to the effect that the suit beforehand is not competent in so far as the requisite consent was neither procured nor obtained before same was filed. In this regard, the Plaintiff is non-suited on the basis of section 30 of the *Land Adjudication Act* Cap 284 Laws of Kenya.
21. Turning to the second issue, it is important to observe that the crux of the plaintiff's case touches on and concerns rectification of the adjudication records/register as pertains to the acreage of the suit property. There is no gainsaying that if the plaintiff was aggrieved by the acreage recorded against the suit property, same [plaintiffs] was obligated to lodge an objection seeking to remedy the errors [if any] contained in the adjudication records. Furthermore, it is crystal clear that such objections [if any] ought to have been filed within 60 days from the date of publication of the register of the adjudication office.
22. To be able to appreciate the manner in which a person aggrieved by the adjudication records/register is expected to challenge such register, it is imperative to take cognizance of the provisions of Section 26 of the *Land Adjudication Act*.
23. The said section stipulates thus;

Objection to the adjudication register

- (1) 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, saying in what respect he considers the adjudication register to be incorrect or incomplete.
- (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.

26A. No Objection Register

- (1) When the time for objection under section 26(1) has expired, the adjudication officer shall prepare a No Objection Register in respect of any land not subject to an objection, and deliver the same to the Director of Land Adjudication who shall—
 - (a) certify thereon and on the duplicate adjudication register that the adjudication of the land set out therein has become final; and
 - (b) forward the No Objection Register, together with a copy of the duplicate adjudication register to the Chief Land Registrar for the purpose of registration under section 28.
2. The provisions of this section shall apply to all adjudication registers not yet finalized before its commencement.

24. Suffice it to state that the Plaintiff herein was called upon to comply with the provisions of section 26 (1) of the *Land Adjudication Act*. Where no objection was lodged, the land adjudication officer was obliged to proceed forward and finalize the records pertaining the various/designated landed properties. In



this regard, it suffices to underscore that the acreage of the suit property was certified and thereafter recorded.

25. Having been so recorded, it was taken that the Plaintiff had no objection. Consequently, the said acreage cannot now found and or form a basis for filing a suit. In any event, there is no gainsaying that the court would not be seized of the requisite jurisdiction to engage with the question pertaining to the correctness or otherwise of the adjudication record, which was neither challenged nor impeached in accordance with the statutory prescription. Simply put, the issues being raised by the Plaintiff are issues that ought to have been dealt with by way of objection[s] or appeal and not otherwise.
26. In the premises, I hold the humble view that the court is divested of the requisite jurisdiction to entertain the subject suit and or grant the reliefs sought. Suffice it to state that where a court is divested of jurisdiction, the court is obligated to down its tools.
27. In any event, there is no gainsaying that any proceedings undertaken by a court without jurisdiction and any orders made therefrom are null and void. [See *Owners of Motor Vessel Lillian "S" vs Caltex Oil Kenya Ltd* (1989) eKLR; *in the matter of interim independent electoral commission* (2011) eKLR; *Phoenix of East Africa Assurance Co. Ltd vs S.M Thiga T/A Newspaper Services* (2019) eKLR; *Kenya Ports Authority vs Modern Holdings East Africa Ltd* (2018) eKLR and *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others* (Civil Appeal 656 of 2022) [2023] KECA 80 (KLR) (3 February 2023) (Judgment) – paragraph 41].

Final Disposition

28. Flowing from the analysis contained in the body of ruling, I come to the conclusion that the suit by the Plaintiff is incompetent. Furthermore, there is no gainsaying that the court is devoid of jurisdiction to grant the reliefs sought.
29. Consequently, and in the premises, the final orders of the court are as hereunder;
 - i. The Preliminary objection dated 15th July 2022 be and is hereby allowed.
 - ii. The Plaintiff's suit be and is hereby struck out.
 - iii. Costs of the suit and the preliminary objection be and are hereby awarded to the Defendant[s].
 - iv. The costs in terms of clause (iii) shall be agreed upon and in default same to be taxed by the Deputy Registrar.
30. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF JUNE 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI].

JUDGE

In the presence of:

Mr. Mutuma - Court Assistant.

Ms. Miranda for the Defendants

No appearance for the Plaintiff

