



**Chindoro & 20 others v Sub-County Land Adjudication & Settlement Officer, Kinango Sub-County & 2 others (Environment and Land Case E019 of 2025) [2025] KEELC 6410 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6410 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE E019 OF 2025  
LL NAIKUNI, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**KOMBO KULALA CHINDORO & 20 OTHERS & 20 OTHERS ..... PLAINTIFF**

**AND**

**SUB-COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER,  
KINANGO SUB-COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR KWALE COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**GURIRO LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. The Honourable Court was tasked to make a determination unto a Notice of Motion application dated 6<sup>th</sup> March, 2025. It was brought by Plaintiffs/Applicants herein pursuant to the provisions of Sections 1A, 1B, 3A and 63 (c) and (e) of the Civil Procedure Act, Cap. 21, Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules, 2010.
2. Upon service, the Defendants/Respondents filed replies in form of Replying Affidavit. Further, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents herein raised an objection by filing a Notice of Preliminary objection dated 2<sup>nd</sup> April 2025. As a matter of precedence, the Honourable Court will deal with it accordingly.

**II. The Plaintiffs/Applicants case**

3. The Applicants sought for the following orders: -
  - a. Spent.



- b. That the Honourable Court be pleased to issue an injunction restraining the Defendants, their servants and or agents from titling or transferring or in any other way alienating the properties known as Gandini Adjudication Scheme Plot Nos 1167, 738, 707, 1152, 780, 1154, 1587, 121, 982, 1452, 753, 939, 1443, 612, 977, 577, 1220, 102, 979, 1050, 776, 984, 752 and 944 pending the hearing and determination of this application and suit.
  - c. That the Honourable Court pleased to make a declaration that the properties belong to the Plaintiffs absolutely.
  - d. That costs of the application be provided for
4. The application was premised on the grounds, testimonial facts and the averments made out under the 16 Paragraphed sworn by Kombo Kulala Chindoro, the 1<sup>st</sup> Plaintiff/Applicant herein. He averred that:-
- a. He was the 1<sup>st</sup> Plaintiff/Applicant herein and had been authorised alongside Mwanjeje Kulala Chindoro and Bati Ngao Bati to institute this suit on behalf of the Plaintiffs/Applicants.
  - b. The Plaintiffs/Applicants had been long term residents of Gandini Kinango Sub County which area had initially been occupied by their forefathers.
  - c. Sometimes in the years 2014 - 2015, the Government as part of its mandate to settle citizens and issue them with title deeds carried out an adjudication exercise in Gandini and the area under the adjudication referred to as the Gandini Adjudication Section.
  - d. At paragraph 5 the Deponent listed the plots as shared out among the Plaintiffs. However, sometimes in the years 2021 - 2022 as the residents were awaiting processing of their titles, it was noticed that some of the residents and who were the Plaintiffs/Applicants herein had been dispossessed their parcels and the titles issued in the name of the 3<sup>rd</sup> Defendant/Respondents.
  - e. The 1<sup>st</sup> Defendant/Respondent was approached by the Plaintiffs/Applicants for confirmation of the status of the plots but the said 1<sup>st</sup> Defendant/Respondents failed to grant the said parties audience. The Plaintiffs/Applicants maintained that they were fearful of losing their plots and hence the instant suit and application before court.
  - f. In the event the orders sought were not granted, the titles to the Plaintiffs/Applicants plots would come out in the names of the 3<sup>rd</sup> Defendant/Respondent and hence the necessity in maintaining the status quo as is on the ground.

### III. Grounds of Opposition

5. The 3<sup>rd</sup> Defendant, Guriro Limited further opposed the Notice of Motion application dated 6<sup>th</sup> March, 2025 by the Plaintiffs on the following grounds that:-
- a. The Application never satisfied the conditions for grant of an injunction as it never disclosed a reasonable cause of action.
  - b. The Supporting Affidavit to the Application was incurably defective in law as it contained hearsay material and ought to be struck out.
  - c. The Application was scandalous, frivolous, vexatious and/or otherwise an abuse of the process of the Court.



- d. It was stated that these grounds of Opposition would be supported by the sworn affidavit of Emmah Wanjiru Waigwa and further reasons to be adduced at the hearing of the Application.

#### **IV. Response by the 3<sup>rd</sup> Defendant/Respondent**

6. On 29<sup>th</sup> April 2025, the 3<sup>rd</sup> Defendant filed an 11 Paragraphed Replying Affidavit sworn by Emma Wanjiru Waigwa on behalf of the 3<sup>rd</sup> Defendant herein in opposition of the application. She stated as follows that: -
- a. She was employed by the Defendant/Respondent Company as the Personal Assistant to the Managing Director/Chief Executive of the Defendant/Respondent Company who had given her express authority to swear the affidavit.
  - b. The deponent in the supporting Affidavit over the instant application never disclosed identities of the complainants nor the identities of the individuals or persons who allegedly noted the aforesaid complaints nor the identities of the alleged residents who had been duly identified as the alleged recipients of certain portions of land allegedly allocated to them and whose alleged land had allegedly, been disposed and whose alleged titles to their alleged properties had allegedly come out in the 3<sup>rd</sup> Defendant's/Respondent's name.
  - c. The 3<sup>rd</sup> Defendant/Respondent had not received any complaints from any resident of Gandini during the period of the years 2021 - 2022 or at any time whatsoever, neither did it hold any title deed or deeds from any disposed person or persons nor does it hold any title or title deeds which came up in its name's allegedly from disposed person or persons.
  - d. The 3<sup>rd</sup> Defendant/Respondent was unaware that any person or persons were allegedly dismayed at any allegedly development of allegedly impropriety alleged on its part concerning any alleged plots in Gandini nor was the 3<sup>rd</sup> Defendant/Respondent aware that any such alleged persons allegedly lodged any complaint against it in the Adjudication Office, Kinango Sub - County.
  - e. The Kinango Sub - County Land Officer was an employee of the Government and as such works as an independent of the 3<sup>rd</sup> Defendant/Respondent and in any case the holder of the office was not accountable to the 3<sup>rd</sup> Defendant/Respondent.
  - f. There existed no scheme whatsoever between the 3<sup>rd</sup> Defendant/Respondent and the 1<sup>st</sup> Defendant/Respondent or anyone else for that matter allegedly hatched to allegedly cause title deeds allegedly to be issued to the 3<sup>rd</sup> Defendant/Respondent without due process.
  - g. It was deposed that the 3<sup>rd</sup> Defendant/Respondent was unaware of any on goings on inside the Lands Office, Kwale County respecting the properties of the Plaintiffs.
  - h. Further that the alleged apprehension averred in Paragraph 12 was misplaced and unfounded as the 3<sup>rd</sup> Defendant/Respondent was neither involved in the process of title deed issuance nor had the Plaintiffs/Applicant linked the 3<sup>rd</sup> Defendant/Respondent in any way whatsoever to their apprehension nor did the 3<sup>rd</sup> Defendant/Respondent intend upon 'impending to take over" the alleged properties of the Plaintiff or any other person whatsoever without legally binding due process.
  - i. The 3<sup>rd</sup> Defendant/Respondent was in no position to influence the 1<sup>st</sup> Defendant/Respondent to register the alleged properties of the Plaintiffs/Applicant in any other persons' names other than the Plaintiffs/Applicants themselves.



- j. Lastly, the 3<sup>rd</sup> Defendant/Respondent had not done any illegal thing to warrant an Injunctive order against it.

## V. Preliminary Objection by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

7. While opposing the Notice of Motion application dated 6<sup>th</sup> March, 2025 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants raised a preliminary objection on points of law. These were on the grounds that:
  - a. This Honourable Court has no jurisdiction to determine the issues raised in the suit and the Application by dint of the provision of Article 159 of *the Constitution* of Kenya, 2010 as read with the provision of Section 30 of the *Land Adjudication Act*, Cap. 284 Laws of Kenya. (Hereinafter referred to as “The Act”).
  - b. Both the suit and the Application were premature as the Plaintiffs/Applicants had failed to exhaust the mandatory internal dispute resolution mechanisms available under the provision of Sections 13 to 29 of the *Land Adjudication Act*, Cap. 284 Laws of Kenya.
  - c. Both the suit and the Application offended the doctrine of exhaustion.
8. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants prayed that the Plaintiffs' suit be dismissed with costs.

## VI. Submissions

9. On 29<sup>th</sup> May 2025 the Honourable Court in the presence of Learned Counsel for both parties gave directions on the disposition of the preliminary objection dated 2<sup>nd</sup> April 2025 by way of written submission. A date for ruling was set for 31<sup>st</sup> July 2025. However, at the time of preparing this ruling only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submissions were on record having complied. Eventually, the ruling was delivered on 23<sup>rd</sup> September, 2025 accordingly.

## VII. The Written Submissions by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

10. The submissions were made in support of the Preliminary Objection dated 2<sup>nd</sup> April, 2025 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The submissions were dated 11<sup>th</sup> June 2025. The Leaned Counsel started by stating that the grounds listed in the preliminary objection as already captured above herein in this ruling.
11. On whether the Court has Jurisdiction to determine the suit herein. The Learned Counsel submitted that this Honourable Court has no jurisdiction to entertain the suit as against the Respondent for offending the doctrine of exhaustion. On this issue, the Counsel referred to the dictum in the celebrated case of: “Owners of the Motor Vessel “Lilian S” – Versus - Caltex Oil Kenya Limited (1989) KLR” the Court held: -

“Jurisdiction is everything without it a court has no powers and where the court has no jurisdiction there is no need to continue the proceedings.”

12. According to the provision of Section 30 (1) and (2) of the *Land Adjudication Act*, Cap. 284 are explicit on staying of land suits and provide as follows:-
  - “(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."

13. The Counsel submitted that the Gandini Adjudication section was declared on 26<sup>th</sup> February, 2014. The process of the adjudication then commences from the composition of the register. Once the register has been completed, it is published and displayed for a 60 days' inspection period so that everyone gets an opportunity to challenge an entry or an omission therein as per the provisions of Section 26 of the Act.
14. Therefore, pursuant to the provision of Section 30, this court lacks jurisdiction to entertain both the suit and the Application until the adjudication register for Gandini had been completed. Further, the Act had mandatory internal dispute resolution mechanisms as pertained in the provision of Sections 13 to 29.
15. The Learned Counsel averred that the Plaintiffs first port of call should have been the procedure for dispute resolution as espoused in the Act. The provision Section 30 of the Act was clear that no action shall be instituted 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 had become final in all respects under the provision of Section 29 (3) of Act which deals with Appeals.
16. The Counsel made reliance was placed on the case of:- "Joseph S Tootio & 12 others – Versus - District Land Adjudication Section and Settlement Officer, Narok South & 24 others; Nitiangau Ole Nkoyo & 30 others [2021] KEELC 2622 (KLR)". In the case of:- "Justus Ntuiti – Versus - Mwirichia Kaumbuthu (2004) eKLR" Onyancha J considered the application of Sections 29 and 30 of Act and observed as follows:-

"The way I understand (section 30) is that no person shall institute a Civil Case in court and no court shall entertain a case with an interest in a place of land in a Section which has been declared an adjudication section under Section 5 of the Act Except with the consent of the adjudication officer or until the adjudication record has been declared finalized."
17. Further, he cited in case of:- "Kilusi Julius Sile & 60 others - Versus - Chairperson, Oloirien Adjudication section "B" Committee & 3 Others (2016) eKLR" Mutungi J held that: -

"It is patently clear that the courts have held they have no jurisdiction to deal with a dispute where the process of adjudication is ongoing unless the adjudication officer has under Section 30 (1) of the Act given his consent for the party to institute court proceedings. No Page 2 of 4 such consent was granted by the Adjudication Officer to the petitioners to enable these proceedings to be brought. In the present matter there is no doubt that the process of adjudication is ongoing and that the Adjudication register has not been closed and/or published. The court in the premises cannot properly get seized of this matter. It lacks jurisdiction to deal with the matter.":
18. The Learned Counsel averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fully associate themselves with the sentiments of the authorities quoted above and wished not to belabour on the point. The court was asked to dismiss that application and suit with costs.



## VIII. Analysis and Determination

19. I have carefully assessed and considered all the filed pleadings herein, the evidence adduced from the said pleadings, the written submission by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents on record, the authorities cited herein, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
20. This Honourable Court will still examine the facts [as they currently are] of the case and in order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court have three [3] issues for its determination. These are: -
  - a. Whether the Preliminary Objection dated 2<sup>nd</sup> April, 2025 meets the threshold of an objection by the Law and Precedents.
  - b. Whether the preliminary objection dated 2<sup>nd</sup> April, 2025 by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents is merited.
  - c. Who bears the costs of the preliminary objection?

### **Issue No. a). Whether the Preliminary Objection dated 2<sup>nd</sup> April, 2025 meets the threshold of an objection by the Law and Precedents.**

21. The threshold of a preliminary objection was set out by the Court of Appeal in the case of: “Mukisa Biscuit Manufacturing Co. Limited – Versus - West End Distributors Limited (1969) EA 696” as follows:-

“...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 objection may dispose of the suit.”
22. The Court went further to note that: -

“A preliminary objection is in 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop”.
23. Likewise, the Court in the case of: “Oraro – Versus - Mbaja [2005] eKLR 141”, on the nature of preliminary objections observed that:-

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and 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. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection 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.”



24. The preliminary objection in this matter is founded on the notion that the Plaintiffs herein have failed to exhaust the dispute resolution mechanism under Section 30 of the *Land Adjudication Act* and as such the suit is unmerited having been instituted in a court devoid of jurisdiction to hear and determine it. The said section provides that: -

- “(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. [Rev. 2012] Land Adjudication CAP. 284 L5 - 17 [Issue 1].
- (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.
- (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.”

25. From the foregoing it is clear that the issue of jurisdiction is an issue of law and as such the preliminary objection is merited. I have perused the plaint instituting this suit, at paragraph 6 of the same, the Plaintiffs state that sometime in the years 2014-2015 the government as part of its mandate to settle its citizens issued them with title deeds after carrying out an adjudication exercise in Gandini under the Gandini Adjudication Section.

**Issue No. b). Whether the preliminary objection dated 2<sup>nd</sup> April, 2025 by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/ Respondents is merited.**

26. Under this sub heading, the Honourable Court will endeavor to examine whether the preliminary objection raised has any merit or not. The gist of the preliminary objection is that the consent of the Land Adjudication officer was not obtained prior to the filing of these proceedings. It was also averred that the Plaintiffs were the owners of the plots listed in the prayers in the Notice of Motion application and further to the Paragraph 7 of the Plaint. That while awaiting processing of titles they were shocked to learn that their plots had been allocated the 3<sup>rd</sup> Defendant and they had thus been dispossessed. That efforts to engage the 1<sup>st</sup> Defendant in resolving the issue have proved futile and hence necessitating the suit and application before court.

27. Legally speaking, the Act was assented on 26<sup>th</sup> June, 1968 and its commencement date was 28<sup>th</sup> June, 1968. The Act is the law that governs provides a framework for the ascertainment and recording of land rights and interests in Trust land. It outlines the procedures for identifying and registering land ownership, particularly within adjudication areas, to ensure clarity and security of land tenure. The main purpose of the Act is to formally recognize and document land ownership within designated areas; to resolve disputes related to land ownership and boundaries; to create a clear and legally recognized record of land rights for individuals and groups within the adjudicated section. All these processes concerning land under the adjudication regime provides for lodging of complaints where more than one person lays a claim to a specific parcel of land.

28. The preamble of the Act holds that it was to deal with all matters of the land adjudication and the persons who are ordinarily residents of the delineated adjudication section. From the very onset,



the Honourable Court strongly and proudly so holds that this is one of those few legislation on land matters in Kenya that has such a well elaborated and established internal dispute resolution mechanisms. From the provisions of Sections 1 to 30 of the Act, it provides for the declaration of the adjudication are by the Minister for Lands (Sections 3 & 5); the appointment of the Land Adjudication Committee comprising of elders appointed from within the area (Section 6); composition of the adjudication register comprising of person who are ordinarily residents of the area based on birth, tribe, clan or customary lineage ,the demarcation and allocation; the appointment of the Arbitration Board (Section 7); the claims and attendance (Section 13); the process of demarcation, allocation of interests and rights to land and preparation of the records and register (Sections 14 to 25); raising of objections to adjudication register (Section 26); Finalisation of the adjudication register (Section 27) and action by the Chief Land Registrar – issuance of title deeds to the registered members (Section 28) and then Appels (Section 29). Based on the above, therefore, the registered person in the adjudication register and the area list, have the rights and interests go through the process of adjudication. These includes ascertainment and registration of the said rights and interests. The process culminates in the issuance of the title deed.

29. It bears such elaborate mechanisms for resolving land dispute through well established “Quasi – Judicial” legal structures. These include, the Adjudication Committees, Arbitration Board. The disputes are in form of objections raised by an aggrieved party. The provision of Section 19 (2) and (3) of the Act states as follows:-

“(2) If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide. (3) The recording officer shall rectify the forms in accordance with any decision which the adjudication officer, the committee or the board may make in accordance with this Act.”

30. A party dissatisfied with the decision of the Adjudication Committee may prefer the dispute to the Arbitration Board for determination under the provision of Section 21 (3) of the Act which provides that: -

“ Any person named in or affected by a decision of the committee who considers the decision to be incorrect may, within fourteen days after the decision, complain to the executive officer of the committee, saying in what respect he considers the decision to be incorrect.”

30. The Appeal lodged before the Minister under the provision of Section 29 of the Act. It provides that the decision by the Minister is final. The provision of Section 29 of the Act provides that: -

“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— delivering to the Minister an appeal in writing specifying the grounds of appeal; and 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”.

31. Therefore, it is expected that the disputes should end there. However, arising from the operation of the Act, a party may only move High Court under two grounds. Firstly, whereupon there has been a



violation or threat or breach of the fair administration action in the process of the hearing the Appeal by the Minister. For instance, an aggrieved party may seek for prerogative writs in form of Judicial Review in form of “Certiorari”, “Mandamous” or “Prohibition” under the common law as provided for under Sections 8 and 9 of the Law Reforms Act, Cap. 26 and Order 53 of the Civil Procedure Rules, 2010 and in the recent development of jurisprudence as provided for in the omnibus provision of the Articles 22, 23 and 47 of the Constitution of Kenya, 2010 and “The Fair Administrative Act No. 4 of 2015”.

32. Secondly, the other way to seek legal remedy by an aggrieved party emanating from the land adjudication process as stipulated from the Act, is through the provision of Section 30 of the Act. It provides that: -

- “(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. [Rev. 2012] Land Adjudication CAP. 284 L5 - 17 [Issue 1]. (Emphasis is mine).
- (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.
- (3) .....

33. To support the Court on this legal position, I seek refuge from the case of: “Mohamed Ahamed Khalid (Chairman) and 10 others –versus-Director of Land Adjudication & 2 others (2013) eKLR where Angote J held: -

“The law that was applicable for the ascertainment of land rights and interests over trust land is the Land Adjudication Act Cap 284. The said Act has an elaborate mechanism of appeal in the event an individual is aggrieved by the decisions of the land adjudication and settlement officer, the land adjudication committee, the land arbitration board and the Minister’s appeal committee. Indeed, before the Director signs the certificates of finality, the Land Adjudication Act provides that the adjudication register must be published which shall be followed with the hearing, determination and implementation of objections in respect to the Adjudication register. The Petitioners have not shown by way of evidence that the adjudication register in respect of the suit property was ever published and that they raised objections in respect to the matter in which the adjudication process was carried out. Considering that the Land Adjudication Act, Cap. 284 has an elaborate procedure on how complaints arising from the planning, demarcation and surveying of Trust Land are supposed to be dealt with, it is my view that this court cannot substitute the established bodies which are supposed to deal with these complaints. The Petitioners can only move this court for declaratory orders and judicial review orders, or by way of an ordinary suit, once they have exhausted the mechanisms that the law has put in place.”



34. Similarly, the Court of Appeal in the case of:- “Speaker of National Assembly -Versus- Karume (1992) KLR 21” held that: -

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly be adhered to since there are good reasons for such special procedures.”

35. Further, in the case of:- “International Centre of Policy and Conflict & 5 Others – Versus - The Attorney General & 4 Others [2013] eKLR” as was cited in the case of “Diana Kethi Kilonzo & Another – Versus - IEBC & 10 Others [2013] e KLR” it was stated: -

“An important tenet of the concept of the rule of law is that this court before exercising its jurisdiction under Article 165 of *the Constitution* in general must exercise restraint. It must first give an opportunity to the relevant constitutional bodies or state of organs to deal with the dispute under the relevant provision of the parent statute. If the court were to act in haste, it would be presuming bad faith or inability by that body to act. ...Where there exists sufficient and adequate mechanism to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanisms have been exhausted”

36. On further regard to the provision of Section 30 ( 1 ) of the Act, I have noted the interpretation of the Court Appeal in respect of when the consent should be sought in the case of:- “Bhaijee & another – Versus - Nondi & another (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment).” It is to the effect that the consent is condition precedent and must predate the filing of the intended suit.

37. The other limb of the objection raised is based on the principle of exhaustion. It is contended that the jurisdiction of this court has been wrongly and prematurely invoked in relation to issues for which specific and exclusive procedures have been prescribed. The court is aware of the numerous court decisions where it has been held that where there are existing mechanisms provided under statute for resolution of disputes then this must be exhausted. See the Supreme Court of Kenya holding in the case of “Bernard Murage -Versus - Fine Serve Africa Limited & 3 others [2015] eKLR.

38. The superior courts have in various decisions, including the Court of Appeal in “Watuku Mutsiemi Watuku & Another – Versus - Republic & 5 Others” and this court in “Onesmus Daniel Masumbuko & Others – Versus - Augustino Baya Thoto [2019] eKLR”, held that the Minister’s decision is final and not amenable for appeal to this court, unless when moved through invoking the court’s judicial review jurisdiction.

39. With the above in mind, I wish to refer to the Supreme Court of Kenya dictum in the case of: “Benard Murage – Versus - Fine Serve Africa Limited & 3 others [2015] eKLR” where the apex court explained the importance of the doctrine of exhaustion of remedies in the following words:

“Where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first.”



40. The doctrine was aptly captured by the Court of Appeal in the case of “Republic – Versus - National Environment Management Authority Ex - Parte Sound Equipment Limited”, where the Court of Appeal observed: -

“ ... Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it ...”

41. Further in the case of “Speaker of the National Assembly – Versus - James Njenga Karume [1992] eKLR”, where the Court of Appeal held that: -

“... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”

42. When tasked with determining issues on jurisdiction similar to the ones in the present suit, Okongo J. commenting on the role of the Court vis-a-vis that of the adjudicating bodies under the Act, in the case of:- “Tobias Achola Osindi & 13 others – Versus - Cyprian Otieno Ogalo & 6 Others [2013] eKLR, held as follows:-

“The whole process leading up to the registration of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act...The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. .... The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot, however, usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in the land...”

44. Thus, in view of the fore going, I strongly discern that this Court lacks the jurisdiction to entertain this matter and hence the suit must be struck out.

#### **Issue No c). Who will bear the costs of the objection**

45. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of the legal action and the proceedings of any litigation. The



provision of Section 27 ( 1 ) of the Civil Procedure Act, Cap. 21 holds that costs follow the event. By the event it means the result or outcome of the legal action.

46. In the instant, taking all the prevailing circumstances and the facts of the case, it is just fair and reasonable that each party bear their own costs.

#### **IX. Conclusion & Disposition**

47. From the foregoing, I will not belabour much into the reasons why the suit is prematurely before court. The issue has been ably outlined above. Thus, I proceed to grant the following specific orders:-
- a. That the Notice of Preliminary Objection dated 2<sup>nd</sup> April, 2025 be and is hereby sustained.
  - b. That it follows that the suit is hereby struck out as it has violated the principles of the doctrine of exhaustion.
  - c. That each party to bear its own costs.

It is ordered accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025**

.....

**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT AT KWALE**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Njeru Advocate for the Plaintiff/Applicant.
- c. M/s. Nzau Faith Advocate holding brief for M/s. Mwanaszumba Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/ Respondents.
- d. Mr. Olaba Advocate for the 3<sup>rd</sup> Defendant/Respondent.

