



**Munene v Kenya Railways Corporation (Environment and Land Case E054 of 2024) [2025] KEELC 6175 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6175 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E054 OF 2024  
SM KIBUNJA, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**MARIAM MWENDE MUNENE ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... DEFENDANT**

**RULING**

1. The defendant filed a notice of preliminary objection dated 24th February 2025 raising six (6) grounds that can be summarised into two (2) grounds, firstly that the suit is about encroachment which is strictly a boundary issue which ought to be dealt by the Land Registrar according to section 18 (2) of the *Land Registration Act* No. 3 of 2012; and secondly, that the suit was prematurely filed in court before the plaintiff could exhaust the other available avenues of dispute resolution, and therefore, this court lacks jurisdiction. The court issued directions on filing and exchanging submissions on the preliminary objection on the 5<sup>th</sup> March 2025, and subsequently, the learned counsel for the defendant filed his dated the 4<sup>th</sup> May 2025, which I have considered.
2. Despite plaintiff being served with the notice of preliminary objection as evidenced by the affidavit of service sworn by Josiah Nyamache on 4<sup>th</sup> March 2025, the plaintiff failed to file a reply or submissions
3. The issues for determinations by the court in the notice of preliminary objection are as follows:
  - a. Whether the suit was prematurely filed in court.
  - b. Whether this court has jurisdiction to hear and determine this suit.
  - c. Who bears the costs of the suit?
4. After meticulous consideration of the pleadings, notice of preliminary objection and the able submissions by counsel for the defendant, the court has come to the following determination:



- a. A notice of preliminary objection was described in the case of dMukisa Biscuit Manufacturers Ltd versus Westend Distributors Limited [1969] E.A 696 where Law, JA stated that;

“...so far as I am aware, 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. 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.”

Newbold, JA set out the remit upon which preliminary objections would be founded as follows;

“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”.

There is no rebuttal presented to the defendant’s contention that the grounds on the notice of preliminary objection are pure points of law, and I agree that the twin issues of exhaustion and the jurisdiction of this court, qualifies as pure points of law.

- b. That jurisdiction is a point of law has been stated and restated ad nauseam in several superior courts decisions, including in the most famous one of Owners of the Motor Vehicle M.V. Lillians versus Caltex Oil (Kenya) Limited (1989) KLR1. At page 14 line 29-43 where Nyarangi JA had this to say:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by the like mean. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the action and matters of which the particular court has cognizance of or as to the area over which the jurisdiction shall extend; or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal including an arbitrator depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction but except where the court or tribunal has been given power to determine conclusively whether the fact exists where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision a merit to nothing. Jurisdiction must be acquired before judgment. It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Facts constitute the evidence before the court...The moment a court determines that it has no jurisdiction it has to down its tools and proceed no further”

- c. The defendant alleges that the suit is a boundary dispute which first ought to been presented and determined by the Land Registrar. The court has perused the plaint dated 27<sup>th</sup> May 2024 and the averment in paragraphs 3 to 12 do not support the defendant’s contention that the



dispute is over a boundary dispute. The plaintiff inter alia pleaded that she is, and was the owner of the house on plot MN/VI/783/R, the suit property, that had been allegedly compulsorily acquired by the defendant for purposes of constructing the Standard Gauge Railway, and was to be compensated. That without notice, or compensation being paid, the defendant started to unlawfully demolish the house, hence interfering with the plaintiff's rights and quiet possession, and refused to stop the illegal actions despite being asked to, and hence this suit. The plaintiff has relied on gazette notice No. 14037 dated 11<sup>th</sup> November 2022, that is attached to the plaintiff's list of documents dated 27<sup>th</sup> March 2024.

- d. It is clear from the averments on the plaint that the plaintiff's dispute with the defendant is about her entitlement to compensation for the house on the land that was compulsorily acquired by the defendant. Whether that allegation is true or not has to wait for evidence to be taken during the trial process. It is trite that compulsory acquisition disputes are under the domain of this court as provided under section 13 (2) (b) of the *Environment and Land Court Act* chapter 8D of Laws of Kenya and section 128 of the *Land Act* No. 6 of 2012. The defendant's claim that the plaintiff's suit is about a boundary dispute therefore fails, and the preliminary objection on both grounds of exhaustion and jurisdiction is thus dismissed.
  - e. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where there is a good reason to find differently. Though the defendant has failed in the preliminary objection, no costs will be awarded as the plaintiff did not participate in its hearing.
5. From the foregoing determinations on the defendant's notice of preliminary objection dated 24<sup>th</sup> February 2025, the court finds and orders as follows:
- a. That said notice of preliminary objection is without merit and is rejected in its entirety.
  - b. There will be no orders as to costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the Presence of:

Plaintiff : No Appearance

Defendant : Mr. Nyamache

Shitemi-court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

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