



Mwandaa & another v Land Registrar of Taita Taveta & another (Environment and Land Case E012 of 2025) [2025] KEELC 6285 (KLR) (Environment and Land) (24 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6285 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E012 OF 2025
EK WABWOTO, J
SEPTEMBER 24, 2025**

BETWEEN

BENJAMIN MWANDAA 1ST PLAINTIFF

JULIUS KAMWERU CHONGO KALUSHA 2ND PLAINTIFF

AND

LAND REGISTRAR OF TAITA TAVETA 1ST DEFENDANT

COUNTY GOVERNMENT OF TAITA TAVETA 2ND DEFENDANT

RULING

1. While two sets of Notices of Preliminary Objection were filed herein, the first one being the 2nd Defendant's Notice of Preliminary Objection dated 9th July 2025 and the 1st Defendant's Preliminary Objection dated 10th July 2025 both challenging the jurisdiction of this court, the court upon issuing its directives directed the parties to proceed with the 2nd Defendant's objection dated 9th July 2025 which now forms the basis of this Ruling.
2. The said objection was premised on the following grounds:-
 - i. That this Honourable Court lacks jurisdiction to hear and determine the suit dated 25th June 2025 for it offends the provisions of Sections 39, 40, 41 and 42 of the [Community Land Act](#), cap 287 Laws of Kenya.
 - ii. That the Plaintiffs have not exhausted the remedies set out in Sections 39, 40, 41 and 42 of the [Community Land Act](#), Cap 287 Laws of Kenya.
 - iii. That the current suit offends the doctrine ripeness and is yet materialized into a concrete legal issue requiring judicial any intervention.



3. Pursuant to the directions issued by this court parties were directed to file written submissions and also granted an opportunity to highlight the same.
4. The 1st and 2nd Defendants made arguments in support of the objection while the Plaintiffs contested the same.
5. It was the 2nd Defendant's contention that the court does not have jurisdiction to hear the suit in view of the provisions of Section 39, 40, 41, 42 of the [Community Land Act](#) and further that the suit offends the doctrine of ripeness since the dispute is yet to materialize into a concrete legal issue requiring judicial intervention.
6. The 2nd Defendant also filed written submissions dated 15th July 2025 which were made in support of the Preliminary Objection.
7. The objection was opposed by the Plaintiffs vide their oral submissions made before court and written submissions dated 22nd July 2025.
8. In referring to Section 39 of the [Community Land Act](#), the Plaintiffs further submitted that the same only applies where there is a dispute between registered communities involving community land which is not the case herein.
9. Having considered the objection and submissions made by the parties, the main issue for consideration is whether the 2nd Defendant's preliminary objection is merited.
10. Article 60(1)(g) of the [Constitution](#) of Kenya states as follows:-
 - “(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles –
 - (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.”
11. Article 159(2) (c) of the [Constitution](#) of Kenya 2010 provides that:
 - “(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles – (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause (3)”
12. Section 39 of the [Community Land Act](#) Cap. 287 Laws of Kenya provides that:
 - “(1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.
 - (2) Any dispute arising between members of a registered community, a registered community and another registered community shall at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.



- (3) Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.
- (4) Subject to the provisions of the Constitution and of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.”

13. Section 40 of the Community Land Act states as follows:

- “(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to mediation.
- (2) The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement.
- (3) The mediator shall have the power to bring together persons to a dispute and settle the dispute by-
- (a) convening meetings for the hearing of disputes from parties and keep record of the proceedings;
 - (b) establishing ground rules for the conduct of parties; structuring and managing the negotiation process and helping to clarify the facts and issues; and (c) helping the parties to resolve their dispute.
- (4) If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.”

14. Section 41 of the Community Land Act states as follows:

- “(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration.
- (2) Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act (Cap.49) relating to the appointment of arbitrators shall apply.”

15. Section 42 of the Community Land Act provides that:

- “(1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.
- (2) The court may –
- (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or
 - (b) make any order in connection therewith as it may deem fit.”



16. In the instant suit it is evident that the Plaintiffs tried to engage the 1st Defendant prior to the filing of this suit with a view of settling the matter amicable but the same was not successful.
17. The provisions of Section 39 to 42 are clear as they ought not to be used to hinder access to justice but to facilitate the same and further the same can only be applicable as to a registered community, members of a registered community and another registered community.
18. Bearing the said provisions in mind, it is the view of this court that where a party invokes a provision of a statute that is limited to its scope and applicability, the court cannot use the same to summarily dislodge a party from the seat of justice and or to the detriment of the said party who has approached the same court seeking for justice.
19. In the circumstances, it is the finding of this court that the 2nd Defendant's objection dated 9th July 2025 is unmeritorious and the same is hereby dismissed. Each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 24TH DAY OF SEPTEMBER 2025.

E. K. WABWOTO

JUDGE

