



**Ngila v Kitavi (Environment and Land Appeal E010 of 2024)  
[2025] KEELC 6250 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6250 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E010 OF 2024  
JM MUTUNGI, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**STEPHEN MUSYOKA NGILA ..... APPELLANT**

**AND**

**DAVID MWANZIA KITAVI ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. Martha Opanga at Wang'uru  
Law Courts in ELC E002 of 2023 delivered on 13th February 2024)*

**JUDGMENT**

1. The Appellant commenced suit in the Magistrate's Court at Wang'uru by way of a plaint dated 29<sup>th</sup> March 2023, seeking inter alia an order for the creation of a feeder road to access his property, Plot No. 170, situate within Karaba, Mbeere in Embu County as per the agreement entered into with the Respondent.
2. The Respondent filed a Preliminary Objection dated 29<sup>th</sup> July 2023 raising two primary objections as follows:-
  1. That the Court lacked jurisdiction by virtue of Section 30(1) of the [Land Adjudication Act](#);
  2. That the suit was fatally incompetent.
3. By a Ruling dated 13<sup>th</sup> February 2024, the trial Court upheld the Preliminary Objection and struck out the Appellant's suit. The Court in its Ruling held that it lacked territorial jurisdiction to entertain the suit as the suit fell within the Siakago Magistrate's Court jurisdiction. Further the Court held the filing of the suit offended the provisions of Section 30(1) of the [Land Adjudication Act](#) as no consent had been obtained from the Land Adjudication Officer to file the suit.



4. Aggrieved by that outcome, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 4<sup>th</sup> March 2024, raising ten grounds. The ten grounds are as follows:
  1. That the learned trial Magistrate erred in law and fact by striking out the Appellant's suit without substantively hearing subjecting the Appellant's suit to a full hearing on merits.
  2. That the learned trial Magistrate erred in law and fact in proposing on one hand that the Appellant was at liberty to file an application for transfer at the High Court and on the other side striking out the suit.
  3. That the learned trial Magistrate erred in law and fact in failing to note that a struck out suit cannot be transferred as there is nothing to transfer upon striking out.
  4. That the learned trial Magistrate erred in law and fact to properly evaluate and analyse that the suit was filed in Wang'uru Chief Magistrate's Court under Karaba Mobile Court.
  5. That the learned trial Magistrate erred in law and fact in failing to note that Wang'uru Chief Magistrate's Court had territory jurisdiction to hear and determine matters falling under Karaba Mobile Court.
  6. That the learned trial Magistrate erred in law and fact in failing to note that under Article 48 and Article 159 of the Constitution the Court was to administer substantive justice rather than shut the door of justice to the Appellant.
  7. That the learned trial Magistrate misapprehended the law and fact by preliminary striking out the Appellant's suit without giving the Appellant right to be heard on merit.
  8. That the learned trial Magistrate erred in law and fact in failing to note that there was no evidence whatsoever that the suit property is located at Riakanau location within Siakago.
  9. That the learned trial Magistrate erred in law and fact in failing to note that the suit property was within Karaba where the sale agreement dated 12<sup>th</sup> June 2016 was entered by the parties.
  10. That the learned trial Magistrate erred in law and fact in failing to note even the decision by Justice Waweru in Paulo Anyanzwa v Steel Structures LTD 2018 eKLR the Court allowed the Appeal as the Court set aside the decision to strike out the suit.
5. The Appeal was canvassed by way of written submissions. Both parties filed and exchanged the same.
6. The Appellant faulted the trial court for entertaining and upholding a Preliminary Objection in a matter where facts were contested particularly on the location of the suit land and whether the land fell within an adjudication Section. The Appellant contended that the Respondent failed to produce any evidence to confirm that the land was in Riakanau within Embu County. He maintained that the land lies within Karaba, Gategi sub-location, and that the sale agreement dated 12<sup>th</sup> June 2016 supported that position.
7. The Appellant further argued that the trial Court erred by intimating that the Appellant should have applied to transfer the suit to a competent Court, yet proceeded to strike out the suit rendering the transfer impossible. The Appellant cited various authorities including Jackson (Suing as administrator of estate of Somet Ole Tanyaag) v Sigei (2023), Paulo Anyanzwa v Steel Structures Ltd, and Rodgers Mwema Nzioka v Attorney General & 10 Others, to emphasize the primacy of substantive justice and the impropriety of prematurely terminating proceedings without a hearing on the merits.



8. The Respondent submitted that the trial Court rightly upheld the Preliminary Objection since jurisdiction is a threshold issue that must be resolved at the earliest opportunity. He argued that the suit land Plot No. 170 was located within Riakanau in Mbeere South, an adjudication area under the [Land Adjudication Act](#), and therefore the Appellant required written consent from the Adjudication Officer under Section 30(1) of the Act to file suit, which he had not obtained.
9. The Respondent further submitted that the Appellant did not produce a title deed, mutation, or minutes to confirm ownership or location of the land, and that the trial Court was right to decline jurisdiction. The Respondent relied on *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, [Milkah Nanyokia Masungu v Robert Wekesa Mwembe & 2 Others](#) (2013), and [Samuel Kamau Macharia v Kenya Commercial Bank Ltd](#) (2012).
10. I have considered the Memorandum of Appeal, Record of Appeal, and the parties' Submissions, and the following issues arise for determination;
  1. Whether the trial Court had jurisdiction to entertain the suit in light of Section 30 (1) of the [Land Adjudication Act](#).
  2. Whether the trial Court had territorial jurisdiction over the suit land.
  3. Whether the trial Court properly considered the nature of the Preliminary Objection raised and correctly struck out the suit at the preliminary stage.
11. This being an Appeal of first instance, the Court is duty bound to appraise and re-evaluate the evidence that was before the Lower Court in keeping with the principle enunciated in the Court of Appeal Case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, to ascertain whether the decision reached by the Trial Court was justified on the basis of the evidence adduced. In the case, the Court of Appeal stated as follows:-

“----- This Court is not bound necessarily to accept the findings of fact by the Court below. An Appeal to this Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

**Whether the trial Court had jurisdiction to entertain the suit in light of Section 30(1) of the [Land Adjudication Act](#).**

12. The Respondent's Preliminary Objection before the trial Court challenged jurisdiction on the basis that the subject land lies within an adjudication section, and therefore, the suit could not be entertained without the written consent of the Adjudication Officer as required under Section 30(1) of the [Land Adjudication Act](#) (Cap 284). The trial Court upheld this argument.
13. Section 30(1) provides:
  - (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.
14. This provision is couched in mandatory terms. It serves to protect the integrity of the adjudication process by ensuring that courts do not intervene before the internal administrative mechanisms provided under the Act together with the Dispute Resolution Mechanisms established under the Act are exhausted. The Court of Appeal restated the rationale in *Bhaijee & Another v Nondi & Another* (2022) KECA 119 (KLR) where the Court held as follows:-

“Section 30 of the *Land Adjudication Act* required consent to be given before the institution of Civil proceedings concerning an interest in land in an adjudication section. The consent was a condition precedent to a valid suit concerning disputes of land in an adjudication Section and specifically required the suits to be discontinued if started without consent. Section 30 therefore affected the power and jurisdiction of Courts to hear and determine such disputes. The rationale for Section 30 of the *Land Adjudication Act* was that there was an elaborate process that was laid down by the *Land Adjudication Act*, on how to determine which persons were, and the extent to which, they were entitled to interests in the land under adjudication. It was therefore necessary that Section 30 was first employed before resort was made to the Courts, and also shielded from unnecessary and unjustified abuses. Where a dispute resolution mechanism existed outside Courts, it had to be exhausted before the jurisdiction of the Courts was invoked.”

15. Further, the Court of Appeal at Nyeri in the case of *Stanley Gitonga v Gerald Mwithia* (2013) eKLR affirmed the Court’s jurisdiction under Section 30 of the *Adjudication Act* flows once the Adjudication Officer grants consent to file suit. The Court stated thus:-

“The provisions of the *Land Adjudication Act* set out an elaborate procedure for dispute settlement. The disputes were supposed to be settled by the Adjudication Committees complete with objection proceedings and even an Appeals mechanism. The dispute over the suit land seems to have gone back and forth before the committees and the Respondent sought the requisite consent of the Land Adjudication Officer which was granted pursuant to the provisions of Section 30 of the Act. We agree with the Judge that after the consent to file suit was given, that shifted the jurisdiction to court to determine the dispute. The trial magistrate had jurisdiction to determine the suit and thus far we agree with the Judge, where we part company is the manner in which the evidence was analyzed leaving out pertinent matters and the fact that the defence evidence was not at all considered and this led to a wrong conclusion.”

16. In the instant case, the Appellant did not obtain such consent before filing suit. That failure rendered the trial Court devoid of jurisdiction, and it was bound to down its tools. I therefore find that the trial Court correctly held that it lacked jurisdiction by virtue of Section 30(1) of the *Land Adjudication Act*, and that the suit was incompetent for want of compliance with a statutory condition precedent.

### **Whether the trial Court had territorial jurisdiction over the suit land**

17. Territorial jurisdiction of subordinate Courts is governed by the *Civil Procedure Act* and the *Magistrates’ Courts Act*. Section 13 of the *Civil Procedure Act* permits a suit relating to immovable



property to be instituted in the court within whose local limits the property is situated. Section 13 of the *Civil Procedure Act* provides that:

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. Additionally, under Section 26(3) and (4) of the *Environment and Land Court Act*, Magistrates designated to handle land matters may only exercise jurisdiction within areas assigned to them by Gazette Notice. The provision stipulates that:
- (3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving Environment and Land matters of any area of the Country.
  - (4) Subject to Article 169(2) of the *Constitution*, the Magistrates appointed under sub-section (3) shall have jurisdiction and power to handle —
    - (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
    - (b) matters of Civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the *Magistrates' Courts Act*.
19. In this case, the trial court found that the subject property Plot No. 170 is situated in Riakanau within Mbeere South Sub-County, Embu County, and therefore outside the geographical jurisdiction of the Wang'uru Magistrate's Court in Kirinyaga County.
20. The Appellant insisted that the suit land was within Karaba, Gategi sub-location, but provided no documentation to prove this. On the contrary, his pleading (prayer (b) in the Plaint) sought orders against the Land Registrar, Embu County; a prayer inconsistent with his position that the land lies in Kirinyaga. Indeed amongst the Appellant's bundle of documents was a copy of Mutation Form 0000011221 which headlined the title of the suit land as MBEERE/KARABA/170 affirming that the land fell within Mbeere which is a Sub County of Embu County.
21. The trial Court was therefore entitled to conclude, on the face of the pleadings, that the suit land lies in Embu County. The Appellant did not produce any material to displace that finding. Accordingly, I find that the trial Court did not err in concluding that it lacked territorial jurisdiction to entertain the matter.

**Whether the trial Court properly considered the nature of the Preliminary Objection and correctly struck out the suit.**

22. The Appellant contended that the trial court erred by determining a preliminary objection where facts were allegedly contested particularly the location of the land and whether the land was under adjudication. He argued that these were evidentiary matters requiring a full hearing.



23. It is trite law that a Preliminary Objection must be based on a pure point of law, as stated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 where the Court as per Law, JA observed as follows:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point 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.” See also the case of *Artar Singh Bhamra v Oriental Commercial Bank*, Kisumu HCCC No. 53 of 2004 (unreported) where the Court stated:-

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

24. In the present case, the Respondent’s objection was premised on jurisdiction both territorial and statutory. These are threshold questions of law. Whether the land was under adjudication was a matter ascertainable from the pleadings and the nature of the dispute, and not a question that required oral evidence. Similarly, the issue of territorial jurisdiction could be inferred from the Appellant’s own documents and plea.

25. Upon evaluation of the evidence and material before the Learned Magistrate, I am satisfied the Learned Magistrate did not err in holding she lacked the territorial jurisdiction to handle the matter. Further though it was not demonstrated by any credible evidence that the area was under adjudication, the interest that the Appellant sought was such interest as would be adjudicated during land adjudication. Quite properly, if the land falls within an adjudication Section where adjudication was ongoing, the filing of the suit was premature as the provisions of the *Adjudication Act*, had not been complied with.

26. The upshot is that I find the Preliminary Objection to have been properly taken and the Learned Magistrate rightly upheld the same. The Appeal is without any merit and the same is ordered dismissed with costs to the Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. M. MUTUNGI**

**ELC JUDGE**

