



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muriuki v Kointakei & 2 others (Environment and Land Case  
88 of 2017) [2025] KEELC 5783 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5783 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 88 OF 2017**

**MD MWANGI, J  
JULY 31, 2025**

**BETWEEN**

**DUNCAN J. MURIUKI ..... PLAINTIFF**

**AND**

**AGNES KOINTAKEI ..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

(In respect of the application dated 14th March 2025 seeking reinstatement of the preservation order issued on 25th September 2018, the application dated May 2025 challenging the reinstatement of this suit and substitution of the plaintiff, and the preliminary objection dated 19th May 2025 contesting the court's jurisdiction)

**Background**

1. In this instance, the court was moved by the following applications:
  - a. A notice of motion dated 14th March 2025 filed by the Plaintiff seeking the reinstatement of the preservation order issued on 25th September 2018.
  - b. A preliminary objection dated 19th May 2025 filed by the 1st Defendant contesting the court's jurisdiction given that the instant suit seeks to challenge the decision of a Tribunal through a fresh suit via a plaint instead of a Judicial Review pursuant to Order 53 of the Civil Procedure Rules, 2010 and the *Fair Administrative Action Act*, 2015.



- c. A notice of motion application filed by the said 1st Defendant seeking the setting aside of orders that reinstated the plaintiff's suit on the basis that they were not served or rather, service was effected to the wrong advocate.

### **Directions**

2. The court directed that the two applications and the preliminary objection be heard concurrently and canvassed by way of written submissions. I have had the opportunity to read the parties' submissions filed by the parties and I have considered them in the writing of this ruling.

### **Analysis and Determination**

3. I will handle the preliminary objection first for obvious reasons. By its very nature, a preliminary objection is capable of disposing of a suit conclusively. In the case of *Mukisa Biscuits Manufacturing Company Ltd. Vs West End Distributors Limited (1969)* eKLR the court defined a Preliminary Objection 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.”

It is trite that a preliminary objection can be raised at any time given that it goes to the jurisdiction of the court.

4. The 1st Defendant's preliminary objection is stated as follows:
  - a. This Honourable Court lacks jurisdiction to entertain the present suit, as the prayers seek to interfere with the decision of Kajiado Land Tribunal Case No. 504/04/09 Agnes Kointankei vs. Duncan J. Muriuki which decision has never been appealed or set aside.
  - b. The suit herein is procedurally incompetent, bad in law and fatally defective as it seeks to challenge the decision of a Tribunal through a fresh suit via Plaint instead of a Judicial Review as required under Order 53 of the Civil Procedure Rules, 2010 and the *Fair Administrative Action Act*, 2015.
  - c. The suit is an abuse of the court process as it attempts to circumvent the legal procedure for challenging tribunal decisions and should therefore be struck out with costs.
5. In order to determine the preliminary objection, the court will have to look at the plaint filed in this matter. The plaint is dated 19th September 2011. In the said plaint, the plaintiff at paragraph 7 expressly states as follows:

“In or about 22nd June, 2010 the plaintiff discovered that the Land Disputes Tribunal, Kajiado, upon a complaint by the 1st defendant, made a decision on 22nd October, 2009, Purporting to Cancel all my titles... to revert back ownership to the original owners”.
6. It is crystal clear from the reading of paragraph 7 of the plaint and as stated by the 1st Defendant that the Plaintiff seeks to challenge the decision of the Kajiado Land Dispute Tribunal. It is his prayer that the Land Dispute Tribunal, Kajiado District, be declared to have had no jurisdiction to cancel the plaintiff's titles i.e. numbers Kajiado/Kaputei-North/12775/12776 and 12777.



7. Jurisdiction is without a doubt the foundation of judicial authority, and without it, any proceedings by a court without the requisite jurisdiction are null and void. The principle was enunciated in the famous case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1, where Nyarangi, JA, held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. Section 8 of the repealed Land Disputes Tribunals Act provided a complete elaborate appellate framework, allowing any party aggrieved by the decision of the Tribunal to appeal to the Provincial Appeals Committee and, thereafter, to the High Court on points of law; while judicial review proceedings by way of certiorari remained available. The said section provided that;

“(1) Any party ... who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee ... (8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.

(9) Either party ... may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of ...”

9. It is not in dispute that the impugned decision of the Kajiado Land Disputes Tribunal cancelling the Plaintiff’s titles was neither appealed as envisaged under the Act nor subjected to judicial review. The Applicant contends that, by reason of this omission, the decision attained finality and the present suit amounts to an impermissible collateral attack. This Court acknowledges that the statutory framework under section 8 and 9 of the repealed Land Disputes Tribunals Act was intended to confer finality on tribunal awards.

9. Superior courts in this country have emphasized on the doctrine of exhaustion and finality of statutory remedies; failure to pursue them renders subsequent collateral challenges to a final decision impermissible. The Supreme Court in Peter Odour Ngoge v Francis Ole Kaparo & others; SC Petition No. 2 of 2012 [2012] eKLR, underscored the significance of respecting the hierarchy of the judicial system as one of the principles guiding the exercise of our jurisdiction under Article 163 (4) (a) of *the Constitution*:

“The Supreme Court, as the ultimate judicial agency, ought in our opinion, to exercise its powers strictly within the jurisdictional limits prescribed; and it ought to safeguard the autonomous exercise of the respective jurisdictions of the other Courts and tribunals.”

A party who fails to utilize the avenues provided under the statute cannot subsequently mount a collateral challenge. Litigation must come to an end.

10. The Court thus finds merit in the preliminary objection by the 1<sup>st</sup> Defendant. Accordingly, the preliminary objection is upheld and the Plaintiffs’ suit is hereby struck out with costs to the first defendant. Having reached the above finding, the applications dated 14th March 2025 and 26th May 2025 are deemed inconsequential.

It is so ordered.



**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Odhiambo h/b for Mr. Ngugi Kamau for the 1<sup>st</sup> Defendant

N/a by the Plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court assistant: Edwin

**M.D. MWANGI**

**JUDGE**

