



**Mndwapimisha v Community Land Registrar Taita Taveta  
& 2 others (Judicial Review Application E002 of 2025)  
[2025] KEELC 7251 (KLR) (Judicial Review) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7251 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E002 OF 2025  
EK WABWOTO, J  
OCTOBER 23, 2025**

**BETWEEN**

**FRUMENCE MSHILA MNDWAPIMISHA ..... APPLICANT**

**AND**

**THE COMMUNITY LAND REGISTRAR TAITA TAVETA ... 1<sup>ST</sup> RESPONDENT  
DEPUTY COUNTY COMMISSIONER, MWATATE SUB-COUNTY .... 2<sup>ND</sup>  
RESPONDENT**

**MWAKITAU SUB-LOCATION BASED ORGANIZATION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Preliminary Objection dated 18<sup>th</sup> July 2025. The Preliminary Objection was premised on the following grounds:-
  - a. That the suit offends the provisions of the *Land Adjudication Act*, Cap. 284 Laws of Kenya. In that the Applicant herein instituted the present proceedings without first exhausting the dispute resolution mechanisms provided under the said Act.
  - b. That the court lacks jurisdiction to entertain this suit as the same was filed prematurely, contrary to the mandatory provisions of Sections 26 and 30 of the *Land Adjudication Act*, which require that any dispute arising during the adjudication process must first be determined by the Land Adjudication Officer and the Cabinet Secretary before any recourse to Court.
  - c. That the suit is incompetent, fatally defective, and an abuse of the Court process, having been instituted in disregard of the statutory procedures and remedies provided for adjudication disputes.



- d. That the Applicant has not obtained the requisite consent of the Land Adjudication Officer as required under Section 30(1) of the [Land Adjudication Act](#) before filing the suit, and as such, the suit is null and void ab initio.
2. The Preliminary Objection was canvassed by way of written submissions. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed written submissions dated 29<sup>th</sup> September 2025 while the 3<sup>rd</sup> Respondent filed written submissions dated 18<sup>th</sup> August 2025. The Applicant filed written submissions dated 14<sup>th</sup> October 2025.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Applicant's issue is that the election of the Community Land Management Committee would allow non members of the community to vote a position which was misleading a false and intended to hinder the process of adjudication.
4. It was contended that the adjudication process is currently in progress. The Applicant has not demonstrated nor is there any evidence on record that he lodged an objection with the demarcation officer, pursued any complaint before the Land Adjudication Officer or exercised the right of appeal to the Cabinet Secretary as mandated under the [Land Adjudication Act](#). The Applicant has therefore failed to exhaust the statutory dispute resolution mechanisms provided in law.
5. It was further submitted [Land Adjudication Act](#) Section 26 provides for the opportunity, within prescribed timelines, for any aggrieved party to object to the record of adjudication before the Land Adjudication Officer. Further, Section 29 provides for appeals to the Cabinet Secretary with respect to adjudication records – “where any person is aggrieved by the determination of an objection under Section 26, he may, within sixty days after the date of the determination, appeal against the determination to the Cabinet Secretary.”
6. The Applicant therefore has not demonstrated compliance with the procedures and dispute resolution mechanisms provided under the [Land Adjudication Act](#) prior to filing this application, thus rendering the application incompetent, premature, and bad in law.

Further Sec 30 of the [Land Adjudication Act](#) provide staying of land suits under adjudication:

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.
3. Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under sub section (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.
4. The foregoing provisions of this section do not prevent a final order or Decision of a court made or given in proceedings concerning land in an Adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.
5. A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.



6. Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown.
7. It was also submitted that this accords with Article 159(2)(c) of *the Constitution* which requires Courts to promote alternative dispute resolution. The doctrine of exhaustion aligns with this constitutional imperative, requiring that statutory dispute resolution mechanisms be engaged first. The Applicant in this application has not elaborated to this Court any proof that they have exhausted all the dispute resolution mechanisms provided for under the *Land Adjudication Act* before approaching this court. The intention of Parliament was to establish specialized forums for first instance resolution of such disputes, only availing courts as a last resort.
8. The Applicant herein intends to stifle the due process set out by the act and deny the community an opportunity to enjoy their rights. Accordingly, the Court was urged to uphold the preliminary objection and dismiss the Applicant's application with costs. Reliance was placed on the cases of Carina Investments Limited =Versus= NEMA (2012) eKLR, Republic =Versus= NEMA Exparte Sound Equipment (2010) eKLR and Geoffrey Muthinja & Another =Versus= Samuel Mungua Henry & 1756 Others (2015) KECA 304 (KLR).
9. The 3<sup>rd</sup> Respondent submitted that the suit was filed prematurely in contravention of the law and it ought to be struck out. It was argued that where the law provides for the proper legal and administrative procedures and mechanisms upon which an aggrieved party must first follow before going to the ordinary court, then unless and until such legal mechanism is followed and exhausted any suit filed thereof is procedurally flawed and legally mature and fatally defective.
10. It was submitted that the Community Land 2016 and the *Land Adjudication Act* Cap 284 which this matter relates to has provided for such legal mechanism to be followed before a party could file any suit.
11. It was further submitted that Section 39 read together with Section 40 and 41 of the *Community Land Act* and also Regulations 25(1) of the Community Land Regulations 2017 provides sufficient forum upon which the Applicant ought to have first exhausted to address the issues raised before the Applicant could rush to this court. Otherwise failing to first exhaust the legal framework provided by the law to address the issues before to court, make this suit premature, incompetent and fatally defective.
12. It is the submission of the 3<sup>rd</sup> Respondent that there is no single evidence by the Applicant that they attempted to solve the matter through the set mechanism by the law.
13. The Court was urged to strike out the entire application dated 12.4.2025.
14. The Applicant on the other hand argued that the Respondents had totally misunderstood the dispute before Court since the same did not relate to the adjudication process but the election of Committee Members and the Court was urged to dismiss the preliminary objection.
15. Having considered the objection and written submissions on record it therefore follows that the main issues for consideration are whether the preliminary objection is merited and whether this court has jurisdiction to hear and determine this matter.
16. It is trite law that preliminary objections should be raised on a pure point of law. This point was stressed by Sir Charles NewboldP in the celebrated case of Mukisa Biscuits Manufacturing Co. Ltd –v -westend Distributors Limited(1969) EA. 696 when he stated 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 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 points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.”

17. Further Ojwang J as he then was in the case of ORARO VS. MBAJA(2005) I KLR held that;-

“I think the principle is abundantly clear, a “Preliminary Objection” correctly understood, is now well defined 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 processes of evidence. Any assertion which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principles 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 point .....Anything that purports to be a Preliminary Objection must not deal with disputed facts and must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence .....

18. In the present circumstances the Applicant alludes to the dispute relating to the election of the Committee Members while the Respondents have maintained that the issue before Court relates to the adjudication process.

19. In consideration of the foregoing, it is evident that the facts herein as to the dispute before court are contested and as such it would not be prudent for the court to pronounce itself summarily at this moment. As has been rightly stated in the Oraro vs Mbaja Case (supra), a preliminary objection must not be blurred with factual details liable to be contested. It is therefore not tenable for the court to proceed on the assumption that all the facts pleaded by the Applicant are correct.

20. Consequently, it is the finding of this Court that the preliminary objection herein doesn't meet the threshold set in the Mukisa Biscuit's case. The same is unmerited and it is hereby dismissed. Each party to bear own costs of the preliminary objection.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Kertiony for the Applicant.

Mr. Mwinzi for the 3rd Respondent.

N/A for the 1st and 2nd Respondents.

Court Assistant: Mary Ngoira.

