

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC LC CASE NO. E092 OF 2024

ANDREW LOUE NANGURAI.....PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF KAJIADO.....1ST

DEFENDANT

KAJIADO COUNTY SURVEY DEPARTMENT.....2ND

DEFENDANT

ATTORNEY GENERAL.....3RD RESPONDENT

CHIEF LAND REGISTRAR.....INTERESTED

PARTY

RULING

(In respect of the preliminary objection dated 28th July 2025 contesting the court's jurisdiction to entertain the matter herein pursuant to the provisions of Section 18 & 19 of the Land Registration Act)

Introduction

1. Before this Court for determination is a Preliminary Objection dated 28th July 2025, filed by the 1st and 2nd Defendants/Respondents and expressed to be taken in opposition to the Application and Plaint dated 20th September 2024. The said Preliminary Objection seeks to have the entire suit struck out in limine for want of jurisdiction.
2. The objector claims that this court lacks jurisdiction to hear and determine the present suit, the same being a boundary dispute involving registered land, contrary to the provisions of **Sections**

18 and **19** of the **Land Registration Act**. The Respondents contend that no boundary determination has been undertaken by the Land Registrar as required under the said statutory provisions, and as such, the suit is premature, misconceived, incompetent and bad in law. The Respondents therefore urge this Honourable Court to find that the suit, together with all attendant applications, is frivolous, devoid of merit, improperly before the Court, and ought to be struck out with costs.

Directions

3. The court directed that this preliminary objection be canvassed by way of written submissions. I have had the opportunity to read the parties' submissions and the same have been considered in the writing of this ruling.

Analysis and Determination

4. Having considered the Preliminary Objection, the pleadings, and the applicable law, the first issue that arises for determination is whether the Objectors have met the threshold for a proper Preliminary Objection. The law on what constitutes a true preliminary objection is settled in the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969)* **EA 696**, where the court, stated:

“...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.”

Further, Sir Charles Newbold, P. observed in the same case:

“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.”

5. The Preliminary Objection herein challenges this Court’s jurisdiction to entertain the suit on account of Sections 18 and 19 of the Land Registration Act. Jurisdiction is a question of law and, if successfully raised, may dispose of the entire suit. The objection therefore satisfies the criteria set out in *Mukisa Biscuit* and qualifies as a proper preliminary objection.

6. The next and central issue is whether this Court has jurisdiction to determine the present dispute. Jurisdiction is everything, as famously pronounced by Nyarangi, J.A. in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) KLR 1*, where he stated:

“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 pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

Similarly, in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR*, the Supreme Court reiterated:

“A court’s jurisdiction flows from either the Constitution or legislation or both. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

7. The Respondents’ argument is premised on Sections 18 and 19 of the Land Registration Act, No. 3 of 2012. **Section 18(2)** expressly provides:

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

8. The import of the above provision is clear and categorical. The law reserves the initial and primary jurisdiction in matters of boundary determination to the Land Registrar. Until such determination is made, the Court is expressly barred from entertaining such disputes. The doctrine of exhaustion complements this statutory framework by requiring parties to first pursue and exhaust the procedures provided under statute before seeking the Court’s intervention.
9. In the case of ***Eliud Njoroge Gachiri v Stephen Kamau Nganga & Another [2019] eKLR***, the Court held:

“It is clear from Section 18(2) of the Land Registration Act that the court cannot entertain a dispute relating to a boundary unless the same has first been determined by the Land Registrar. To that extent, this court has no jurisdiction to determine the dispute as filed.”

10. Similarly, in ***Azzuri Limited v Pink Properties Limited [2018] eKLR***, the Court observed:

“It is now trite that where a dispute relates to the determination of boundaries, it is the Land Registrar who must first ascertain and fix the same. Until that is done, the court has no jurisdiction to entertain any suit founded upon an undetermined boundary.”

11. The Court of Appeal in ***Republic v National Environmental Management Authority Ex Parte Sound Equipment Ltd [2011] eKLR***, had pronounced the same principle when it stated that:

“Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

12. The doctrine of exhaustion was equally articulated in *Speaker of the National Assembly v James Njenga Karume [1992] eKLR*, where the Court of Appeal held that:

“Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

13. The rationale behind the doctrine of exhaustion of the available statutory mechanisms and authorities is that specialized statutory bodies are best equipped with the expertise to determine disputes falling within their mandate before judicial intervention. This principle has also been underscored in the hierarchy of the judicial system as a necessary aspect of orderly administration of justice. In *Peter Oduor Ngoge v Francis Ole Kaparo & Others; SC Petition No. 2 of 2012 [2012] eKLR*, the Supreme Court emphasized:

“In the interpretation of any law touching on the jurisdiction of a Court, the chain of Courts in the constitutional set-up, running up to the Supreme Court, have the professional competence to resolve all matters that come before them, and only cardinal issues of law or of jurisprudential moment will deserve the further input of the Supreme Court. It follows that the lower Courts in the judicial hierarchy are the proper forum for the resolution of disputes, save in the exceptional cases meriting the attention of a higher Court. The hierarchy of the judicial system must be respected as a matter of principle.”

14. This pronouncement resonates with the doctrine of exhaustion and reinforces the principle that parties must first resort to the competent statutory or administrative forum before invoking the jurisdiction of the superior courts. The requirement ensures that the Court only intervenes after the specialized mechanisms established by Parliament have been properly utilized and exhausted, thereby preserving judicial time and promoting administrative efficiency.

15. It is clear that the Plaintiff's claim revolves around a dispute concerning the position of a road viz a viz the Plaintiff's parcel of land with the Plaintiff contending that the position of the road was inside his parcel of land. This is a dispute that should easily be resolved by the Land Registrar who has at his disposal the expertise of the District Surveyor. The Plaintiff has not demonstrated that the Land Registrar has determined the boundary as required under Section 18(2) of the Act. No determination, plan, or note evidencing such demarcation has been produced before this Court. Consequently, the statutory bar in Section 18(2) is operative.
16. Section 18(2) of the Land Registration Act in essence takes away the jurisdiction of the Court until the Land Registrar has discharged his statutory duty of ascertaining and fixing the boundaries. Therefore, this Court finds and holds that this suit was prematurely instituted before the exhaustion of the statutory procedure and that this Court is bereft of jurisdiction to entertain it.
17. In view of the foregoing, this Court finds that the Preliminary Objection dated 28th July 2025 has merit. The objection raises a pure point of law on jurisdiction which goes to the root of the Court's authority to entertain the dispute. Jurisdiction having been found lacking, the Court must "down its tools" as enunciated in *Lillian S (supra)*.
- 18.** Accordingly, the Preliminary Objection dated 28th July 2025 is upheld. The Plaint and all attendant applications filed thereunder are hereby struck out for want of jurisdiction. The Plaintiff is at liberty to pursue the appropriate procedure before the Land Registrar in accordance with ***Sections 18 of the Land Registration Act.***
19. The court makes no orders as to costs considering the stage at which this case has terminated. It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 30th Day of October 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Nekesa h/b for Mr. Omari for the Plaintiff

Ms. Kokelo h/b for Mr. Nyakwana for the 1st and 2nd Defendants

N/A by the 3rd Defendant and the Interested Party

Court Assistant: Mpoye

M.D. MWANGI

JUDGE