



**Githinji & another v Wairimu & 4 others (Land Case E179 of 2025)
[2025] KEELC 7554 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E179 OF 2025
CA OCHIENG, J
NOVEMBER 3, 2025**

BETWEEN

GEORGE MURIITHI GITHINJI 1ST PLAINTIFF

PURITY WANJIRU MURIITHI 2ND PLAINTIFF

AND

PHILOMENA WAIRIMU 1ST DEFENDANT

**PHILIP MURIITHI WOKABI (BOTH BEING SUED AS THE
ADMINISTRATOR/BENEFICIARIES OF THE ESTATE OF THE LATE DAVID
WOKABI MURIITHI) 2ND DEFENDANT**

DIRECTOR OF SURVEYS 3RD DEFENDANT

LAND REGISTRAR, NAIROBI 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The Plaintiffs commenced this suit vide the plaint dated 10th April 2025. They seek a mandatory injunction compelling the 3rd Defendant to prepare and submit for registration by the 4th Defendant, a subdivision plan of land parcel number LR No. 13330/1092 that conforms to the existing boundaries where together with the 1st and 2nd Defendants each cedes three metres towards access road plus three metres to comprise and form part of their respective title to LR No. 13330/192 (IR 129818) among other orders.
2. The 1st and 2nd Defendants have filed a Notice of Preliminary Objection dated 26th September 2025, which is for determination. It is premised on grounds that this Court lacks jurisdiction to hear and determine this suit by virtue of Regulation 40 (6) of the Land Registration (General)



Regulations, which only gives it Appellate jurisdiction over land boundary disputes. Further, that it lacks jurisdiction over land boundary disputes by virtue of Section 18 (2) of the [Land Registration Act](#).

3. The preliminary objection was canvassed by way of written submissions.

Submissions

4. The 1st and 2nd Defendants' submit that a suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. They submit that this Court's jurisdiction over general and/or uncertain land boundary disputes is conferred by Section 18 (2) of the [Land Registration Act](#) and Regulation 40 (6) of the Land Registration (General) Regulations and under the said provisions, this Court does not exercise original jurisdictions over general and/or uncertain land boundary disputes but rather exercises Appellate jurisdiction against the determination of the relevant Land Registrar and which Appeal must strictly be filed within thirty days from the date of the Land Registrar's determination. They contend that the substratum of this suit is based on the general and/or uncertain land boundary dispute over land parcel number L.R No. 13330/192 [IR 129818]. Further, that the said boundary dispute was referred to the 4th Defendant, who after hearing the Plaintiffs together with them, made a Ruling delivered on 10th June, 2024. They insist that the 3rd Defendant implemented the same through visiting the suit parcels and placing the relevant beacons on 3rd April 2025, in the presence of the Plaintiffs including themselves. They argue that the Plaintiffs' suit is an attempt to compel the Court to overturn the Ruling of the 4th Defendant and thereafter compel the 3rd Defendant to have the same undertaken as per their demand and wish. Further, that the Ruling of the 4th Defendant on the general and/or uncertain land boundary dispute has never been challenged through an Appeal as contemplated under the law.
5. They insist that pursuant to Regulation 40 (6) of the Land Registration (General) Regulations, if aggrieved by the Ruling of the 4th Defendant, the Plaintiffs were to lodge an Appeal against the 4th Defendant's. Ruling within thirty days. To support their averments, they relied on the following decisions: Owners of the Motor Vessel "Lillian S" v Caltex Oil [Kenya] Ltd [1989] eKLR; Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR; Tomosiay Ole Shonko v Langesa Ole Natu Pulei [2024] eKLR and Gabriel Onsongo Okondo & 10 Others v Sangiri Ole Kiok & 3 Others [2024] eKLR; Meiseyeki Loontubu & Another v The County Land Registrar Narok & 3 Others [2024] eKLR, Teresia Wayua Nzau v Loice Jepchumba Kemei & 2 Others [2025] eKLR; Katimua Ene Meria Kardasi v Benson Lasiti Kakoro & 6 Others [2025] eKLR and Malindi, Azzuri Limited v Pink Properties Limited [2018] eKLR.
6. On their part, the Plaintiffs' submit that from a reading of the Complaint and the 1st and 2nd Defendants' Statement of Defence, parties are not in agreement on the principal facts of the case, including whether there are Rules in Thome Estate, which require the access roads to be part of the titles as opposed to surrender for public use, and whether there was an agreement to have three metres hived from each title to create a six metres access road, thus the Preliminary Objection fails the test. They further submit that at the centre of the dispute is whether three metres of access road hived from each party's portion of land should form part of the title or should be surrendered for public use, and if the latter prevails, who will take liability for damages arising from the demolition of the Plaintiffs' buildings, which were developed in line with the existing boundaries as pointed out by the common vendor and subsequently agreed upon by the parties.
7. They admit that the Land Registrar's determination of the boundary contained in the Ruling dated 10th June 2024 exists and contend that they were not aggrieved by the determination by the Land Registrar on the boundary dispute but by the 1st and 2nd Defendant's unilateral implementation of



- Clause 2 (i) of the said determination, which the parties elected to proceed with, thus their cause of action is not an Appeal against the determination of the Land Registrar.
8. They argue that the interpretation of the dispute before the Court by the 1st and 2nd Defendants as one of "general and/or uncertain land boundary dispute" as opposed to a dispute of "sub-division of the suit land" as they have set out does not advance the overriding objective of this Court under Section 3 of the *Environment and Land Court Act*. Further, that Section 13 (2) (e) of the *Environment and Land Court Act*, grants this Court jurisdiction to hear this dispute. They urge the Court to disallow the Preliminary Objection and sustain the suit for determination on its merits.
 9. To support their averments, they relied on the following decisions: Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited (1969) E.A. 696 and Oraro v Mbaja (2005) KLR 141.

Analysis and Determination

10. Upon consideration of the instant Notice of Preliminary Objection including the respective submissions, the only issue for determination is whether this Court has jurisdiction to handle the dispute herein.
11. The 1st and 2nd Defendant's preliminary objection is anchored on Section 18 (2) of the *Land Registration Act*. They contend that under Section 18 (2) of the *Land Registration Act*, this Court does not have jurisdiction to hear boundary disputes and that given that the 4th Defendant had made a boundary determination in the Ruling dated 10th June 2024, the Plaintiffs can only invoke this Court's Appellate jurisdiction under Regulation 40 (6) of the Land Registration (general) regulations.
12. On their part, the Plaintiffs contend that the suit is not a boundary dispute and that it is not an Appeal as they were not aggrieved by the determination of the 4th Defendant on the boundary dispute but by the 1st and 2nd Defendants' unilateral implementation of Clause 2 (i) of the said determination by submitting to the 3rd Defendant, a subdivision plan that deviates from the existing boundaries where each party agreed to cede three meters from their respective portion to create the six metres access road with the three metres so ceded forming part of the separate title, to be registered in the name of each party.
13. On raising a preliminary objection, in the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] 1 EA it was held that:

“.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit.....”
14. In Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR, the Supreme Court observed as follows:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection— against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement.....”



15. Section 18 of the *Land Registration Act*. provides;

“18 (1) Except where in accordance with Section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate situation only of the parcel.

(2) 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.

(3) Except where it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel receive such evidence as to its boundaries and situations as may be necessary.

Provided that where all the boundaries are defined under Section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the *Survey Act* Cap 299.”

16. The Court of Appeal held as follows in *Estate Sonrisa Ltd & Another v Samuel Kamau Macharia & 2 Others* [2020] eKLR:

“The ascertainment and fixing of boundary in dispute involve three parties, the owners of the affected parcels, the surveyor and the Registrar..... It is the *Land Registration Act* that makes provisions relating to the determination of boundaries. Those provisions are found in sections 16 to 19. Specifically, for this dispute, the Registrar is empowered, after giving notice to all the affected parties, in this case, the 1st Appellant and 1st Respondent, indeed as well as any owner whose land adjoins the boundaries in question, and with the assistance of the surveyor, to ascertain and fix the disputed boundaries.”

17. In this instance, I note the Land Registrar already made a determination of the boundary between the Plaintiffs’ including the 1st and 2nd Defendants’ parcels of land vide his report dated the 10th June, 2024. The Plaintiffs have confirmed that they are not aggrieved by the Land Registrar’s determination of the said dispute. From the averments in the supporting affidavit, what emerges is that the Plaintiffs’ including 1st and 2nd Defendants purchased their parcels of land from one vendor. Further, that the title is one and is yet to be subdivided into equal shares. I note the 1st and 2nd Defendants’ proceeded to implement some of the findings of the Land Registrar without involving the Plaintiffs, hence this forms the fulcrum of the dispute. On perusal of the Land Registrar’s report dated the 10th June, 2024, I note he made various recommendations after he noted that the ownership structure was in equal shares.

18. Further, I note as per Clause 2 (i) which the 1st and 2nd Defendants’ have not denied proceeding to implement without the Plaintiffs’ input, the Land Registrar recommended that parties were to lodge an application for subdivision of the parcel of land into two equal portions with engagement of the Government Surveyor and subsequent registration of the same. It is my considered view that the 1st and 2nd Defendants should not have proceeded to implement this Clause without the Plaintiffs’ participation. I opine that an issue revolving around subdivision of land into equal shares and ceding of a road cannot be deemed as a boundary dispute as the 1st and 2nd Defendants’ want this Court to believe.

19. Based on the facts as presented including my analysis above as well as associating myself with the decisions cited, I find that the dispute herein is not a boundary dispute as claimed but a claim for an equal share of land including ceding of a road. In the foregoing, I find the instant Notice of Preliminary Objection unmerited and will dismiss it.



20. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2025.

CHRISTINE OCHIENG

JUDGE.

In the presence of:

Githinji for Plaintiffs

Ms Njuguna for 3rd, 4th, 5th Defendants

Ochieng for 1st and 2nd Defendants

Court Assistant: Joan

