



REPUBLIC OF KENYA



Gitu v Kamanda & 3 others; Attorney General & another (Interested Parties) (Environment and Land Case 1484 of 2016) [2025] KEELC 7897 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7897 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1484 OF 2016
CA OCHIENG, J
NOVEMBER 13, 2025**

BETWEEN

JAMES NGUGI GITU PLAINTIFF

AND

HON. MAINA KAMANDA 1ST DEFENDANT

STANLEY MUCHERU 2ND DEFENDANT

PETER NGUGI 3RD DEFENDANT

**HON MEMBER OF PARLIAMENT STAREHE CONSTITUENCY 4TH
DEFENDANT**

AND

THE HON. ATTORNEY GENERAL INTERESTED PARTY

LAND REGISTRAR INTERESTED PARTY

RULING

1. What is before the Court for determination is the 1st Defendant's Notice of Preliminary Objection dated the 5th January 2024. It is premised on grounds that this Court has no jurisdiction to determine any issues in light of Sections 56 (1) and (3) of the National Government *akn ke act 2013 30 Constituencies Development Fund Act*, Act No.30 of 2015 and Sections 56 (5) of the same Act.
2. The Preliminary Objection was canvassed by way of written submissions.
3. The 1st Defendant submits that by instituting this suit against him in his official capacity, the Plaintiff offends the provisions of section 56 (5) of the National Government Constituencies Development Act 2015, which provides that no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.



4. He points out that at the time of the events surrounding the dispute herein, he was serving in an official capacity within the Starehe CDF and while the original 2nd and 3rd Defendants were also part of the administration of Starehe CDF, the Plaintiff removed them through amendments and further amendments to the Plaint and has since joined the appropriate parties to the suit but still insists on suing him despite the fact that he is no longer part of the Starehe CDF Committee. Further, that he only acted in his official capacity at the time. He contends that the Plaintiff should sue the National Government Constituencies Development Fund Board (NGCDF Board) which has perpetual succession. He also submits that the Plaintiff's failure to exhaust the dispute resolution procedure provided for under Section 56 (3) of the National Government Constituencies Development Act 2015, divests this Court of jurisdiction to entertain the matter. To buttress his averments, he relied on the following decisions: Republic v Chief Executive Officer, Independent Electoral And Boundaries Commission & Another Ex-Parte M' Anyiri Hannington Gitaari [2016] KEHC 1509 (KLR); John Rimui Waweru & 3 others v Githunguri Constituency Ranching Co Limited & 5 others [2015] KEELC 497 (KLR); Libea Services Limited v National Government Constituency Development Fund Board & another; Fund Account 4 Manager- National Government Constituency Fund Bondo Constituency & another (Interested Parties) (Civil Case E001 of 2022) [2022] eKLR; James Cheruiyot v National Government Constitution Development Fund Manager Nakuru West Constituency & 2 others [2018] eKLR and Gitonga Mithika & another v Chairperson, Igembe South CDF Committee & 4 others [2016] eKLR.
5. In opposition, the Plaintiff submits that the Preliminary Objection is not merited to the standards set out in Oraro v Mbaja [2007] KLR 141 because the Court is tasked with establishing certain facts. He argues that trespass upon his property is deemed as an unlawful act and as such the 1st Defendant can be held personally liable for unlawful actions taken in his official capacity under Section 53 (3) of the National Development Fund Act, No. 30 of 2015. It is also his submission that the suit is anchored on Articles 10, 27, 40 and 47 of *akn ke act 2010 constitution the Constitution* and is purely based on violation of constitutional rights to property as there is clear infringement on his property contrary to Article 40 of *akn ke act 2010 constitution the Constitution*. Further, that this is not a dispute under the National Development Fund Act, No. 30 of 2015. He insists that there are exceptions to the rule that dispute resolution mechanisms outside Court must be exhausted before approaching Court and the instant suit is one such matter as it concerns violation of private rights to property under Article 40 of *akn ke act 2010 constitution the Constitution*.
6. To buttress his averments, he relied on the following decisions: Fleur Investments Limited v Commission of Domestic Taxes and Anor [2018] eKLR; Geoffrey Muthiga Kabiru & 2 others v Samuel Munga & 176 others [2015] eKLR and Njenga & another v National Government Constituencies Development Fund Board & others [2015] Environment & Land Petition E012 OF 2024 [2025] KEELC 1488 (KLR).

Analysis and Determination

7. Upon consideration of the 1st Defendant's Notice of Preliminary Objection including the rivalling submissions, the only issue for determination is whether this Court has jurisdiction to handle the dispute herein and if the said Objection is merited.
8. The 1st Defendant contends that this Court has no jurisdiction to preside over the dispute owing to his inclusion in these proceedings despite departure from public service and statutory protection under Section 56 (5) of the National Government Constituencies Development Act, 2015. He argues that



section 56 (3) of the same Act makes it mandatory for all disputes of a civil nature to be referred to the Board in the first instance.

9. On raising a Preliminary Objection, in *Oraro v Mbaja* [2005] eKLR, the Court stated that:

“A “preliminary objection”, correctly understood, is now well identified 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, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.” Emphasis Mine

10. Section 56 (5) of the National Government Constituencies Development Act 2015 provides that:

“Subject to this Act, no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.”

11. While Section 56 (3) of the same Act stipulates thus:

“Disputes of a civil nature shall be referred to the Board in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.”

12. In *Albert Chaurembo Mumba & 7 others* (sued on their own behalf and on behalf of predecessors and or successors in the title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v *Maurice Munyao & 148 others* (suing on their own behalf and on behalf of the Plaintiffs and other Members Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR the Supreme Court stated that:

“118) in the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior Courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute...”

13. While in *Hassan Shano & 3 others v National Committee of The Constituency Development Fund & 2 others* [2011] KEHC 1269 (KLR); the Court held as follows when referencing Section 56 of the National Government Constituencies Development Act 2015:

‘I agree with the respondent that the intention of Parliament in enacting the said section was to make the court the last arbiter where the Board and or arbitrators have been unable to resolve a complaint regarding operations of a constituency development function under the Constituency Development Fund Act.’

14. I note in the amended Plaintiff dated the 28th September, 2023, the Plaintiff sought for the following Orders:

i. A declaration that the Plaintiff is the bona fide owner of LR No. 209 11081 situated in Nairobi City.



- ii. A permanent injunction restraining the Defendants by themselves, their servants, agents or anyone acting through them from trespassing, encroaching, entering, taking possession, fencing, working therein, constructing, developing or in any other way interfering with the Plaintiff's quiet possession and enjoyment of all that land being LR No. 209 11081 situated in the City of Nairobi.
 - iii. An Order directed to the Defendants and or successors to remove or demolish the constructions upon the Plaintiff's property and forthwith cease from any or further encroachment upon the Plaintiff's property being LR No. 209 11081.
 - iv. General damages for trespass.
 - v. Cost of this suit.
 - vi. Interest on (d) and (e) herein above.
 - vii. Any other and or further relief that this Honourable Court may deem fit and just to grant.
15. From a reading of the Plaint, it is clear that the fulcrum of the dispute herein revolves around ownership of suit land and continued trespass on the said land. The 1st Defendant contends that this Court is devoid of jurisdiction to handle this matter and has raised the instant Preliminary Objection, nine (9) years down the line. The jurisdiction of the ELC Court is outlined in section 13 of the *akn ke act 2011 19 Environment and Land Court Act* and stipulates thus:

‘The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *akn ke act 2010 constitution the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2) In exercise of its jurisdiction under Article 162 (2) (b) of *akn ke act 2010 constitution the Constitution*, the Court shall have power to hear and determine disputes— (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.’

16. The National Government Constituencies Development Act 2015, outlines the functions of the board at section 16 and provides that:

‘The functions of the Board shall be to— (a) consider project proposals submitted from various constituencies in accordance with the Act, approve for funding those projects proposals that are consistent with this Act and send funds to the respective constituency operations account of the approved projects; (b) ensure timely and efficient disbursement of funds to every constituency; (c) ensure efficient management of the Fund; (d) co-ordinate the implementation of projects at the inter-constituency level; (e) receive and address complaints that may arise from the implementation of the Act; (f) encourage best practices in the implementation of projects; (g) administer the funds and assets of the Board in such manner and for such purpose as shall promote the best interest of the Board in accordance with the Act to ensure efficient management of the Fund; and (h) perform such other duties as the Board may deem necessary from time to time for the proper management of the Fund.’



17. The 1st Defendant contends that he cannot be sued in person as he is no longer with the Starehe CDF. I note except for the Preliminary Objection, he has not provided any evidence to that effect. From a reading of the function of the National Government Constituencies Development Act 2015 board vis a vis the jurisdiction of the ELC, I opine that the said board does not have jurisdiction to handle the dispute revolving around ownership and title to land which is not indicated as an issue the board can deal with in its functions.
18. Based on the facts as presented while relying on the legal provisions I have quoted including associating myself with decisions cited and applying them to the circumstances at hand, I find that the dispute herein is distinct from what was envisaged that the National Government Constituencies Development Act 2015, Board would handle. In my view, it is the Environment and Land Court clothed with jurisdiction to handle the dispute herein. It is my considered view that since trespass to land is an unlawful act, the 1st Defendant can be held personally liable for unlawful actions taken in his official capacity under Section 53 (3) of the National Development Fund Act, No.30 of 2015. Further, it will hence be incumbent upon him to demonstrate otherwise.
19. In the foregoing, I find the instant Notice of Preliminary Objection unmerited and will dismiss it.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Akhulia for 1st Defendant

Kago for Plaintiff

Nyawira for Interested Parties

Court Assistant: Joan

