



**Tusaidiane SKS Housing Co-operative Society Ltd v Piyanko;
Kompe & another (Interested Parties) (Environment and Land Case
E045 of 2024) [2025] KEELC 5780 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5780 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E045 OF 2024**

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

BETWEEN

TUSAIDIANE SKS HOUSING CO-OPERATIVE SOCIETY LTD PLAINTIFF

AND

WILSON TETO OLE PIYANKO DEFENDANT

AND

PIYANGO OEL TETO KOMPE INTERESTED PARTY

LAND REGISTRAR, KAJIADO COUNTY INTERESTED PARTY

(In respect of the preliminary objection by the defendant dated 21st April 2025)

RULING

Background

1. The defendant has raised a preliminary objection dated 21st April 2025. The preliminary objection contends:
 - a. That this Court lacks jurisdiction to entertain the suit as framed in the prayers; specifically (a), (c), (d) and (e) which seek to interfere with a decision of Kajiado Land Dispute Tribunal Case No Tc 522/09/09 *Wilson Tetu Ole Piyanko(claimant) Vs Joseph Muigai Wanene* And Adopted As The Courts Judgement In Kajiado Chief Magistrate Land Dispute Tribunal Case No.60 OF 2009, the decision of which has never been Appealed against and/or set aside.
 - b. That 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 Proper



Judicial Review suit pursuant to Order 53 of the Civil Procedure Rules 2010 and the Fair Administrative Action Act 2015.

- c. That the suit is an abuse of court process as it attempts to circumvent the legal procedure for challenging tribunal decisions and should therefore be struck out with costs.
 - d. That this Honourable Court is enjoined to down its tools where jurisdiction is absent.
2. The court directed that the preliminary objection be canvassed by way of written submissions. The objector duly complied. The Plaintiff filed a replying affidavit and submissions on 29th July 2025 way after the timelines given by the court, without seeking leave and after the Objector had already filed his submissions. The court will disregard both the replying affidavit as well as the submissions for the aforesaid reasons.

Issues for Determination

3. In framing the issues for determination, it is worth restating that a preliminary objection correctly understood must be a point of law which must not be blurred by factual details liable to be contested and to be proved through the process of evidence. In the case of *Mukisa Biscuit Manufacturing Company Ltd. Vs West End Distributors Limited* (1969) eKLR, 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.”

4. The issues for determination arising out of the preliminary objection by the defendant herein are:
- a. Whether this Honorable Court has the jurisdiction to redetermine the dispute at hand, considering that the Kajiado Land Dispute Tribunal had already determined the matter, the decision of which has never been appealed against and/or set aside.
 - b. Whether the plaintiff's suit challenging the prior decision by the Kajiado Land Dispute Tribunal which was later adopted by the Magistrate's Court is competent.
 - c. Who should bear the costs of the suit.

Analysis and determination

5. Generally, the defendant contests this court's jurisdiction on the ground that the instant suit, instituted by way of a plaint, has been already been determined by the Kajiado Land Dispute Tribunal and the decision was consequently adopted by the Kajiado Chief Magistrates Court.
6. Jurisdiction speaks to a court's competence to determine a matter. On matters jurisdiction, I stand guided by the court's determination in the case of Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR. The court opined 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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”



7. Jurisdiction is the foundational pillar upon which the authority of a court rests. A court must therefore satisfy itself, at the earliest opportunity, that it is properly seized of jurisdiction before delving into substantive issues. In common law jurisdictions the doctrine of exhaustion is of importance. In the case of *Speaker of the National Assembly v Karume* [1992] KLR 21 cited in *Clifford Keya v Inguitiah* [2022] KEHC 1605 eKLR the court opined that;

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

8. The doctrine of exhaustion bars this court from determining the suit herein as instituted, given that the Kajiado Land Dispute Tribunal made a determination in the Land Dispute Tribunal Case No TC 522/09.09 *Wilson Teto Ole Piyianko (Claimant) v Joseph Muigai Wanene (Objector)* and Kajiado Chief Magistrates Land Dispute Tribunal Case Number 60 of 2009 *Wilson Teto Ole Piyianko v Joseph Muigai Wanene*, which was then adopted by the Chief Magistrates court at Kajiado. The plaintiff being aggrieved by the Tribunal’s decision ought to have either sought judicial review; as provided in Order 53 of the *Civil Procedure Rules* and the *Fair Administrative Action Act* or lodged an appeal as provided for under section 8 and 9 of the repealed *Land disputes Tribunal Act*. The plaintiff opting to file a plaint instead amounts to bypassing the prescribed remedies.

9. As for the second issue, a matter is deemed res judicata when it has already been heard and finally decided by a competent court between the same parties (or their privies), on the same subject matter. This principle is firmly rooted in Section 7 of the *Civil Procedure Act*, which states:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties ... and has been heard and finally decided by such court.”

10. In *C.K. Bett Traders Ltd & 2 others v Kennedy Mwangi & another* [2021] KEHC 5107 eKLR, the High Court emphasized that the doctrine protects the public interest by ensuring litigation comes to a definite end and prevents parties from relitigating issues already conclusively determined. The Court of Appeal further clarified the required elements in *IEBC v Maina Kiai & 5 others* [2017] eKLR as follows:

“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms:

- (a) The suit or issue was directly and substantially in issue in the former suit.
- (b) The former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”



11. The plaintiff's case is hinged on the prayer for a declaration that the judgment issued in their land dispute Tribunal Case No. TC 522/09.09 which was adopted as a judgment of the court in Kajiado Chief Magistrate's court Tribunal Case No. 60 of 2009, was a nullity.
12. That the decision was arrived at pursuant to the provisions of the *Land Disputes tribunal Act* (Repealed). The Act had an elaborate mechanism for appeal for any party dissatisfied with the decision of the Tribunal as noted in the case of *Florence Nyaboke Machani –vs- Mogere Amosi Ombui & 2 others* (2014) eKLR cited by the defendants, where the court was categorical that a party had a right of appeal against the award of the Tribunal to the Appeals Committee in accordance with the provisions of Section 8 (1) of the *Land Disputes Tribunal Act*, or a right to commence Judicial Review proceedings in the nature of certiorari to quash the award. What is before the court is neither an appeal nor judicial review proceedings. The plaintiff's case has no basis in law. I agree with the defendant's preliminary objection, which I uphold and strike out the plaintiff's suit with costs to the defendant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Were for the Plaintiff

Mr. Odhiambo h/b for Mr. Ngugi for the Defendant

N/A by the Interested Parties

Court assistant: Edwin

