



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELCL APPEAL CASE NO. E051 OF 2024**

**JOHNSON MBAABU MBURUGU.....1ST  
APPELLANT**

**CATHERINE GAKII MBAABU.....2ND  
APPELLANT**

**=VERSUS=**

**JAMES KIBAKI & MAINGI M'ITHARA MBURI (*Suing as the  
Legal Representatives of the estate of  
MATHEW M'NABEA [DECEASED]* .....1ST  
RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER  
MBWAA ADJUDICATION SECTION.....2ND  
RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS, TIGANIA WEST  
SUB COUNTY.....3RD  
RESPONDENT**

**THE ATTORNEY GENERAL .....4TH  
RESPONDENT**

**(An Appeal against the Ruling of the Chief Magistrate Court at Meru [Hon. J. M. Njoroge - CM] rendered on 17/7/2024 in Meru CMC E & L Case No. E003 of 2024)**

**JUDGMENT**

**Introduction**

1. This appeal challenges the ruling of the **Chief Magistrate Court at Meru [Hon J M Njoroge - CM]** rendered on 17/7/2024 in **Meru CMC E & L Case No. E003 of 2024**. The ruling disposed a preliminary objection by the appellants, dated 5/2/2024. Through the preliminary objection, the appellants invited the Chief Magistrate Court to strike out the suit on the grounds that it violated the mandatory requirements of **Section 30(1)** of the **Land Adjudication Act** and that it violated the doctrine of exhaustion of statutory remedies. Dismissing the preliminary objection, the Chief Magistrate Court rendered itself thus:

***“In view of the above reservations at this juncture, it has not come out clearly that the court lacks jurisdiction to hear and determine the matter. The issues raised by the parties are weighty. The court shall not hesitate to take appropriate steps when the situation matures.”***

2. The two key issues that fell for determination in the preliminary objection were: (i) Whether the suit was fatally incompetent on account of failure to comply with the requirements of **Section 30(1)** of the **Land Adjudication Act**; and (ii) Whether the suit was fatally defective due to failure to exhaust the statutory remedies provided under the **Land Adjudication Act**. Invariably, these are some of the key issues that fall for determination in this first appeal. Before I analyse and dispose the issues, I will briefly outline the background to the appeal; the grounds of appeal; and the parties' respective submissions on the appeal.

### **Background**

3. Through a plaint dated 17/1/2024, the administrators of the estate of the late **Mathew Nabea alias Mathiu M'Nabea [James Kibaki & Maingi M'Itharamburi]** sued: (i) Johnson Mbaabu Mburugu [1st appellant]; (ii) Catherine Gakii Mbaabu [2nd appellant]; (iii) District Land Adjudication & Settlement Officer, Mbwaa Adjudication Section [2nd respondent]; (iv) Director of Criminal Investigations, Tigania West Sub County [3rd Respondent]; and (v) The Attorney General [4th respondent]. The estate sought a permanent injunction barring the two appellants, the 2nd respondent and the 3rd respondent against stepping onto, placing beacons on, surveying or in any way dealing with any of the subdivisions out of land parcel number **Ruiri/Rwarera/3099**, especially **Ruiri/Rwarera/1488**, without the knowledge and consent of the administrators of the estate. They also sought costs of the suit.

4. The case of the estate was that, in 2016 the appellants filed **Meru ELC Petition No. 35 of 2016** against the late **Mathew Nabea** [hereinafter referred to as **“the deceased”**]. The Environment and Land Court [**the ELC**] heard the petition and dismissed it. The judgment of the ELC was not challenged through an appeal. They added that, the appellants thereafter embarked on filing claims at the Land Adjudication Officer’s Office and they had “zeroed on” parcel number **Ruiri/Rwarera/1488**.
5. The estate contended that the appellants, through “illegal collusion and conniving” were litigating despite there being “ a sound judgment” over parcel number **Ruiri/Rwarera/3099** which bore parcel number **Ruiri/Rwarera/1488**. The estate added that despite them “confronting” the appellants and the Land Adjudication Officer with the judgment of this court, the trio had “refused to accommodate” them, thereby necessitating the suit.
6. Alongside the plaint, the estate filed a notice of motion dated 17/1/2024, through which they procured an ex-parte injunction on 18/1/2024. The ex-parte interlocutory injunctive order barred the appellants and the 2nd - 4th respondents against entering or placing beacons on parcel number **Ruiri/Rwarera/3099** or in any way dealing with/interfering with the land register relating to parcel number **Ruiri/Rwarera/3099** and all its sub-divisions, pending the hearing and determination of the “application and the main suit inter-partes”.

7. Upon being served with court papers, the appellants filed a notice of preliminary objection dated **5/2/2024** and a defence dated **15/2/2024**. They averred in their defence that the suit parcels were previously demarcated as parcel numbers **1079** and **5165** in **Ruiri/Rwarera Adjudication Section** before part of **Ruiri Rwarera Adjudication Section** was hived off to form **Mbwaa 1 Adjudication Section**. They added that **Mbwaa 1 Adjudication Section** was created pursuant to a consent order adopted and issued by the **Court of Appeal in Nairobi Civil Appeal No. 129 of 2005**.
8. It was the appellants' case that the deceased never owned the suit lands. They added that in its judgment in Meru ELC Petition No. 35 of 2016, this court held that, in view of the fact that part of **Ruiri Rwarera Adjudication Section** was hived out to create **Mbwaa 1 Adjudication Section** pursuant to the consent order of the Court of Appeal, the appellants were to pursue relevant processes within the dispute resolution framework in the Land Adjudication Act. They contended that they had duly complied with the judgment of this court. They added that dismissal of the petition did not give the deceased any rights or interest in the suit lands.
9. They further averred that following the determination of **Meru ELC Petition No. 35 of 2016**, they pursued their claims within the framework of the Land Adjudication Act and on 16/11/2022, the Mbwaa 1 Adjudication Committee awarded them parcel numbers **3099; 1480 -1487; and 1489 -1592**. They further stated that Ruiri/Rwarera/1488

had never existed within **Mbwaa 1 Adjudication Section** and that they had no claim over parcel number **1488 Mbwaa 1 Adjudication Section**.

- 10.** The appellants further averred in their defence that the estate's suit was incompetent, frivolous, bad in law and an abuse of the process of the court because the estate had failed to comply with **Section 30(1)** of the **Land Adjudication Act** had failed to exhaust the dispute resolution mechanisms provided in the **Land Adjudication Act**. They contended that, on the above grounds, the Chief Magistrate Court lacked jurisdiction to entertain the suit. They intimated their intention to pursue their challenge against the jurisdiction of the Chief Magistrate Court through their preliminary objection on the above grounds.
- 11.** On 7/2/2024, the Chief Magistrate Court directed the appellants to canvass their preliminary objection through written submissions. The two points canvassed in the preliminary objection and in the appellants' submissions before the Chief Magistrate Court focused on: (i) the estate's failure to comply with the mandatory requirements of Section 30(1) of the Land Adjudication Act; and (ii) the estate's failure to exhaust the dispute resolution mechanisms under the Land Adjudication Act. The Chief Magistrate Court rendered the impugned ruling on 17/7/2024, holding that "it had not come out clearly that the court lacked jurisdiction to hear and determine the matter". The court dismissed the preliminary objection.

## **Appeal**

**12.** Aggrieved by the ruling of the Chief Magistrate Court, the appellants brought this appeal, advancing the following grounds:

**1) The Learned Chief Magistrate erred in law in failing to find that the 1st respondents had not obtained the requisite consent of the Land Adjudication & Settlement Officer, Tigania West Sub-County as provided under Section 30(1) of the Land Adjudication Act Cap, 284 Laws of Kenya, before filing Meru CMC ELC No.E003 of 2024.**

**2) The Learned Chief Magistrate erred in law in failing to find that in view that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were claiming interest on land parcel No. parcel 3099 belonging to the appellants which has also an impact on land parcels Nos. 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1590, 1591 and 1592 situated in Mbwaa 1 Adjudication Section and recorded in the names of the appellants, they ought to have exhausted the dispute mechanism provided in the Land Adjudication Act Cap 284 Laws of Kenya (but which they did not pursue within the specified period provided under Cap 284 Laws of Kenya) before filing a suit in court.**

**3) The Learned Chief Magistrate erred in law in failing to find that he had no jurisdiction to**

**hear and determine the notice of motion dated 17/01/2024 and the suit in Meru CMC ELC No. E003 of 2024 in the absence of the consent of the Land Adjudication & Settlement Officer Tigania West Sub-County.**

**4) The Learned Chief Magistrate erred in law in failing to allow the notice of preliminary objection in Meru CMC ELC No. E003 of 2024 even after he referred to Section 30(1) of the Land Adjudication Act Cap 284 Laws of Kenya and the case law.**

**5) The Learned Chief Magistrate erred in law in making and finding that it did not come out clearly that the courts lacks jurisdiction to hear and determine the matter whereas there are clear provisions of the law and case law presented to him by the appellants in their submissions to prove that the Honorable Court had no jurisdiction to hear the notice of motion dated 17/01/2024 and the suit in Meru CMC ELC No. E003 of 2024.**

**6) The Learned Chief Magistrate's ruling is against the law.**

**13.** The appellants urged this court to allow the appeal and strike out **Meru CMC E & L Case No. E003 of 2024** together with the application dated 17/1/2024. They urged this court to award them costs of the appeal and costs of the suit in the Chief Magistrate Court.

## **Appellants' Submissions**

- 14.** The appeal was canvassed through written submissions dated 26/9/2025, filed by **M/s Nyamu Nyaga & Co Advocates**. Counsel for the appellant identified the following as the four issues that fell for determination in the appeal: (i) Whether leave was required to file an appeal from an order arising from a court ruling in respect of a notice of preliminary objection seeking orders to strike out the suit and the notice of motion on grounds that they were incompetent, frivolous, bad in law, and an abuse of the court process; (ii) Whether the 1st respondent had complied with the mandatory provisions of the Land Adjudication Act, Cap 284 Laws of Kenya, before filing Meru CMC ELC No. E003 of 2024; (iii) Whether the Chief Magistrate Court had jurisdiction to hear the suit and the notice of motion dated 17/1/2024 in the absence of a consent to file a suit as provided under section 30 (1) of the Land Adjudication Act; and (iv) What appropriate orders should the court give in this appeal.
- 15.** On whether leave was required under **Order 43** of the **Civil Procedure Rules**, counsel submitted that although the preliminary objection did not expressly cite **Order 2 rule 15(1)** of the civil procedure framework upon which it was anchored, it sought an order striking out pleadings for being an abuse of the process of the court; for being vexatious and frivolous; and for failure to disclose a reasonable cause of action. Counsel added that, consequently, the ensuing order was issued by the Chief Magistrate Court in exercise of jurisdiction under **Order 2 rule 15(1)**. Citing **Order 43** of the Civil Procedure Rules,

counsel argued that an appeal ensuing from Order 2 rule 15(1) does not require prior leave.

- 16.** On whether the 1st respondent complied with the provisions of the Land Adjudication Act prior to filing the suit, counsel submitted that it was undisputed that parcel numbers 3099, 1480 - 1487; and 1489 - 1592 fell within **Mbwaa 1 Adjudication Section in Tigania West Sub County**, hence any suit relating to the said parcels required prior consent of the Land Adjudication Officer under **Section 30(1)** of the **Land Adjudication Act**. Counsel observed that, in their pleadings, the 1st respondent did not aver that they obtained consent of the Land Adjudication Officer, adding that they, similarly, did not annex any consent to the plaint. Citing the Court of Appeal pronouncement in ***Bhaijee & another v Nondi & another (2022) KECA 119 (KLR)***, counsel submitted that the suit was fatally incompetent.
- 17.** Counsel further submitted that even if the 1st respondent had obtained the consent of the Land Adjudication Officer, the suit was still fatally incompetent because they were obligated to exhaust the remedies provided under the Land Adjudication Act before they could approach the courts. Counsel added that the Act provided elaborate dispute resolution mechanisms relating to claims over land in an adjudication section. Citing the decision of the Court of Appeal in ***Speaker of the National Assembly v Karume (1992) 22 KLR***, counsel submitted that the Chief Magistrate Court should have downed its tools on the ground of want of jurisdiction.

- 18.** On the appropriate reliefs, counsel argued that the suit in the Chief Magistrate Court is incompetent, frivolous and bad in law and should therefore be struck out with costs to the appellants. Counsel urged the court to allow the appeal as prayed.

### **Respondents' Submissions**

- 19.** The appellants filed affidavits of service severally, indicating that the respondents were served on all occasions. None of the respondents tendered submissions in the appeal. Consequently, the appeal is uncontested.

### **Analysis and Determination**

- 20.** The court has read and considered the record of appeal; the grounds of appeal; and the submissions tendered in the appeal. The court has also considered the relevant legal frameworks and jurisprudence. The following are the four questions that fall for determination in the appeal: (i) Whether leave was necessary prior to filing of this appeal; (ii) Whether the suit in the Lower Court was fatally incompetent for failure to comply with the requirements of Section 30(1) of the Land Adjudication Act; (iii) Whether the suit in the Lower Court was fatally incompetent for failure to comply with the doctrine of exhaustion of statutory remedies under the Land Adjudication Act; and (iv) What order should be made with regard to costs of this appeal and costs of the suit in the Lower Court.
- 21.** The task of a first appellate court was summarized by the Court of Appeal in ***Susan Munyi v Keshar Shiani (2013) eKLR*** as follows:

***“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”***

22. The principle was similarly outlined in **Abok James Odera t/a A J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR** as follows:

***“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”***

23. Did the appellants require leave under **Order 43** of the **Civil Procedure Rules** prior to bringing this appeal? The question relating to leave was raised by the court at the stage of admitting the appeal. In his address on the material day, counsel for the appellant stated that leave was not necessary because the preliminary objection sought the striking out of pleadings under Order 2 rule 15(1) of the Civil Procedure Rules. The court directed the appellants to address the question in their written submissions on the appeal.

- 24.** The appellants subsequently filed written submissions dated 26/9/2025. The appellants' counsel pointed out that the preliminary objection sought an order striking out the suit for being vexatious, frivolous and an abuse of the process of the court and for failure to disclose a reasonable cause of action. Counsel argued that although Order 2 rule 15(1) of the Civil Procedure Rules was not expressly cited, it was clear that the preliminary objection sought an order striking out the plaint and the notice of motion. Counsel added that under **Order 43 rule 1(1)** of the **Civil Procedure Rules**, an appeal challenging an order issued under Order 2 [pleadings generally] does not require prior leave.
- 25.** The above submissions have not been countered in any way. Based on the above submissions and on the cited legal frameworks, the court is persuaded that leave was not necessary. Consequently, it is the finding of this court that leave was not necessary.
- 26.** Is the suit in the Lower Court fatally incompetent for failure to comply with the requirements of Section 30(1) of the Land Adjudication Act? Section 30(1) of the Land Adjudication Act provides as follows:
- “30 (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.”***

27. Besides raising non-compliance with Section 30(1) of the Act as a preliminary objection, the appellants also raised the issue as a substantive defence. The estate elected to remain quiet about the issue, notwithstanding the fact that the parcels they were litigating about were located in a declared adjudication section. They did not contest the fact that the suit parcels were in an adjudication section and the adjudication register had not become final. They did not also contest the fact that they initiated the suit without the requisite consent of the Land Adjudication Officer under Section 30(1) of the Land Adjudication Act.
28. The Court of Appeal interpreted the provisions of **Section 30 (1) of the Land Adjudication Act** in ***Bhaijee & another v Nondi & another (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment)*** and made the following binding pronouncement:
- “Section 30 of the Land Adjudication Act requires consent to be given before the institution of civil proceedings concerning an interest in land in an adjudication section. The consent was a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically required the suit to be discontinued if started without consent. Section 30 therefore affected the power***

***and jurisdiction of courts to hear and determine such disputes. The rationale for Section 30 of the Land Adjudication Act was that there was an elaborate process that was laid down by the Land Adjudication Act, on how to determine which persons were, and the extent to which, they were entitled to interests in the land under adjudication. It was necessary that Section 30 was first employed before resort was made to the courts, and also shielded from unnecessary and unjustified abuses.”***

- 29.** The estate of the late Nabea initiated the suit in the Chief Magistrate Court without the requisite consent. In the absence the mandatory consent of the Land Adjudication Officer, the Chief Magistrate Court had no jurisdiction to entertain a suit relating to an interest in land located in an adjudication section whose adjudication register had not been finalized. The estate needed prior consent of the Land Adjudication Officer. For the above reason, the court finds that the suit in the Chief Magistrate Court was fatally incompetent on account of failure to obtain prior consent of the Land Adjudication Officer.
- 30.** Was the suit fatally defective for failure to exhaust the mandatory statutory remedies under the Land Adjudication Act? The key objective of the Land Adjudication Act is spelt out in the preamble to the Act which states as follows:

***“An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land, and for purposes connected therewith and purposes incidental thereto.”***

- 31.** The Act contains an elaborate statutory mechanism for ventilating grievances relating to decisions made under the Land Adjudication Act in relation to interests in land. The organs established under the Act are: (i) the Land Adjudication Committee; (ii) the Arbitration Board; (iii) the Adjudication Officer as an organ that hears and determines objections relating to the adjudication register [A/R Objections]; and (iv) the Minister/Cabinet Secretary as an organ that hears appeals against decisions made by the Adjudication Officer on A/R Objections.
- 32.** Our courts have umpteen times stated that where Parliament has, through statute, established primary dispute adjudication mechanisms, those mechanisms ought to be exhausted before the jurisdiction of the superior courts is invoked. In ***Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (2015) eKLR***, the Court of Appeal reiterated this principle in the following words:

***“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call. The exhaustion***

***doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts.”***

33. Similarly, in ***Speaker of the National Assembly v Njenga Karume, [1992] 22 KLR*** the Court of Appeal stated as follows:

***“...In our view, there is considerable merit in the submission 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. We observed without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”***

34. The above principle was also outlined in ***Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR*** as follows:

***“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that***

***avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”***

- 35.** It does emerge from the pleadings and from the arguments advanced that the estate decided to ignore the dispute resolution mechanisms established under the Act. Regrettably, Section 30(1) of the Adjudication Act expressly barred the Chief Magistrate Court from entertaining the suit. For the above reasons, it is the finding of this court that the suit before the Chief Magistrate Court is fatally incompetent for failure of the 1st respondent to exhaust the remedies available under the Land Adjudication Act.
- 36.** On costs, the errors leading to the appeal were committed by the Chief Magistrate Court. Parties will therefore bear their respective costs of the appeal. However, the estate of the late Nabea [the 1st respondent] will bear costs of the suit in the Chief Magistrate Court.

### **Disposal Orders**

- 37.** Having evaluated the pleadings and the preliminary objection, and having considered the submissions that were tendered before the Chief Magistrate and those that have been tendered in this appeal, I make a finding that the preliminary objection was merited. The Chief Magistrate Court had no jurisdiction to entertain a suit

relating to a land ownership dispute within an adjudication section in the absence a prior written consent of the Land Adjudication Officer. Similarly, the Chief Magistrate Court had no jurisdiction to entertain a suit that violated the express provisions of the Land Adjudication Act relating to dispute resolution mechanisms relating to land in an adjudication section.

- 38.** For the above reasons, this appeal succeeds in terms of prayers (a) and (b) of the memorandum of appeal. Parties will bear their respective costs of the appeal. Lastly, the 1st respondent [the estate of the late Nabea] will bear costs of the suit in the Chief Magistrate Court.

**DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF NOVEMBER, 2025.**

**B M EBOSO [MR]**

**ELC JUDGE**