



REPUBLIC OF KENYA



**Mwangi v Waliaula & another (Civil Appeal E056 of 2024)
[2025] KEHC 16086 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E056 OF 2024
PJO OTIENO, J
NOVEMBER 5, 2025**

BETWEEN

PAUL MUNGAI MWANGI APPELLANT

AND

MARTIN WALIAULA 1ST RESPONDENT

COUNTY GOVERNMENT OF TRANS-NZIOIA 2ND RESPONDENT

(Arising from the Ruling of Hon. M.A Ochieng (PM) in Kitale Land Case No. E101 of 2014)

RULING

Introduction

1. Before the Court for determination is an Appeal against the Ruling of the Kitale's Principal Magistrate (Hon. Mary. A. Ochieng²) delivered on 15th August 2024 in Land Case No. E101 of 2024.
2. The genesis of the matter traces back a suit which was commenced by the 1st Respondent against the Appellant. The Plaintiff there (now the 1st Respondent) pleaded to have been the Appellant's tenant for the property L.R No. Kitale Municipality Block 3/810 Laini Moja, pursuant to a tenancy agreement dated 1st June 2018. The gist of the 1st Respondent's claim flowed from the assertion that the Appellant was not the registered owner of the property. It alleged to have discovered in May 2019 that the land actually formed part of a road reserve, land number L.R. No. 2116/460, belonging to the 2nd Respondent.
3. It was the 1st Respondent's case that the tenancy agreement was void ab initio, the Appellant having fraudulently obtained rent despite lacking the legal capacity to lease or deal with the property. The sought prayers in the Plaint included; (i) a declaration that the Appellant is not the registered owner of L.R No. Kitale Municipality Block 3/810 Laini Moja T/A LR. No. 2116/460; (ii) a declaration that the Appellant has no capacity to lease, collect rent, or deal in any way with the suit property; (iii) a



- permanent injunction restraining the Appellant from interfering with the suit property; and, (iv) an order directing the Appellant to reimburse all money obtained fraudulently in the form of rent.
4. In response to the Plaintiff, the Appellant filed a Preliminary Objection dated 5th June 2024 in the Chief Magistrate's Court challenging its jurisdiction on the matter. He asserted two primary grounds: first, that the Chief Magistrate's Court lacked jurisdiction as the matter fell under the exclusive domain of the specialized Landlord and Tenant (Shops, Hotel and Catering Establishment) Act (Cap 301); and second, that the court was functus officio given the prior, final determination and orders issued in Eldoret (Nairobi) BPRT NO. E092 of 2023.
 5. Upon full hearing, the court vide Ruling delivered on August, 15 2024 dismissed the Preliminary Objection raised by the Appellant and allowed the suit instituted by the 1st Respondent to proceed. The trial Magistrate recognized the BPRT proceedings, noting that a consent order had been issued requiring the 1st Respondent to vacate the premises. However, it was the court's position that the current suit introduced a contention regarding ownership of the suit property, which the 2nd Respondent claimed was a road reserve. It was thus held that such claims on ownership could only be canvassed by the parties through hearing and tendering of evidence.
 6. Accordingly, the court reached a conclusion that the Preliminary Objection transitioned from a pure matter of law to one involving facts requiring evidential proof hence dismissing the Preliminary Objection.
 7. Aggrieved by the trial Ruling, the Appellant lodged this Appeal vide Memorandum of Appeal dated 16th September 2024. The grounds put forth in support of the Appeal are; (i) that the Magistrate failed to find that the suit before the court was misconceived and an outright abuse of court process; (ii) that the Magistrate failed to find that the Court was functus officio; and, (iii) that the Magistrate failed to appreciate that the matter had been substantially determined by the BPRT and that it was not open to the court for determination. The Appellant prays that the impugned Ruling be set aside the said dismissal and substitute it with an order allowing the Preliminary Objection.

Analysis and Determination

8. When the matter landed on the desk of the court for confirmation if parties had filed submissions, the respondent had filed what it called a Preliminary Objection, contesting the jurisdiction of the court on the basis that section 13(1) and (2), *Environment and Land court Act* divests the court of jurisdiction to Entertain Appeals from the magistracy sitting as Environment and Land courts.
9. That is a point that stares on the court on the face and demands neither minute explanation nor arguments. It is to court a strait jacket that cannot be mistaken for any other garment. Unmistakable because, the title of the suit before the trial court was clearly Environment and Land court. Section 13 of the *Environment and Land Court Act*, deriving its norms from, Article 165(5) of *the Constitution* divests this court of jurisdiction to entertain an appeal from the magistracy while exercising the jurisdiction as an Environment and Land court.
10. Having found so, what is the recourse! Must it be an obvious striking out as the 1st respondent prays? To this court, there is an imperative that access to justice be facilitated, devoid of technicalities and that costs of litigation should never be a difficulty of an impediment to such access and the substantive administration of justice.
11. This court and the its sisters; the Environment and Land court and The Employment and Labour Relations Court, enjoy equal status even when jurisdictional docket, remain firmly demarcated. The three courts being of equal status must have the latitude to share coordinate jurisdiction, even if limited to ability to transfer a cause that clearly belong to one as appropriate. To strike out a matter does not



resolve the dispute but leaves it hanging by sending parties to a fresh start at additional costs. That approach commends itself not to this court.

12. What the court finds just and to further access and substantive administration of justice is that this matter be transferred to the Environment and Land court for hearing and final disposal.
13. It is so ordered. Let the Deputy Registrar, cause the file to be transmitted to the Appropriate registry forthwith.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT LODWAR, THIS 5TH DAY OF NOVEMBER, 2025

PATRICK J O OTIENO

JUDGE

