



**Kahara v M’Itobi & 7 others (Environment and Land Case  
E012 of 2023) [2025] KEELC 5700 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE E012 OF 2023**

**BM EBOSO, J**

**JULY 30, 2025**

**BETWEEN**

**SAMUEL MWANGI KAHARA ..... PLAINTIFF**

**AND**

**JOHANA NTONJA M’ITOBİ ..... 1<sup>ST</sup> DEFENDANT**

**JULIUS MWITI M’ITOBİ ..... 2<sup>ND</sup> DEFENDANT**

**JANET MUKONJIRA M’ITOBİ ..... 3<sup>RD</sup> DEFENDANT**

**SHADRACK KIBURI M’ITOBİ ..... 4<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR, I GEMBE SOUTH ..... 5<sup>TH</sup> DEFENDANT**

**OFFICER ..... 6<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**THE DIRECTOR OF SURVEY, MERU COUNTY ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. Falling for determination in this ruling is the 3rd defendant’s preliminary objection dated 12/3/2025 through which the said defendant urged the court to strike out the plaintiff’s suit on the ground that the court lacks jurisdiction to entertain the suit and the subsequent application in view of the provisions of Section 29 of the *Land Adjudication Act* [hereinafter referred to as “the Act”]. The preliminary objection was canvassed through written submissions dated 7/4/2025, filed by M/s Boniface Koome & Co Advocates. The plaintiff opposed the preliminary objection through written submissions dated 11/4/2025, filed by M/s Ngentu & Company advocates.
2. The gist of the preliminary objection was that the plaintiff failed to exhaust the statutory appeal mechanism for challenging the decisions made in objection number 584, 585, 586, 360, 361, 362 and



363 pursuant to the mandatory requirements of Section 29 of the [Land Adjudication Act](#). He argued that the suit lands were the subject matters in the above objection proceedings.

3. The 3rd defendant annexed to her written submissions a purported decision dated 11/9/2014 and alleged that the annexure to the written submissions was the Land Adjudication Officer's decision made under Section 26 of the Act. He faulted the plaintiff for failing to challenge the decision through an appeal to the Minister, contending that the plaintiff slept on his right only lodge the present suit 10 years later.
4. Citing case law, the 3rd defendant argued that in the absence of an appeal to the Minister, the decision of the Land Adjudication Officer should be deemed final and binding under the [Land Adjudication Act](#). The 3rd defendant urged the court to uphold the preliminary objection.
5. Opposing the preliminary objection, the plaintiff made reference to "the proceedings attached to the preliminary Objection" and argued that the tribunal (the Land Adjudication Officer) downed its tools on the ground that it lacked jurisdiction because the courts had heard, determined and made orders on the dispute. The plaintiff argued that despite having downed its tools, the tribunal [the Land Adjudication Officer] "proceeded to hear and determine the matter". The plaintiff argued that it was clear from the foregoing that there are material facts which require to be disclosed during trial. The plaintiff argued that in the circumstances, the preliminary objection dated 12/3/2025 failed to satisfy the requirement that a preliminary objection should raise a pure point of law.
6. The plaintiff added that the suit land had been subdivided and subdivision titles had been issued. Counsel argued that the issues raised in the plaint pointed to illegalities and fraud in the issuance of the said titles, hence the dispute was properly before this court.
7. The court has considered the preliminary objection and the parties' respective submissions on the preliminary objection. The court has also considered the prevailing jurisprudence on the issues that arise for determination. The following are the two issues that fall for determination in this ruling: (i) Whether the point canvassed in the preliminary objection dated 12/3/2025 meets the threshold of a preliminary objection; and (ii) Whether, in relation to the dispute in this suit, the jurisdiction of this court has been ousted by the provisions of Section 29 of the [Land Adjudication Act](#). I will dispose the two issues sequentially in the above order.
8. Does the point canvassed in the notice of preliminary objection dated 12/3/2025 meet the threshold of a preliminary objection? The threshold of a preliminary objection was outlined by the Court of Appeal for East Africa in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696* 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."

9. Sir Charles Newbold, P, rendered himself as follows in the same case:

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion..."



10. The Supreme Court of Kenya in *Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others* SCK Petition No 10 of 2013 reiterated the above threshold in the following words:

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which is 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... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

11. The preliminary objection under consideration is anchored on objection proceedings that took place under Section 26 of the *Land Adjudication Act*. The preliminary objection is also anchored on alleged decision(s) made under Section 26 of the *Land Adjudication Act*. The court is expected to examine the said proceedings and the said decision(s) in order to determine the second identified issue. The 3rd defendant having chosen a preliminary objection as the platform on which to canvass the point, there was no room for presentation of evidence on the said platform
12. Having realized her folly, the objector (3rd defendant) purported to annex to her written submissions a purported decision alleged to have been made on 11/9/2014. At paragraph 3 of the written submissions, the objector stated as follows:

“Your lordship the said objections relate to the suit land in this cause and their decision was delivered on 11th September, 2014 (Decision Annexed)”

13. Clearly, by annexing a purported decision to her written submissions, the objector, no doubt, realized that the point she was canvassing required presentation of evidence in form of the alleged decision. There are only two ways through which documentary evidence is presented to a civil court in Kenya’s legal system: (i) production as an exhibit during viva voce evidence after taking oath or after affirmation; and (ii) through a sworn affidavit presented to the court and admitted by the court. Annexing evidence to a party’s written submissions is irregular. Such an annexure cannot be relied upon as evidence. Even documents contained in a trial bundle do not constitute evidence until they are marked and produced as exhibits during sworn testimony or as marked annexures to a sworn and admitted affidavit.
14. The totality of the foregoing is that the point canvassed in the preliminary objection dated 12/3/2025 requires evidence which has not been tendered to the court. Put differently, the point canvassed in the preliminary objection dated 12/3/2025 does not meet the threshold of a preliminary objection.
15. For the above reasons, the preliminary objection dated 12/3/2025 is struck out on the above grounds. The objector will be at liberty to canvass the point on the platform of a notice of motion supported with a sworn affidavit containing relevant evidence and annexures. Consequently, the court will not make a pronouncement on the second issue which looks into the merits of the point. For inappropriately raising her point on a preliminary objection, the 3rd defendant will bear costs of the preliminary objection.

**DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF JULY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of



Ms Wairimu for the 5th, 6th, 7th and 8th Defendants

Court Assistant - Tupet

