



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC LAND CIVIL SUIT NO. E080 OF 2024**

**CHINA WU YI (KENYA) PRECAST COMPANY LIMITED.....**  
**PLAINTIFF**

**VERSUS**

**GODFREY NDOMBI NAMUSONGE.....1<sup>ST</sup>**  
**DEFENDANT**

**ELIZABETH WANGARI GATHUTHI.....2<sup>ND</sup>**  
**DEFENDANT**

**WILBERFORCE INGWE.. .....3<sup>RD</sup>**  
**DEFENDANT**

**RICHARD ODONGO GAITANO.....4<sup>TH</sup>**  
**DEFENDANT**

**WILSON GAKONGU WAWERU..... 5<sup>TH</sup>**  
**DEFENDANT**

**BERNADETTE FLOSSY MUNGAI.....6<sup>TH</sup>**  
**DEFENDANT**

**DINAH CHEBET KEINO.....7<sup>TH</sup>**  
**DEFENDANT**

**STEVE SIMIYU WANYAMA.....8<sup>TH</sup>**  
**DEFENDANT**

<b>JOHN MWANGI MUCHIRI.....</b>	<b>9<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>MAUREEN ADHIAMBO KANGU.....</b>	<b>10<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>MOSES WANJALA MWASAME.....</b>	<b>11<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>ROSEMARY OGUBALA APIYO .....</b>	<b>12<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>DAVID NJIHIA MWAURA.....</b>	<b>13<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CHRISPIN MAENDE KHASAJO.....</b>	<b>14<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BARRACK OKWARO MAINA MULUKA.....</b>	<b>15<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>KENYA INSTITUTE OF MANAGEMENT.....</b>	<b>16<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>JOSEPH IKOBOI AMUKE.....</b>	<b>17<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>FLORENCE WAIRIMU MURIUKI.....</b>	<b>18<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>NANCY NJERU NDUNGU.....</b>	<b>19<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>DIRECTOR OF SURVEY, KENYA.....</b>	<b>20<sup>TH</sup></b>
<b>DEFENDANT</b>	

**RULING**

1. This ruling considers the notice of motion dated 17/09/2024 filed by the plaintiff, along with one notice of preliminary objection (PO) filed by the 16<sup>th</sup> defendant dated 2/12/2024. We will soon review a summary of these documents and their responses, offering a clear overview.
2. In regard to the motion, it is expressed to have been moved under the provisions of **Sections 1A, 1B & 3A** of the **Civil Procedure Act** and **Orders 40, Rules 1 (a) & (b) and 51 Rule 1**, of the **Civil Procedure Rules**, and all other enabling provisions of the law. The plaintiff seeks the following reliefs from this court: -

***a. Spent.***

***b. Spent.***

***c. That pending the hearing and determination of the main suit herein, this honourable court be pleased to issue a temporary injunction order restraining the respondents, their servants, agents, assignees, transferees, licensees or any such other person, institution, or organization claiming through them from further entering, trespassing, utilizing, and/or building and or in any manner occupying or using the plaintiff's property known as L.R. No. Mavoko Town Block 2/119.***

***d. That the costs of the application be provided for.***

3. The motion is premised on the grounds outlined in the main body and the supporting affidavit of Shi Zuliang, sworn on the same date. In summary, he states: a) The plaintiff is the bona fide, genuine, and legal owner of land parcel no. **Mavoko Town Block 2/119 (“plaintiff’s land”)**; b) The 1<sup>st</sup> to 19<sup>th</sup> defendants are owners of adjoining parcels of land; c) They (1<sup>st</sup> to 19<sup>th</sup> defendants) have since 2019 to date, without lawful justification, trespassed and encroached onto the plaintiff’s property by creating beacons therein; d) A survey report of August 2023 by the 20<sup>th</sup> respondent confirms that the encroached area is 2.0767 ha; and
4. Finally, e) such encroachment has prevented the plaintiff from carrying out its business, including the excavation of construction stones or ballast, thereby causing the plaintiff profound economic loss, and the property is at risk of being wasted, damaged, or alienated by the 1<sup>st</sup> to 19<sup>th</sup> defendants. A survey report by the 20<sup>th</sup> defendant was tendered to the court.
5. In opposition, the 19<sup>th</sup> defendant, with the authority of the 1<sup>st</sup> - 15<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> defendants, filed a replying affidavit sworn on 19/12/2024. She vigorously challenges the motion, and in a nutshell, maintains that: a) They are the purchasers of parcels of land that emanated from the subdivision of **Mavoko Town**

**Block 2/133 (“mother parcel”)**, which the Kenya Institute of Management originally owned after purchasing from Associated Mercantile and Allied Services Ltd; b) The mother parcel from which their land parcels were subdivided was issued on 13/03/2004, long before the plaintiff secured its parcel of land, on 21/02/2019.

6. C) When the plaintiff raised the issue of a boundary dispute in 2018, the parties jointly agreed to engage surveyors to determine the boundary. A survey was conducted on 27/06/2018, followed by a site visit on 05/07/2018, which took place in the presence of the parties’ representatives and a report was generated, confirming that the plaintiff had encroached onto the mother parcel; d) Subsequently, the plaintiff and the Trustees of Kimua Self-Help Group, who owned parcels of land in the mother parcel, carried out a joint survey. This resulted in separate survey reports with their respective recommendations; and, e) They doubted the veracity of the report from the 20<sup>th</sup> defendant, as they were never aware of any exercise that generated such a report. These defendants tendered several survey reports to this court.
7. In response to the motion, the 16<sup>th</sup> defendant’s PO raises the singular point of law that the court lacks jurisdiction to entertain the suit pursuant to the provisions of **Section 18** of the **Land Registration Act**.

8. This point of law is also reiterated in the replying affidavit sworn on 6/12/2024 by Raymond Mwangi. Additionally, this affidavit chiefly states that the 16<sup>th</sup> defendant is not an encroacher and that the letter dated 8/08/2023, allegedly signed on behalf of the regional surveyor, is highly irregular as the power to determine a boundary dispute vests in the land registrar and not the regional surveyor, pursuant to the provisions of the **Land Registration Act**.
9. When this matter came up for directions, **Mr Kuria**, counsel for the 20<sup>th</sup> defendant, informed the court that he would not participate; thereafter, all other parties filed written submissions. **Ms Rashid & Obayi Advocates**, representing the plaintiff, filed two sets dated 20<sup>th</sup> and 27<sup>th</sup> March 2025. **Ms J.M. Onyancha & Associates**, acting for the 1<sup>st</sup> to 15<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> defendants, filed theirs dated 27/03/2025, and finally, **Ms Kiarie Kariuki & Githii Advocates**, representing the 16<sup>th</sup> defendant, filed theirs dated 26/03/2025. Therefore, after identifying and considering the issues for determination, this ruling shall, later in its analysis and decision, address the arguments contained in the rival submissions regarding the specific issues and also take into account the law and judicial precedents.
10. Accordingly, having reviewed the motion, grounds, affidavits, annexures, PO, and the rival submissions, the issues that arise for resolution are as follows: (a) **whether the PO has met**

**the legal threshold, (b) whether this court has jurisdiction to hear the suit, and (c) whether the plaintiff has met the legal threshold to justify the grant of injunctive relief.** Consequently, these issues will be addressed sequentially.

a) **Whether the PO has met the legal threshold**

11. Regarding this issue, the 16<sup>th</sup> defendant raised it in both the PO and the replying affidavit, and it is essential to reaffirm the pertinent principles derived from the landmark case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696**, which has long settled the tests that a PO has to meet 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 ... 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.”***

12. In affirming **Mukisa Biscuit (*Supra*)**, the Supreme Court of Kenya in **Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others [2015] KESC 23 (KLR)** emphasised the following on the threshold of a PO: -

***“Thus a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”***

13. Accordingly, based on these principles, when addressing this issue, the court will investigate whether the point of law is clear; whether the facts are settled and correct; do not necessitate further ascertainment; and whether the court is not being asked to exercise its prudent discretion. Therefore, having considered the documents presented, this court concludes that the question of jurisdiction is a matter of pure law, as it could determine the outcome of the entire suit. Moreover, it is settled law that without establishing jurisdiction, the court cannot proceed any further than to lay down its tools. This finding now enables us to move on to the second issue.

b) **Whether this court has jurisdiction to hear the suit**

14. This issue was argued to the pulp in the parties' submissions, with all agreeing that in areas with general boundaries, this court lacks jurisdiction to hear disputes over those boundaries. This court agrees with the unanimous position of the counsels on this matter, as **Sections 18 and 19** of the **Land Registration Act** state that: -

**18. Boundaries**

**(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.**

**(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.**

**(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:**

***Provided that where all the boundaries are defined under section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act (Cap. 299).***

***19. Fixed boundaries***

***(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.***

***(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.***

***(3)Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.”***

15. Referring to the prevailing jurisprudence, courts have consistently considered this issue, and some decisions have been cited by the parties in their arguments. Notably, this court adopts the position taken in the following case law: -

In appreciating the import of **Section 18** of the **Land Registration Act**, the Court of Appeal in **Azzuri Limited v Pink Properties Limited [2018] KECA 392 (KLR)**, stated as follows: -

***“This means that under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution; while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor...In this case, reference of the dispute to the Environment and Labour Court at first instance was proscribed by statute and on that account alone, the appellant’s case was a nonstarter.”***

**See also *Njugunah v Maluka & 4 others [2023] KEELC 18522 (KLR)***, which has been relied upon by the plaintiff and the 16<sup>th</sup> defendant.

As to the difference between a general boundary and a fixed boundary, the persuasive decision of **Abdalla Mohamed Salim & another v Omar Mahmud Shallo & another [2014] KEHC 5389 (KLR)** held:-

***“A distinction has to be made between the “general boundaries” as defined under the repealed Registered Land Act and fixed boundaries” which are applicable in land registered under the repealed Registration of Titles Act. Under Section 18 of the repealed Registered Land Act, the Director of Surveys was required to prepare and maintain a series of maps for every registration district. The type of survey that generated the registry index maps is what was known as “general boundaries” which has been defined in section 18(1) of the Land Registration Act, 2012 to mean “the approximate boundaries and the approximate situation only of the parcel.” Indeed, most of the titles under the repealed Registered Land Act were issued on the basis of the general boundaries, meaning that***

***such parcel of land had no fixed beacons. On the other hand, land registered under the Registration of Titles Act required a cadastral survey to be prepared, which is based on a fixed boundary survey principle. Such a survey has an accurate linear and angular measurements to aid the registration of a title of on plot. The boundaries of land registered under the Registration of Titles Act can easily be identified by any surveyor because of the fixed nature of its beacons.”***

16. In this case, the parties have engaged in a prolonged dispute over the boundary between the mother parcel, the plaintiff's land, and apparently over **Mavoko Town Block 2/770**, and this court is unsure whether the Registry Index Map ("**RIM**") has been updated to reflect the subdivisions of the mother parcel. However, what this court is certain about is that the plaintiff's land and the subdivisions of the mother parcel were governed by the repealed **Registered Land Act**, which shows the approximate position of the land boundaries, rather than their exact location, as evidenced by the title document and official searches. In such instances, the land registrar is responsible for resolving boundary disputes concerning land with general boundaries, as the RIM only shows approximate boundaries and reflects the situation on the ground as an estimate.

17. Consequently, this court finds that the parcels of land in dispute have a general boundary. It also determines that the jurisdiction to hear and determine disputes on general boundaries lies with the land registrar. Therefore, this court does not have the jurisdiction to hear the matter. As a result, resolving the third issue is unnecessary. As this court concludes, it is essential to note that in disputes over general boundaries, the **Land Registration Act** provides a clear legal framework for how such matters should be handled, and it cannot be conducted in the manner in which the plaintiff obtained its report of 8/08/2023. In the end, the final orders that the court finds appropriate are as follows: -

***a) The suit is hereby struck out with costs to the defendants.***

***b) The file is hereby effectively marked as closed.***

It is so ordered.

**Delivered and Dated at Machakos this 2<sup>nd</sup> day of  
December, 2025.**

**HON. A. Y. KOROSS**  
**JUDGE**  
**02.12.2025**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms. Kanja Court Assistant.

Mr. Onyancha for the Respondents except 16<sup>th</sup> & 20<sup>th</sup>.

Mr. Ombaji for the Plaintiff.

Miss. Githii for 16<sup>th</sup> Respondent.

No appearance for 20<sup>th</sup> Respondent.

ORIGINAL