



**Gichuhi & another v Kagio (Environment and Land Case
E057 of 2024) [2025] KEELC 8592 (KLR) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E057 OF 2024**

TW MURIGI, J

DECEMBER 5, 2025

BETWEEN

KINUTHIA GICHUHI 1ST PLAINTIFF

JOSEPHINE WANJIRU GICHUHI 2ND PLAINTIFF

AND

NDEGWA KAGIRI KAGIO DEFENDANT

RULING

1. This ruling is in respect of the Notice of Preliminary Objection dated 24th March 2025, raised by the Defendant on the following grounds:-
 - a. That Plaintiff's suit is misconceived, premature, incompetent, defective, and an abuse of the court process.
 - b. The dispute herein relates to the boundary between L.R. No. 14970/211 and L.R. No. 14790/224.
 - c. The Honourable court lacks jurisdiction to hear and determine the Plaintiff's suit by dint of Section 18(2) of the [Land Registration Act](#) 2012.

Based on the foregoing, the Defendant urged the court to dismiss the suit with costs.

2. The preliminary objection was canvassed by way of written submissions.

The Defendant's Submissions

3. The Defendant filed his submissions dated 6th May 2025.
4. On behalf of the Defendant, Counsel submitted that the only issue for determination is whether the preliminary objection is merited.



5. Counsel submitted that this matter relates to a boundary dispute, as shown by the pleadings and the Surveyor's Report. It was submitted that this matter falls within the jurisdiction of the Land Registrar, as the Plaintiff claims encroachment by the Defendant on their property, while the Defendant asserts that the wall is within the correct boundaries. Counsel observed that the additional orders sought are contingent upon the resolution of the boundary dispute.
6. To buttress this argument, reliance was placed on the case of *Ali & 2 others v Wangómbe* (Environment & Land Case No E032 of 2023) (2024) KEELC 4420 (KLR), *Willis Ocholla v Mary Ndege* (2016) eKLR, *Adina v Otiato & 2 others* (ENVIRONMENT & Land Court Case 81 of 2018) *Njumbi v Njoroge & 2 others* (Environment & Land Case 731 of 2011) (2022) KEELC Sagalla Ranches Limited v Saumu Mwanganjoni & 99 others (2022) eKLR 14623 (KLR)

The Plaintiff's Submissions

7. The Plaintiffs filed their submissions dated 9th May 2025.
8. On behalf of the Plaintiff, Counsel submitted that the Land Registrar's jurisdiction is limited to general boundaries for land registered under the Registered *Land Act* (repealed) and does not extend to fixed boundaries. To support this argument, reliance was placed on the case of *Aden Abdullahi Mohammed v George Dominic Otieno & 2 others* (2021) eKLR, where the court held that the Land Registrar has no authority to deal with fixed boundaries. Further reliance was placed on the case of *Azzuri Limited v Pink Properties Limited* (2018) eKLR, where the court held that a surveyor may investigate disputes relating to lands with fixed boundaries.
9. Counsel argued that the suit property is not within the Land Registrar's jurisdiction because it is registered under the Registration of Titles Act and has defined boundaries. Counsel also pointed out that the surveyor's report confirms that the property is defined by fixed boundaries.
10. It was further submitted that the preliminary objection does not raise a point of law because it is based on contested facts. Counsel argued that the pleadings show serious contested facts regarding whether the wall is encroaching or in compliance with the Physical Planning Act.
11. Counsel further submitted that Article 159(2) (d) of *the Constitution* requires the court to administer justice without undue regard to procedural technicalities.

Analysis And Determination

12. The law on Preliminary Objections is well settled. A Preliminary Objection must be on a pure point of law.
13. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* (1969) EA 696, Law JA stated as follows:-

“So far as I'm aware, 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 submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



14. Further on, Sir Charles Newbold JA stated:-

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

15. In *Oraro Vs Mbaja* [2005] eKLR Ojwang J (as he then was) described it as follows:-

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

16. The issue of jurisdiction is a pure point of law that can determine the matter without having to consider the merits of the case. This Court is therefore satisfied that the Defendant’s Preliminary Objection is based on a pure point of law.

17. This court is called upon to determine whether it has jurisdiction to hear and determine this suit. It is trite law that jurisdiction is everything, and without it, the court cannot take one more step in the case.

18. The locus classicus on jurisdiction is the celebrated case of *Owners of Motor Vessel ‘Lillian S’ Vs Caltex Oil (Kenya) Limited* (1989) eKLR, where the Court held 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...”

19. Similarly, the Supreme Court in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others* [2012] eKLR pronounced itself thus;

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

20. A court derives its jurisdiction from *the Constitution*, legislation, or both. The jurisdiction of this court is derived from Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. Article 162(2) (b) of *the Constitution* provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.



21. To give effect to Article 162 (2) (b) of *the Constitution*, Parliament enacted the Environment & Land Court Act. Section 13(1) and (2) of the said Act provides as follows:-

“ 13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals, and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private, and community land and contracts, cause in action, or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to the environment and land.”

22. The Defendant contends that the suit herein offends the provisions of Section 18 of the *Land Registration Act*, as the dispute relates to a boundary dispute.

23. Section 18 of the *Land Registration Act* provides as follows:-

- (1) 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 field 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.

23. A reading of Section 18(2) of the *Land Registration Act* takes away the jurisdiction of this Court to deal with disputes regarding boundaries of registered land that have not been determined.

24. By a Plaint dated 7th February 2024, the Plaintiff prays for judgment against the Defendant for:-

- a) An order that the Defendant do remove or demolish or pull down the permanent stone perimeter wall that is trespassing or encroaching on the Plaintiff's parcel of land known as Nairobi L.R. No. 14970/224 together with the concrete waste and/or debris deposited or dumped on the said parcel of land within fourteen (14) days of the making of the orders herein and failure to do so the Plaintiff be at liberty to do the same at the Defendant's costs.
- b) An order of permanent injunction to restrain the Defendant whether by himself, his agents, servants, employees or any other person acting under the Defendant's mandate or authority or direction from trespassing or encroaching or entering or constructing or erecting or developing



or in any way howsoever from interfering with the Plaintiff's ownership, use and possession of all that parcel of land known as Nairobi L.R. No. 14970/224.

- c) General damages for the destruction of the Plaintiff's property.
 - d) General damages for trespass.
 - e) The OCS Runda Police Station do ensure compliance with the orders of the court.
 - f) Costs of this suit.
 - g) Interest on (c) and (d) above.
24. The Defendant argued that the dispute relates to a boundary dispute and therefore falls under the jurisdiction of the Land Registrar. The Plaintiff contends that the title is registered under the Registration of Titles Act and therefore does not fall within the Land Registrar's jurisdiction.
25. For a preliminary objection to be valid, it must be on a point of law and must be founded on facts that are not in dispute. It should not be proved through facts or evidence, nor deal with disputed facts
26. The Plaintiff's claim alleges trespass on the suit property. He produced a Survey Report by Geomeasure Surveyors showing that the boundary is fixed under the RTA (Repealed). To determine whether the property is registered under the Registered *Land Act* or the Registration of Titles Act, the court must examine the title deed, land register, and supporting documents. This requires gathering evidence and verification. Because a preliminary objection cannot rely on facts that must be proved through evidence, it falls outside the scope of a preliminary objection.
27. The orders sought by the Plaintiff relate to occupation and use of land and therefore fall within the jurisdiction of this court.
28. In the end, I find that the preliminary objection dated 24th March 2025 is devoid of merit and the same is hereby dismissed with costs to the Plaintiff.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF DECEMBER, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of:

The absence of the parties

Ahmed – Court assistant

