



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)
AT MILIMANI LAW COURTS, NAIROBI
ELC CASE NO E554 OF 2025

NAOMI ACHIENG OKELLEO.....1ST
PLAINTIFF /APPLICANT

JETS GORMSEN2ND
PLAINTIFF /APPLICANT

-VERSUS-
KETHI

KILONZO1ST
DEFENDANT

KAISA VENTURES KENYA CO.LTD KENYA CO.
LTD2ND DEFENDANT

ORCHID RESIDENCY MANAGEMENT3RD
DEFENDANT

RULING

Brief facts

The Applicants have filed the notice of motion application dated 3rd November 2025. The gist of the application is that the applicants and the 1st defendant are residents in Orchid Residency apartments under the management of the 2nd and 3rd defendants. That the applicants reside in apartment B705 while the 1st defendant resides in B704 making them close door neighbours. The applicants indicate that the 1st defendant owns two dogs that have been a nuisance due to their aggressive behaviour of

barking at them whenever they leave their house to access the hallway and the lift causing fear and panic. The application is supported by an affidavit sworn by the 1st plaintiff where she gives occasions as to when the dogs have harassed members of her family. This she depones goes against the code of conduct that governs the residency which prohibits the keeping of dogs or pets in common areas.

She deponed that despite several complaints to the 2nd and 3rd respondents no action has been taken and as such they continue to live in fear. The application seeks for orders to restrain the 1st respondent from allowing the unmuzzled dogs in the common areas and keep them within their premises and orders compelling the 2nd and 3rd respondents to enforce the residency code of conduct touching on the issue of pets in the common areas.

Prayers in the application

1. Spent
2. **THAT** pending the hearing and determination of this application, a temporary injunction be issued restraining the 1st Defendant/Respondent, her agents, servants, or anyone acting under her instructions from:
 - i. allowing or keeping unmuzzled or unrestrained dogs in any common area within Orchid Residency, including hallways, lifts, stairways, or basements;
 - ii. allowing the said dogs to charge, or frighten residents;
 - iii. keeping dogs that cause nuisance within the premises by their constant loud barking.

3. THAT pending the hearing and determination of this suit, a temporary injunction be issued in the above terms;
4. **THAT** the 2nd and 3rd Defendants/Respondents be compelled to enforce the residency and safety provisions, including immediate prohibition of the dogs' presence in common areas and application of fines as provided under the Residency Code of Conduct;
5. THAT costs of this application be in the suit.

Response

The 1st defendant responded by filing a notice of preliminary objection dated 1st December 2025 and a replying affidavit dated sworn by 1st defendant dated 2nd December 2025.

The preliminary objection was on grounds that the court lacked jurisdiction being that the dispute falls under the purview of the Nairobi City County Dog Control and Welfare Act, 2015, and any civil proceedings therefrom correctly belong before a Court of Civil Jurisdiction with the requisite pecuniary and geographical jurisdiction being the chief magistrate's court and not the Environment and Land Court.

The deponent denied the allegations of the dogs causing nuisance to the applicants indicating that the applicants intentionally provoked the dogs to be able to come up with video they intend to rely on as evidence.

She further deponed that the dogs were trained, leashed and controlled when they access the seventh-floor passages and elevators and any other common spaces for their daily health and exercise breaks.

It was deponed that the 2nd and 3rd respondents had no legal basis to enforce any laws on the residency as they were not a corporation a Corporation registered under the Sectional Properties Act nullifying the code of conduct relied on by the applicants.

Submissions by parties

The applicant did not file any submissions on the preliminary objection 1st defendant's submissions in support of the notice of preliminary objection

The 1st respondent reiterated the issue raised in the preliminary objection insisting that the dispute between the Parties was care and control of dogs in Orchid Residency which is not within the jurisdiction of the Environment and Land Court.

It was submitted that the dispute was civil in nature and ought to have been filed in a Civil Court with the substantive and pecuniary jurisdiction being the Chief Magistrates Court conferred with both Civil and Environment and Land Court jurisdiction. Counsel relied in the case of **Owners of the Motor Vessel "Lillian S\$" v Caltex Oil (Kenya) Ltd [1989] eKLR**, where the Court of Appeal held that jurisdiction is everything and without it, a court has no power to make one more step.

He submitted that where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law must down tools in respect of the matter before it

Issues for determination

Whether the notice of preliminary objection is merited

This being a Preliminary Objection, then it has to fall within the parameters of such objection as was set out in *Mukisa Biscuits Ltd Vs West End Distributors Ltd* (1969) EA 696 where it was held as follows: -

“ So far as I am 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 a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

The 1st Defendant’s Objection is based on jurisdiction, so it is a valid point to raise as a Preliminary Objection.

Article 162(2)(b) of *the Constitution* of Kenya 2010 grants this Court original jurisdiction over land disputes, including title and tenure, irrespective of pecuniary value.

162. System of courts

1. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - a) employment and labour relations; and
 - b) the environment and the use and occupation of, and title to, land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

4. The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

To give effect to Article 162 (2) (b) and (3) enacted the Environment and Land Court Act, No. 19 of 2011 which under Section 13 of said Act provides for the Jurisdiction the court as:

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, choses in action or other instruments granting any enforceable interests in land; and
 - e) any other dispute relating to environment and land.

Anchoring on the above position of the law the subject matter of this suit is on the issue of dog control and welfare, while important for public health and local environment I hold the view that it does not fall within the

specific constitutional and statutory mandate of the ELC, which primarily deals with proprietary land and environmental issues.

The 1st respondent has stated that the dispute falls within the Nairobi City County Dog Control and Welfare Act, 2015 which is the correct position. This Act focuses on dog licensing, control, and welfare within the county, including penalties for offences. It is a county-level legislative measure related to animal control, which is a devolved function under the Constitution of Kenya. Section 13 of the said Act reads

.13. A person shall not—

- a) urge any dog to attack, worry or frighten any person or animal or through negligence fail to prevent any dog from attacking, worrying or frightening any person or animal, except where necessary for the defense of such first-mentioned person or his or her property or of any other person;
- b) take out a dog on a public place unless it is on leash.
- c) keep any dog which causes damage to public property;
- d) keep any dog the faeces of which he or she fails to remove regularly and dispose of suitably;
- e) keep any dog whose barking, yelping, howling or whining constitutes to a public nuisance;
- f) keep any dog which causes a nuisance to inhabitants of the neighbourhood by—
 - i. having acquired the habit of charging any vehicle, animals, poultry, pigeons or persons outside any premises where it is kept;

ii. or by misbehaving in any other manner.

Disputes arising from the Act, such as liability for dog bites or enforcement actions by county officers, typically result in civil proceedings or criminal charges for offences. These matters do not inherently relate to the "use and occupation of, and title to, land" or "environmental planning and protection". I would then tend to categorize the dispute herein as one that falls within the ambit of the Act as captured above in Section 13 and as such, the appropriate forum would be the Magistrate's Court, which handles most civil and criminal cases with limited pecuniary jurisdiction, or the High Court if the claim exceeds the Magistrate's Court's limits or involves constitutional matters.

Having established that the dispute does not fall within what entails use and occupation of land, this court is therefore not vested with the Jurisdiction to entertain the same.

Conclusion:

The notice of preliminary objection is merited and the application and entire suit should be dismissed for want of jurisdiction.

Each party to bear costs.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **21st** day of

January, 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Kori Quar..... for the Applicants

Ms. Kethi Kilonzo..... for 1st Defendant

No appearance..... for 2nd and 3rd Defendants

Philomena W...... Court Assistant

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