



REPUBLIC OF KENYA



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**Kardalei & 13 others v District Land Adjudication and Settlement Officer Transmara & 61 others
(Environment and Land Case 013 of 2021) [2026] KEELC 569 (KLR) (9 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 569 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CASE 013 OF 2021**

**MN MWANYALE, J
FEBRUARY 9, 2026**

BETWEEN

OLOISIRIRI KARDALEI & 13 OTHERS & 13 OTHERS PLAINTIFF

AND

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
TRANSMARA & 61 OTHERS & 61 OTHERS DEFENDANT**

RULING

1. This Matter is a part heard matter and when it comes up for further hearing on 4th of November 2025 Mr. Mbithi learned counsel for the 2nd Defendant informed the court that he had filed a Notice of Preliminary Objection on the matter raising jurisdictional issues. As the matter had been slated for two days to wit 4th and 5th of November 2025, the court directed the same P/O to be heard on 5th November 2025 by way of oral submissions. This Ruling relates to the said Notice of Preliminary Objections which is based on the following grounds that:
 - i. the court lacks jurisdiction to hear and determine the matter as the same is contrary to the doctrine of exhaustion of all legal avenues provided under section 30 of the [Land Adjudication Act](#)
 - ii. the Plaintiff should have submitted the dispute under Sections 26, and 29 of the [Land Adjudication Act](#).
2. The court heard oral submissions on the P/O. Mr. Mbithi Learned counsel for 2nd Defendant and the Applicant in the P/O submitted that the Plaintiff never complied with sections 26,29 and 30 of the [Land Adjudication Act](#). That the Plaintiff should have submitted the dispute under Sections 26, and 29 of the [Land Adjudication Act](#). He submitted further that this issue raises a pure point of law. In Further submissions Mr. Mbithi submitted that the Plaintiff were aware that the Nkararo Adjudication process commenced in May 1985 yet they did not file any objections before the adjudication committee nor



filed any appeal under section 29 of the [Land Adjudication Act](#), that no consent was filed before commencing of the suit, hence the court lacked jurisdiction. To buttress the point Mr. Mbithi relied on the decision in the case of S.K.Macharia vs Kenya Commercial Bank limited as well as the decision in Albert Chaurembo Mumba and 143 Others, on the point that where a dispute settlement mechanism exists the same must be strictly followed.

3. It was further submitted on behalf of the Applicant that the pleadings herein were a nullity for lack of a consent from the Land Adjudication Officer and to this end reliance was placed on the decision in the case of Samburu Ole Kijabe and 30 others vs Cabinet Secretary Ministry of Land and 30 Others. That by refusing to register an objection as required in law the court would be usurping the mandate of the Land Adjudication Committee as was held in Benson Njagi vs Wilson Miriti Thaura. Mr. Mbithi Learned counsel for the 2nd Defendant further in his submissions distinguished the authorities filed by the Respondents in the P/O and urged the court to uphold the P/O.
4. Mr. Ochwangi for some of the defendants associated himself with the submissions of Mr. Mbithi and supported the Preliminary Objection.
5. In his Submissions Mr. Nanda Learned counsel for the Plaintiffs/Respondents placed reliance on the list of authorities he had filed and submitted that the P/O as filed was a misconception of the law as the ground raised do not qualify to be a preliminary Objection as the issue as to whether or not there was objection proceedings, as well as an appeal thereof to the Minister were factual issues that required evidence to be adduced thereof and be ascertained while the issue of whether or not the Nkararo Adjudication section had been finalized at the time of filing the suit is equally a factual issue which needed examination of evidence Mr. Nanda referred the court to proceedings of 8/7/2024 where he stated that the 1st Plaintiff witness had testified in court and produced as evidence two consents to institute Civil proceedings dated 19/5/2012 and 14/5/2012 which consents had been issued to all the Plaintiffs hence there was compliance with section 30(1) of the [Land Adjudication Act](#).
6. Mr. Nanda Further submitted that Objections proceedings with respect to parcels no. 512, 722,479 and 749 had been produced in evidence the decisions were in favour of the Plaintiffs hence there was compliance with section 26 and 29 of the [Land Adjudication Act](#) hence the P/O was misplaced and he since consents had been issued there was no compliance with section 30 and he placed reliance to the decision in the case of Benjamin Okwaro Esikita vs Christopher Anthony Ougo as well as the decision in Mike Mbevi Ndambuki VS Thomas Mwaka Kamuna and 8 Others where the court envisaged a situation where a party would opt not to exhaust all the processes and obtain a consent and approach courts for redress. Further reliance in this regard was placed in the decision in the case of Athur Nduru Githere vs Francis George Githere and 11 others.
7. Ms. Ngira learned State Counsel appearing for the Attorney General who is a Defendant in the suit on behalf of the Director Land Adjudication and Settlement associated herself with the Submissions of Mr. Nanda for the Plaintiff. It was her brief submissions that the nature of the P/O as drafted and argued did not meet the threshold of the Mukhisa Biscuits case especially on the issue of consents and the exhaustion of the adjudication process which were factual issues and not pure points of law. It was her further submissions that the ELC retained as supervisory jurisdiction where issues of contravention of [the Constitution](#) were raised and that jurisdiction could not be ousted she urged the court to disallow the P/O.
8. In his rejoinder Mr. Mbithi submitted that in the case of Dina Management case it was held that a P/O could be raised at any stage of the case, he submitted that there was no valid consent in the case as the consents issued were valid only for 60 days. On the issue of supervisory jurisdiction n it was submitted that the same was not absolute. He beseeched the court to allow the P/O



Issues For Determination

9. Having analyzed the Notice of preliminary objection as well as the rival submissions by the parties, the court frames the sole issue for determination as follows,
 - i. Whether the Preliminary objection before court meets the threshold of a Preliminary Objection capable of determining the suit in limine?

Analysis And Determination

10. The grounds in support of the P/O have been set out at paragraph 1(i) and (ii) of this is undoubtedly a point of law as it is based on section 7 of the *Civil Procedure Act* and it has the potential of determining a matter summarily.
11. The Court shall now consider whether the grounds in support of the Preliminary objection as filed in this Matter meets the threshold of Preliminary Objections as was observed in the decision in the case of *In Mukisa Biscuit Manufacturer Limited vs Westend Distributors Limited*; the Court held in respect of a preliminary objection, that “so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implications out of pleadings, and which if argued as 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 acts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion....”
12. Similarly in the decision in the case of *Omondi vs National Bank of Kenya Limited and 2 others*; as quoted in the decision of *J. N. and 5 others vs Board of Management St. G. School Nairobi and Another* where it was held that; “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.....where a Court needs to investigate facts, a matter cannot be raised as a preliminary point. Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
13. From the above excerpts a Preliminary Objection must no deal with issues of ascertainment of the facts and evidence. It follows therefrom as drawn the preliminary objection fails to meet the threshold of a preliminary objection as this P/O revolves around the issue of whether or not objections proceedings were filed and the process under section 26 and 29 of the *Land Adjudication Act* were exhausted. That means that the court has to ascertain facts in terms of the existence of the objection proceedings and evidence in terms whether the objection proceedings were adduced in evidence so as to determine compliance with sections 26 and 29 of the *Land Adjudication Act*. Similarly, the issue of whether or not there is a valid consent from the Lands Adjudication officer that was filed in the matter does not arise from the pleadings and requires ascertainment of facts through the rules of evidence as was submitted by both Mr. Nanda and Ms. Ngira and hence the P/O must therefore fail, as it hereby does, and the court shall not dwell on its merits or otherwise.
14. The court shall consider the issues raised in the P/O in the final submissions of the matter as they shall form part of issues for determination.
15. The court wishes to note the industry and preparedness of counsels who argued the P/O who had one day to prepare and argue the P/O from the date it was filed and wishes to mention Ms. Ngira learned State Counsel who though appeared for Defendants in the matter opted to oppose the P/O while it



would have been convenient for her to associate with it. Ms. Ngira displayed a high level of intellectual honesty in this matter.

16. The upshot is that the preliminary objection dated 14th November 2025 is hereby struck out with costs in the cause.

DATED AND DELIVERED AT KILGORIS THIS 9TH DAY OF FEBRUARY 2026.

HON. M.N. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Sandra/Clara

Ms Tonui h/b for Mr. Nanda for the Plaintiff

Mr. Ochwangi for the Defendants

Ms. Ngira for the A.G

Mr. Seriani for the Defendants

Mr. Mbithi for the 2nd Defendant

