



Mruttu v Director Land Adjudication & Settlement & 5 others (Miscellaneous Application E009 of 2025) [2026] KEELC 773 (KLR) (Civ) (18 February 2026) (Ruling)

Neutral citation: [2026] KEELC 773 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
CIVIL**

MISCELLANEOUS APPLICATION E009 OF 2025

EK WABWOTO, J

FEBRUARY 18, 2026

BETWEEN

LYDIA KATHEKE MRUTTU APPLICANT

AND

**THE DIRECTOR LAND ADJUDICATION & SETTLEMENT' 1ST
RESPONDENT**

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

**THE DISTRICT LAND REGISTRAR, TAITA TAVETA
COUNTY 3RD RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER, TAVETA SUB
COUNTY 4TH RESPONDENT**

THE HON ATTORNEY GENERAL 5TH RESPONDENT

MARTINA KALUMU NGUNZILA 6TH RESPONDENT

RULING

1. This ruling is in respect to the application dated 2nd July 2025 and the Preliminary Objection dated 21st and 28th July 2025.
2. The application dated 2nd July 2025 and the objections dated 21st and 28th July 2025 were contested and pursuant to the directions issued by the court, it was directed that the same be canvassed simultaneously to enable the court render its Ruling.
3. In respect to the application dated 2nd July 2025, the Applicant sought the following reliefs:-



- i. That a declaratory order be and is hereby issued to the effect that there is no decision of the Minister capable of enforcement in respect of adjudication proceedings in Land Parcel No. 5089, situated within the Chala/Njukuni Adjudication Section.
 - ii. That a declaratory order be and is hereby issued to the effect that the decision of the adjudication officer in objection proceedings number 19 of 2018 dated 29th January 2018 which adjudged the suit property as belonging to Rames Sangunai Mruttu remains unchallenged in law.
 - iii. That a declaratory order be and is hereby issued to the effect that the adjudication register in respect of Land Parcel No. 2089, situated within the Chala/Njukuni Adjudication Section has in accordance with the [Land Adjudication Act](#) become final in favour of the estate of Rames Sangunai Mruttu.
 - iv. That an order be and is hereby issued directing the Chief Land Registrar to make the necessary alterations to the adjudication register in respect of land Parcel No. 5089, situated within the Chala/Njukuni Adjudication Section in favour of the estate of Rames Sangunai Mruttu.
 - v. That order be and is hereby issued directing the Chief Land Registrar to cause registration of Parcel No. 5089 in the name of the administrators of the estate of Rames Sangunai Mruttu and/or the estate of Rames Sangunai Mruttu and to issue the title deed accordingly.
 - vi. That the costs of this application be provided for.
 - vii. Any further or other orders or directions the Honourable Court considers appropriate in the circumstances.
4. In opposition to the said application, the 1st to 5th Respondents filed the Notice of Preliminary Objection dated 21st July 2025. The same was premised on the following grounds:-
- i. That the application and/or suit is incompetent, bad in law, misconceived and otherwise an abuse of the court process and should be dismissed in the first instance.
 - ii. That the application and/or suit explicitly offends the express provisions of Section 30 of the [Land Adjudication Act](#) Cap 284 Laws of Kenya.
 - iii. That the Applicants do not have the prerequisite Consent of the Land Adjudication and Administration Officer to institute these proceedings.
 - iv. That this Honourable Court is without requisite jurisdiction where the Land Adjudication Officer has not given consent in writing to institute these proceedings.
5. The 6th Respondent filed a Preliminary Objection dated 28th day of July 2025. The same was premised on the following grounds:-
- i. There are no proceedings known in law in which a Notice of Motion can originate a suit hence the current miscellaneous application offends the provisions of Order 3 Rule 1 of the Civil Procedure Rules, 2010.
 - ii. As a consequence, the miscellaneous application herein is thus a non-starter, incompetent, frivolous, fatally defective and an abuse of the court process hence should be struck out with costs to the Respondent.
 - iii. That the suit is thus misconceived and mischievous and therefore unsustainable in the obtaining circumstances.



6. The 6th Respondent also filed Replying Affidavit sworn on 29th September 2025.
7. It was the Applicant's case that she is a Legal Representative of Mr. Rames Sangunai Mruttu (deceased) wherein the deceased and the 6th Respondent have been disputing the ownership of the parcel of land known as No. 5089 situated within Chala/Njukuni Adjudication Section. The latest of the adjudication in the said disputes was determined in objection proceeding number 19 of 2018 dated 29th January 2018 which adjudged the suit property as belonging to Mr. Rames Sangunai Mruttu. Dissatisfied with the decision, the 6th Respondent purported to have lodged an appeal to the Minister and obtained a decision therefrom. The 6th Respondent sought to enforce the said decision vide JR No. E001 of 2024 wherein the court held that the 6th Respondent had conceded material facts by failing to disclose the existence of a second decision regarding the same subject matter. Hence therefore the purported existence of this decision of the Minister relating to the same subject matter renders the proceedings before the Minister a nullity.
8. It was also the Applicant's case that the decision of the adjudication officer in objection proceedings number 19 of 2018 dated 29th January 2018 which adjudged the suit property as belonging to the late Rames Sangunai Mruttu remains unchallenged in law and hence therefore the said application ought to be allowed in law.
9. It was contended by the 6th Respondent that the Land Adjudication Board made a decision on 29th January 2018 and an appeal was lodged 4 days later which was within the sixty (60) days period.
10. It was further contended that by the fact that the appeal to the Minister under Section 29 of the [Land Adjudication Act](#) was lodged within the prescribed time, the register in respect of land parcel No. 5089 did not become final at that stage.
11. It was also contended that on 4th May 2021 the Appeal was heard by the 4th Respondent in presence of the Applicant on 5th May 2021 and a decision rendered by the 1st Respondent. Hence therefore the decision of the adjudication officer thus remains overturned and cannot be reverted to.
12. It was averred that the application is baseless and driven by bad faith and the 6th Respondent has no control over how the 4th Respondent was to decide the appeal since the existence of the two decision were not matters within the knowledge of the 6th Respondent.
13. During the plenary hearing of the application, Learned Counsel Mr. Kibukosya made oral submissions on behalf of the Applicant, Learned Counsel Mr. Kemei made oral submissions on behalf of the 1st to 5th Respondents while Learned Counsel Mr. Mutinda submitted on behalf of the 6th Respondent.
14. Lead Counsel Mr. Kibukosya added that the application is not seeking any substantive orders but merely seeking declaratory orders and the application ought to be allowed in the interest of justice.
15. Learned Counsel Mr. Kemei submitted that, the application is akin to a Judicial Review Application disguised as a Miscellaneous application, the same offends Section 30 of the [Land Adjudication Act](#), no consent was obtained prior to filing the same and the application cannot be used to enforce orders issued in a different matter.
16. Learned Counsel Mr. Mutinda submitted that the suit was wrongly commenced as a Miscellaneous Application. The application is defective and the court lacks jurisdiction.
17. Having considered the application dated 2nd July 2025 and the Preliminary Objection dated 21st and 28th July 2025 it is the considered position of the court that the following are the salient issues for determination herein:-



- a. Whether the Preliminary Objections dated 21st and 28th July 2025 are merited.
 - b. Whether the Applicant has met the threshold for grant of the relief sought.
18. I will therefore start with the Preliminary Objections before determining the application depending on the outcome of the objections.
 19. What constitutes a Preliminary Objection was discussed in the case of Hassan Ali Joho & Another v Suleiman Said Shabal & 2 Others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukisa Biscuit Manufacturers Ltd v West End Distributors Ltd (1969) E.A where the Court of Appeal said that:

“...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 need to be ascertained or if what is sought is the exercise of judicial discretion.”
 20. The Respondents filed the objections which contested the jurisdiction of the court on the following grounds, the application offends Section 30 of the [Land Adjudication Act](#), Applicant does not have consent from the land Adjudication and Administration offer and the application offends the powers of order 3 Rule 1 of the Civil Procedure Rules 2010.
 21. In responding to the said objections, the Applicant argued that the application is properly before this court, there exists special circumstances for the court to consider the same, the orders sought in the instant application cannot wait indefinitely until the closing of the adjudication register as that would deny the Applicant from exercising her constitutional right to the subject property and further the said application has merely sought for declaratory reliefs and not substantive orders.
 22. From the perusal of the application before court, it is evident that the Applicant moved this court vide a Miscellaneous application brought under Section 1A, B, Section 80 of the [Civil Procedure Act](#) and Section 26 to 29 of the [Land Adjudication Act](#).
 23. It is also evident that the said application seeks a number of reliefs which have been enumerated earlier in this ruling.
 24. From a perusal of the said provisions, it is worth noting that the said Act is salient on the mode or manner of which a party can seek to enforce any decision made thereon or challenge the same when he or she is aggrieved. Does this therefore mean that a party can thus move court vide a Miscellaneous application? This is an issue which this court needs to address.
 25. A Miscellaneous Application is meant to seek specific or interlocutory orders from the court that do not immediately necessitate the filing of a full or formal suit.
 26. Order 3 rule 1 of the Civil Procedure Rules, 2010 as cited by the 6th Respondent, prescribes the form and manner of institution of a suit. In the case of Scope Telematics International Sales Ltd v Stoic Company Ltd & Another [2017] eKLR, the Court of Appeal held that:

“The manner of initiating a suit cannot be termed as a mere case of technicality. It is the basis of jurisdiction. Obviously, overlooking a statutory imperative and the above authorities, the learned judge cannot be said to have exercised his discretion properly. There can be no other interpretation of rule 2. The application should have been anchored as a suit. It was not about what prejudice the appellant or and 2nd Respondent would suffer or what purpose the suit would have served. The discretion cannot be used to override a mandatory statutory



provision. For these reasons, we are in agreement with the submissions of the appellant that the application was totally incurably defective.”

27. The Court of Appeal in the above cited matter, emphasizes that the manner of initiating a suit is not a mere technicality; it is actually the basis of jurisdiction. The import is that it is a matter that is so critical that the court can raise it suo moto without being moved by any party.
28. In the instant case, the seek orders which have far reaching implication that may be decreed to be full in their nature even though she has argued that the same are not substantive.
29. In the case of *Rockland Kenya Ltd v Commissioner General of KRA & Another* (2020) eKLR, the court held that substantive orders cannot be issued in miscellaneous applications. The court had in turn cited with approval the decision in *Witmore Investment Ltd v County Government of Kirinyaga & 3 Others* (2016) eKLR where it was stated that;

“.....where a party such as an applicant herein seeks an order that in effect appears to resolve with a finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such. If the applicant wanted to move this court for a final resolution of the issues in controversy, raised in the application, it should have moved this court properly in the manner provided by the law.”
30. The court in the case of *Nairobi West Hospital Ltd v Joseph Karina & Another* (2018) eKLR, made a similar finding that a substantive order cannot be issued through a miscellaneous application.
31. In view of the foregoing, it is the finding of the court that the nature of the orders sought by the Applicant cannot be issued in a Miscellaneous Application as sought. The said orders are not merely procedural but substantive.
32. Consequently, the application dated 2nd July 2025 is hereby dismissed. Each party to bear own costs of the same. This being a miscellaneous cause the file is marked as closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 18TH DAY OF FEBRUARY, 2026.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Kinukosya h/b for Mr. Awele for the Applicant.

Mr. Kemei for the 1st to 5th Respondents.

Ms. Wambura for the 6th Respondent.

Court Assistant: Mary Ngoira.

