

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC CASE NO. E004 OF 2024

JOSHUA OTIENO OJALA.....

PLAINTIFF

VERSUS

BROWN KHOJAH OJALA.....1ST

DEFENDANT

COUNTY GOVERNMENT OF MIGORI.....2ND

DEFENDANT

RULING

1. The Plaintiff filed this suit claiming that the 1st and 2nd Defendants caused the transfer of Plot No. 25 "B" measuring 25ft by 100ft from the original names of Yunita Adhiambo Ojala (now deceased) to the 1st Defendant. He added that the land was situated in Sori town within Nyatike Sub County of Migori County. He prayed for the relief of it reverting the ownership of the said Plot to the original owner John Ojala Odindo, and an order restraining the defendants from interfering with the said Plot, and costs of the suit and interest thereon.

2. Following the service of the summons to enter appearance, and the filing of the responses thereto, the 1st Defendant raised a preliminary objection dated 16th June 2025, against the Plaintiff's suit. It was based on the grounds that:

1. This honourable court lacks jurisdiction to hear this matter in the first instance as the same contravenes Section 9 of Magistrate's Court Act, 2015 and Section 26 (4) of Environment and Land Court Act No. 19 of 2015 (sic).

2. The said matter is a non-starter in law.

3. The preliminary objection was argued on the basis of written submissions. The 2nd Defendant began by giving the background of the Objection. He then set out the issues for determination. They were whether the Honourable Court had jurisdiction to hear and determine the Plaintiff's suit. On this they argued that the Court lacked jurisdiction to hear and determine the instant suit. They argued that while the subject-matter was within the jurisdiction of the court because under Article 162(2)(b) of the Constitution the court could handle land matters, the issue was that the subject matter fell below the

statutory threshold of Kshs. 20 million as set out in Section 26(3) of the Magistrates' Court Act (as amended in 2023).

4. They relied on the case of *The Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, where Nyarangi JA observed that jurisdiction is everything and without it, a court has no power to make one more step. They argued that for that reason this court should not exceed the constitutional and statutory limits of its mandate.
5. They raised a second argument to the limb, which was that, in the pleadings there was no valuation report or credible evidence or proof to demonstrate that the property in issue was worth more than Kshs. 20 million, as required for ELC jurisdiction. They argued that the suit should have been filed in the Magistrates Court as that would improve access to justice as envisioned in Article 48 of the Constitution. They relied on the case of **Mwambela v Mohamed & 2 Others (E&L Case E011 of 2023)**, in which the Court held that where the value of the subject property is not pleaded or proven, a Preliminary Objection based on pecuniary jurisdiction does not stand as it requires resolution of factual issues, and further that the ELC

retains residual jurisdiction and the appropriate remedy is transfer to the Magistrates Court, not striking out.

6. He submitted that the Court to adopt a purposive interpretation of Section 26(3) of the Magistrates' Court Act (as amended). He argued that the Plaintiff ought to have stated the market value of the land, attached a valuation report or Tender any other material from which the pecuniary worth may be reasonably inferred. Further, that absence of such particulars left the Defendants and the Court unable to assess the appropriateness of the forum. He urged the Court to apply the statutory threshold under Section 9 of the Magistrates' Court (Amendment) Act, 2023.

7. The Plaintiff opposed the objection through submissions dated 24th June 2025. They began the argument by stating that the Preliminary Objection was not known to the law procedure hence an abuse of the procedure. Further, it was raised by a firm that was not on record for the 2nd defendant. He argued that the submissions on the Objection was signed by the firm of Tom Mboya & Co. Advocates on behalf of the 2nd defendant while the said firm is on record for the 1st defendant and not

the 2nd defendant, and no notice of change of advocates had been filed to allow the firm to act for the 2nd defendant. He cited Order 9 Rule 1 of the Civil Procedure Rules. he urged that both the Notice of

- 8.** Preliminary objection and submissions as filed by the firms of Tom Mboya & Co. Advocates be struck out.
- 9.** On whether the preliminary objection was sustainable, they submitted that it was bad in law and misplaced because no point was raised by the 2nd defendant. She added that this was the correct court to hear and determine all land related cases whether the value is Kshs. 500/= or unlimited in amount. He cited Article 162(2)(b) of the Constitution 2010 and Sections 4(2)(3) and 13(2)(e) of the Environment and Land Court Act. He argued that this Court has unlimited jurisdiction to hear all matters filed before it which relate to land. He added that the 2nd defendant was misled on the provisions of the Magistrates Act which cannot override the provisions of Article 162 (2) (b) of the constitution as well as Sections 4 and 13 of the Environment and Land Court Act.

- 10.** He relied on the case of Micelle Samba Mwambela vs Mohamed Ali Mohamed and 2 others in the Environment and Land court at Kwale, Environment and Land Case No. 8011 of 2023 and the Mukisa Biscuits Manufacturing Co. Ltd =Vs: West End Distributors Ltd. He concluded that the preliminary objection was not properly raised and lacks merit.
- 11.** This court as deeply considered the objection raised. It is of the view that the only issue for determination is whether the Preliminary Objection is merited and who to bear the costs thereof.
- 12.** One preliminary issue was raised which need to be clarified first. It is that the submissions in support of the Preliminary Objection were signed by the first of Tom Mboya & Company Advocates purportedly acting for the 2nd defendant whom the said law firm does not represent. To the plaintiff, it therefore rendered the submissions and the preliminary objection incompetent hence they should be struck out.
- 13.** One thing should not be lost sight of: submissions do not constitute pleadings or evidence. They are mere arguments meant to woo the court to be swayed to the side of the

presenter. In **Moi v Muriithi & another (Civil Appeal 240 of 2011) [2014] KECA 642 (KLR) (9 May 2014) (Judgment)**, the Court of Appeal held;

“Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

14. This court has examined the record. It shows that the preliminary objection was signed by the advocates for the 1st Defendant while the submissions were signed by the same advocates who mistakenly signed them as acting for the 2nd defendant. The two documents must be looked at distinctly. One is a pleading and other a marketing tool. The tool is the one what is wrongly indicated as being for another party. This can be, and has been, left out while this court analyzed the objection herein. But the preliminary objection is validly before the court.

15. The Court is called upon to determine that which the 1st Defendant calls a preliminary objection. The law pertaining to Preliminary Objections was well captured in the famous **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, where the Court of Appeal for Eastern Africa, stated (Law JA) in part that

"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 a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

16. Sir Charles Newbold, President of the Court in the Mukisa case went on to state;

“a Preliminary Objection cannot be said to be such if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.” (Page 710).

17. In the case of **Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004,** the court held that:-

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

18. It turns me to determining the point of law. Jurisdiction is everything when it comes to courts’ determination of disputes. Without it the court does nothing no work at all even if that work may be demonstrated by any amount of output: it is simply a nullity.

19. In **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment)**, Nyarangi JA, underscored the significant of in the following terms:

“30. With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”

20. On pecuniary jurisdiction of judicial officers, **Section 7** of the Magistrates’ Court Act provides as follows:

“(1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

(a) twenty million shillings, where the court is presided over by a chief

magistrate;

(b) fifteen million shillings, where the court is presided over by a senior principal magistrate;

(c) ten million shillings, where the court is presided over by a principal

magistrate;

(d) seven million shillings, where the court is presided over by a senior

resident magistrate; or

(e) five million shillings, where the court is presided over by a resident magistrate.

(2) The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.”

21. It is instructive to note that this court which is of equal status as the High Court derives its jurisdiction from Article 162(2)(b) and 3 of the Constitution of Kenya which establishes the Court

through the statute that was enacted to actualize it, namely, the Environment and Land Court Act. Specifically, Section 13 of the Act give the jurisdiction of this Court.

22. Sub Articles 162(2)(b) and 3 provide that;

“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to--

(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).”

23. Parliament then enacted the Act establishing this Court and by virtue of Section 13(1) gave it the jurisdiction it required.

The provision reads that;

“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.”

24. This Court has underlined the phrase “all disputes” in the above provision to emphasize that this court has jurisdiction to hear and determine all and any dispute in so far as it is

envisaged under the two provisions above, irrespective of the pecuniary jurisdiction. It means that the law does not prohibit the ELC from handling any dispute whose value can even be zero (0) and be as high as billions or trillions as long as it relates to the environment and land. Only subordinate courts have their pecuniary jurisdiction(s) limited by law.

25. Thus, regarding the preliminary jurisdiction raised herein, this Court finds it mischievous, an abuse of the process of the court. While it is good order and advisable for a dispute over certain subject to be instituted in a court of the lowest pecuniary jurisdiction, it does not render the suit incompetent and does not divest the court with more pecuniary jurisdiction than that lower court to handle or determine the dispute. The best the 2nd Defendant would have done was to apply to this court to transfer the instant suit to the subordinate court, if he was of the opinion that the subject matter was of less value than the maximum KShs 20 million that the subordinate court can handle.

26. The upshot is that the preliminary objection is unmerited. It is dismissed with costs to the Plaintiff.

27. The above notwithstanding, this Court has carefully considered the pleadings herein, particularly the Plaintiff. Indeed, the does not disclose the value of the 25ft x 50ft situate in Sori town. It is within the Court's knowledge that, save for a plot full of minerals such as gold reserves, within such a township, the value of one of the sizes as that of the instant one cannot exceed a sum of KShs. 20 million. It is therefore ordered that since there is a subordinate court within Migori Town whose jurisdiction is up to KShs 20 million. This Court therefore orders, *suo motto*, that the instant suit be transferred forthwith to the Migori Subordinate Court for hearing and determination.

28. Orders accordingly.

Ruling Dated, signed and Delivered this virtually via the Teams Platform this 11th day of February 2026.

**HON. DR. IUR NYAGAKA
JUDGE**

In The Presence Of,

Ms. Kirindo Advocate for the Plaintiff

B. Mboya Advocate for the 1st and 2nd Defendant

