



REPUBLIC OF KENYA



**Sum v Kiptanui & another (Environment and Land Appeal  
E003 of 2025) [2026] KEELC 528 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 528 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

**CK YANO, J**

**FEBRUARY 5, 2026**

**BETWEEN**

**JOEL CHERUIYOT SUM ..... APPELLANT**

**AND**

**BENJAMIN KIPTANUI ..... 1<sup>ST</sup> RESPONDENT**

**JEREMIAH TANUI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal arising from the ruling and order of the Chief  
Magistrates Court at Eldoret before Hon. Daniel Sitati Sifuna (SRM)  
delivered on 22nd January, 2025 in Eldoret CM ELC No. E191 of 2024)*

**JUDGMENT**

1. The Appellant herein was the Plaintiff in Eldoret CM ELC No. E191 of 2024, in which he sought various reliefs and contemporaneously, he filed a Notice of Motion Application dated 22<sup>nd</sup> November, 2024 seeking an interlocutory injunction pending the hearing and determination of the suit. In response, the Respondents herein filed a Notice of Preliminary Objection dated 3<sup>rd</sup> December, 2024 challenging the trial court's pecuniary jurisdiction. In the Ruling delivered on 22<sup>nd</sup> January, 2025, the trial court struck out the lower court suit for want of pecuniary jurisdiction.
2. Being aggrieved with the ruling and order, the Appellant commenced the instant Appeal vide a Memorandum of Appeal dated 23<sup>rd</sup> January, 2025 challenging the ruling on grounds that:-
  1. The learned trial magistrate erred in law by allowing the Preliminary Objection on jurisdiction based on a contested valuation report, disregarding the existence of a rival report filed by the Appellant.



2. The learned trial magistrate erred in law by allowing the Preliminary Objection on jurisdiction based on contested facts, whereas a Preliminary Objection should be determined on points of law alone.
  3. The learned trial magistrate erred in law by allowing the Preliminary Objection based on affidavits, when a Preliminary Objection should be determined based on pleadings only.
  4. The learned trial magistrate erred in law by allowing the Preliminary Objection based on a replying affidavit filed out of time.
  5. The learned trial magistrate erred in law by failing to find that the Preliminary Objection should have been determined on the assumption that all the facts pleaded by the Appellant are true, thus rendering any other evidence regarding pecuniary jurisdiction inadmissible.
  6. The learned trial magistrate erred in law by allowing the Preliminary Objection based on facts that required to be ascertained through evidence.
  7. The learned trial magistrate erred in law by considering irrelevant and extraneous factors, leading to an erroneous verdict.
  8. The learned trial magistrate is plainly wrong.
3. Arising out of the aforementioned grounds of Appeal, the Appellant prays for judgment against the Respondents herein as follows:-
1. The appeal be allowed.
  2. The ruling and order of the subordinate court be set aside and be substituted with an order dismissing the Respondents' Preliminary Objection.
  3. All orders granted by the trial court be vacated.

**Submissions:**

4. The Appeal was admitted on 21<sup>st</sup> May, 2025 when the court also directed that it would be canvassed by way of written submissions. The Appellant's submissions in support of the Appeal filed herein are dated 13<sup>th</sup> October, 2025. The Respondents' submissions are dated 22<sup>nd</sup> October, 2025.

**The Appellant's Submissions;**

5. Counsel for the Appellant started by giving a background of the dispute at the Magistrate's Court. Counsel also recounted that the Appellant acquired the land through allocation by the Director-Directorate of Land Adjudication and Settlement. That the Respondents had allegedly trespassed onto the suit land. Counsel submitted that nothing in the pleadings attributed a specific value to the land, thus the issue of jurisdiction was purely raised by the Respondents through affidavit evidence.
6. On the issue of jurisdiction, Counsel Submitted that Section 7(1) of the Magistrates' Court Act prescribes the pecuniary jurisdiction of Magistrates' Courts. She argued that it was incumbent on the trial Magistrate to determine the actual value of the suit property through evidence. Counsel submitted that the trial magistrate failed to interrogate the conflicting valuation reports filed herein, and as a result ousted the jurisdiction of the court. That the Magistrate thus misdirected himself on the law and facts. She cited Phoenix of E.A. Assurance Company Ltd vs S.M. Thiga t/a Newspaper Service (2019) eKLR and Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd (1989) KLR 1.



7. Counsel also faulted the court for treating a disputed fact as a pure point of law. Counsel relied on the description of a preliminary objection given in the case of *Mukhisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696. From this authority, Counsel argued that a PO must not rely on evidence (*Oraro vs Mbaja* (2005)1 KLR 141). Counsel further argued that a PO assumes the opponent's facts are true and that a PO cannot be raised if a court must investigate facts. For this argument, Counsel relied on *Hassan Ali Joho & Another vs Suleiman Said Shahbal & Others* (2014) eKLR and *Attorney General of Kenya vs Independent Medical Legal Unit* (Appeal No. 1 of 2011) alongside other authorities from Uganda and Tanzania. Counsel also cited the Nigerian Case of *Adetoun Oladeji vs Nigerian Breweries PLC* (SC91/2002, where it was held that no Affidavit is needed to support a valid PO.
8. Counsel however conceded that the pecuniary jurisdiction of a court is a point of law that can be raised through a PO. Counsel also submitted that determination of the value of land where each side has proffered a different valuation requires evidence and cannot be determined at the preliminary stage. Counsel argued that in choosing one valuation report over another, the trial magistrate made a finding of fact without a hearing, whereas he ought to have found that the PO did not meet the threshold of a PO and struck it out. Counsel further faulted the trial magistrate for finding that there was no rebuttal evidence yet the Appellant had filed rebuttal evidence through his Supplementary Affidavit.
9. The Appellant's advocate also submitted that the ruling focused on valuation reports and was not founded on pleadings. She urged that the introduction of facts via affidavits is antithetical to a proper PO. Counsel for the Appellant also had an issue with the fact that the PO and Replying Affidavit were filed on time but served late and the same should have been struck out. Counsel added that since a PO is raised on the assumption that all facts pleaded are true, then it should have been assumed that he is the true owner of the land, and that his allegation that the land is valued at KShs. 18,000,000/- is also true. That in upholding the Respondent's PO, the trial magistrate assumed the Respondent's facts to be true instead of the Appellant's and she cited the case of *Naizsons (K) Ltd vs China roads & Bridge Corp* (2001)2 EA 502.
10. Counsel also submitted that in relying on the details contained in the Respondent's valuation report, the trial magistrate considered irrelevant or extraneous factors, leading to an erroneous conclusion. Counsel claimed that the trial magistrate held the Appellant's failure to file submissions to mean that the Respondent's valuation was unopposed, when it was in fact opposed. Counsel further argued that the trial magistrate's decision to strike out the suit was an error, and that it has caused the Appellant grave prejudice. Counsel thus asked that the Appeal be allowed in its entirety with costs, and the ruling of 22.01.2025 be set aside.

### **The Respondent's Submissions;**

11. On the part of the Respondents, Counsel submitted that the Appeal is misguided, is an afterthought and based on a misconception. Counsel acknowledged that the instant Appeal arises out of the PO filed by the Respondents in the lower court regarding the issue of jurisdiction. Counsel reiterated the Respondent's position that the suit land is valued at KShs. 40,000,000/- which exceeds the jurisdiction of the Chief Magistrate's Court.
12. Counsel submitted that this position is guided by a valuation report dated 12<sup>th</sup> December, 2024 presented to the trial court. Counsel submitted that the annexed valuation report was properly filed and did not offend the tenets of a preliminary objection. Counsel refuted the Appellant's claim that there were two conflicting valuation reports. Counsel further submitted that the Appellant had not



tendered any evidence to show that he indeed filed a Supplementary Affidavit dated 17<sup>th</sup> January, 2025 annexing a valuation report as alleged.

13. Counsel pointed out that there is no receipt from CTS evidencing payment for the purported Supplementary Affidavit or any extract to show that it was actually filed. Counsel also explained that the ruling was delivered on 22<sup>nd</sup> January, 2025 while the Supplementary Affidavit, if indeed it was filed, is dated 17<sup>th</sup> January, 2025 just five days before the ruling, thus the trial court could not be faulted for not considering it. Counsel claimed that in any event, the said Supplementary Affidavit was filed without leave of court and cannot be relied upon.
14. In addition, Counsel submitted that the Appellant had acknowledged in his submissions that the Respondent's Affidavit was filed on time, contrary to the allegations in the Memorandum of Appeal. Counsel asked the court to uphold the lower court's finding and uphold the preliminary objection. Counsel further asked the court to find that the appeal lacks merit and ought to be dismissed with costs.
15. To support his submissions, Counsel relied on *Mursal & Another vs Manese* (Suing as the legal administrator of Daphine Kanini Manesa) (2022) KEHC 282 (KLR), *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 969, *Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* (1989) KECA 48 (KLR) and *Kamweli Petroleum Oil Kenya Limited vs Mwanja & 2 Others* (2024) KEELC 7342 (KLR).

#### **Analysis and Determination;**

16. I have considered the grounds raised in the Memorandum of Appeal, the Record of Appeal filed herein as well as the submissions filed by the respective parties. I am of the view that the grounds in the Memorandum of Appeal can be summarised into the following issues for determination:-
  - i. Whether the PO raised before the trial court meets the test of a proper PO;
  - ii. Whether the trial court erred in the manner in which it determined the PO;
  - iii. Whether the Learned Magistrate erred by striking out the suit for want of pecuniary jurisdiction;
  - iv. Who shall bear the costs of the Appeal?
17. This is a first appeal, and the duty of the court in this case was clearly explained in *Gitobu Imyanyara & 2 Others vs Attorney General* (2016) eKLR, where the court of Appeal stated thus:-

“An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
18. This court is therefore under a duty to re-evaluate, reconsider, and re-assess the entire evidence, both on points of law and fact, to reach its own independent conclusions.



### **Whether the PO raised before the trial court meets the test of a proper PO;**

19. A Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696* to mean:-

“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.”

20. In that same decision, Sir Charles Newbold, JA gave a further definition of a preliminary objection by explaining 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 had 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 not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

21. As is evident, among the examples of matter that can be raised as a preliminary objection in the *Mukisa Biscuits Case (Supra)*, is an objection to the jurisdiction of the court. The PO raised by the Respondents in the trial court was purely on the issue of pecuniary jurisdiction. Pecuniary jurisdiction is the court’s authority to hear and determine a case based on the monetary value of a dispute.

22. Pecuniary jurisdiction, relates to the authority of a court to hear a dispute, therefore it must exist at the time of filing of the suit, as was held in *Joseph Muthee Kamau & Another vs David Mwangi Gichure & Another (2013) eKLR*, as follows: -

“When a suit has been filed in a Court without jurisdiction, it is a nullity. Many cases have established that; the most famous being the case of *Kagenyi vs Musirambo (1968) EA 43*. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the Court’s pecuniary jurisdiction.

We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

23. Therefore, a Court may not hear and determine a suit that exceeds its pecuniary jurisdiction. Where a court finds that it lacks pecuniary jurisdiction, it must down its tools. That being the case, the Respondents’ PO therefore falls within the definition of a proper PO.

### **Whether the trial court erred in the manner in which it determined the PO;**

24. The Appellant also faulted the manner in which the trial court handled the determination of the PO. The Appellant first argued that a Preliminary Objection is argued on the assumption that all facts



pleaded by the other side are correct. In the case of *Aviation & Allied Workers Union Kenya vs Kenya Airways Limited & 3 others* (2015) eKLR, the Supreme Court held that:-

“ 14. This Court has had occasion in the past, to consider the nature of a preliminary objection. The Court endorsed the long-standing jurisprudence set in the *Mukisa Biscuit* case, on the nature of a preliminary objection...

... 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 has to be ascertained or if what is sought is the exercise of judicial discretion.

15. Thus a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are *prima facie* presented in the pleadings on record.”

25. According to the Appellant, since a PO is raised on the assumption that all facts pleaded are true, then it should have been assumed that he is the true owner of the land, and that his allegation that the land is valued at KShs. 18,000,000/- is also true.
26. This is misconception of the said principle. A look at the case of *Mukhisa Biscuits* (Supra) makes it clear that the PO ought to be raised on the assumption that all facts pleaded by the other party are true, save for the singular preliminary issue/point raised in the PO, which in this case was the pecuniary jurisdiction. It is this issue that the court was called upon to determine under the PO, thus the Appellant cannot claim that his allegations on the same issue that was in contention ought to have been assumed to be correct.
27. In addition, a PO cannot be raised if any fact has to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. Therefore, when a party raises a preliminary point, the matter should be capable of being disposed without the Court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings.
28. The Appellant faulted the court for considering affidavit evidence while determining the PO. There is indeed no doubt that the court did consider the Respondents’ Replying Affidavit and annexures thereto in its ruling. It must be noted however, that the ruling by the trial court was in determination of both the Application for injunction and the PO raised in response thereto.
29. Since the issue of jurisdiction was not only raised in the PO, but also in the Replying Affidavit, the trial court was well within its rights to consider Affidavit evidence without necessarily violating the legal principles applicable in determining a preliminary objection.

#### **Whether the Learned Magistrate erred by striking out the suit for want of pecuniary jurisdiction;**

30. By way of brief background, the proceedings at the Magistrate’s Court were commenced vide Plaint dated 22.11.2024 seeking various reliefs with respect to Land Parcel No. Uasin Gishu/Kahungura/397 (the suit property herein). The Appellant also filed a Notice of Motion Application of the same date seeking injunctive orders.
31. In response to the Application, the Respondents filed a Notice of Preliminary Objection (PO) dated 03.12.2024 challenging the suit and application on grounds that the court lacked pecuniary jurisdiction since the value of the suit land slightly exceed KShs. 40,000,000/-. From the Record of Appeal, I note that the Respondents also filed a Replying Affidavit in further reply dated 09.12.2024



annexing a valuation report from Premium Valuers Ltd who had valued the land at Kshs. 40,000,000/- as at 04.12.2024.

32. The Appellant claims that he filed a Supplementary Affidavit where he annexed a contrary valuation Report indicating that the value of the land was KShs. 18,000,000/- thus the suit was within the Court's jurisdiction. However, in its ruling of 22.01.2025 the trial court dismissed the Application and suit for want of pecuniary jurisdiction. In the impugned ruling, the trial court relied on the Respondents' valuation report from which the court noted that the land had actually been valued at KShs. 41,000,000/-.
33. The Appellant took issue with the fact that the court narrowed down the arguments and consideration to the singular question of whether or not it had requisite pecuniary jurisdiction to entertain the suit. Jurisdiction, as has been stated severally, is everything. A court of law cannot take any valid step in the absence of jurisdiction. In the case of Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Limited (1989) KLR 1, it was stated that:

“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...

A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado...”

34. A court's jurisdiction flows from either *the Constitution* or statute or both and it can only exercise jurisdiction as conferred on it by law (See Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 others (2012) eKLR). Section 9 of the Magistrates Courts Act confers jurisdiction on gazetted Magistrates' Courts to hear cases relating to land and the environment. However this jurisdiction must fall within their pecuniary jurisdiction as set at Section 7 of the Magistrate's Court Act 2015, which provides that:-

7. Civil jurisdiction of a magistrate's court

- (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.



35. I have taken time to read the ruling of the trial court, and at paragraph 10 thereof, the learned Magistrate held that:-

“ 10. The 1<sup>st</sup> Defendant deposed that the suit property had a value of above KShs. 40,000,000/- and supported that contention with an annexed inspection and valuation report dated 4<sup>th</sup> December, 2024 by Premium Valuers Ltd. The report puts the combined acreage of the land at approximately 8.3Ha, which translates to about 20.5093 acres. Its open market value and the value of the developments thereon is put at KShs. 41,000,000/=. The valuation report is quite detailed and describes the suit property well, complete with photographs. It also describes the land as being situated in a prime locality in the outskirts of the City of Eldoret and its proximity to the highway and other such amenities such as electricity and water. In the absence of rebutting evidence by the Plaintiff, I find no reason to doubt that the land is about KShs. 41,000,000/- in value. Accordingly, this court lacks jurisdiction to hear and determine the application and the suit and must down tools now.”

36. It is evident that the trial Court heavily relied on the Respondents' valuation report, describing it as detailed. It is unfortunate that the Appellant did not include a full copy of the Respondents' valuation report in the record of appeal and only attached two pages of it. The said two pages in no way show the amount valued nor are they instructive on how the amount of KShs. 41,000,000/- was reached. The original record from the lower court is also looking incomplete.

37. However, the trial Magistrate extensively detailed the matters considered in the Respondents' valuation report to arrive at the value of KShs. 41,000,000/-. I have no reason to disbelieve the analysis of the trial magistrate who saw the full valuation report.

38. The Appellant claims that he filed his own contradictory valuation report annexed to his Supplementary Affidavit. Indeed, in the record of Appeal, the Appellant included a Supplementary Affidavit annexing a valuation report showing that the value of the land was KShs. 18,000,000/.

39. I am constrained to believe the Respondents that this allegation may be false and no such report was actually filed. I have read the proceedings before the trial court, and I note that when the matter first came up before the trial magistrate on 4<sup>th</sup> December, 2024, Counsel for the Respondents asked for more time to reply to the application dated 22<sup>nd</sup> November, 2024 and was granted 7 days within which to file a response. The court then indicated that it would deliver its ruling on the Application and the PO on 22<sup>nd</sup> January, 2025.

40. There is no mention anywhere on the record of any Supplementary Affidavit having been filed as alleged by the Appellant. There is also indeed no proof that the Supplementary affidavit was actually filed. And if indeed the Appellant actually filed the Affidavit in court, as submitted by the Respondents, it is evident that it was filed without leave of court and the court was well within its rights to disregard it.

41. Moreover, even if the land was valued at KShs. 18,000,000/- as alleged by the Appellant, it would still fall outside the jurisdiction of the trial Magistrate, since as a Senior Resident Magistrate his pecuniary jurisdiction is set at Seven Million Shillings per Section 7(d) of the Magistrates' Court Act.

42. All matters considered, I do find that the trial court was right to find that it did not have the requisite pecuniary jurisdiction to determine the suit, and rightly struck it out.



**Who shall bear the costs of the Appeal?**

43. Based on Section 27(1) of the *Civil Procedure Act*, costs of any litigation must follow the event. This is a general rule, which essentially means that the party who succeeds in the action is entitled to the costs of the suit or litigation. However, a court retains the discretion to order otherwise where there exists sufficient or justifiable cause.
44. It is apparent that the Appellant herein has failed to demonstrate that his Appeal has any merit. Being the losing party in this Appeal, the Appellant is hereby condemned to pay the costs to the Respondents.

**Orders:**

45. In view of the foregoing, it is the finding of this court that the present Appeal as contained in the Memorandum of Appeal dated 23<sup>rd</sup> January, 20205 lacks merit. The same is hereby dismissed with costs.
46. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. C. K. YANO**

**ELC, JUDGE**

Ruling delivered in the virtual presence of: -

Ms. Chesoo & Ms. Chirchir for Appellant.

Mr. Githaiga for Respondents.

Court Assistant – Laban

