

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC SUIT NUMBER E011 OF 2025**

**WILLIS OCHIENG ODHOCH.....1<sup>ST</sup>**

**PLAINTIFF**

**LILIAN ATIENO OGOLLA .....2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**MAURAY ASEWE OUKO alias**

**MOURAY.....1<sup>ST</sup>**

**DEFENDANT**

**CONSOLATA ATIENO OLONDE .....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. The Defendants herein through their counsel, have filed a Notice of preliminary Objection dated 21<sup>st</sup> November 2025.
2. The defendants claim is that this court is bereft with the jurisdiction to entertain this suit on the ground that the value of the land subject matter of the suit is Kshs. 1,400,000.00 yet the jurisdiction of the court is KSh 20 000 000.00 and above.

3. The plaintiff in response filed Grounds of Opposition dated 13/01/2026 Opposing the preliminary objection contending that; -
  - 1) THAT preliminary objection is filed in flagrant violation of the well-established legal doctrines and statutory provisions relevant to the subject suit and the same is devoid of merit whatsoever or at all.
  - 2) THAT this Honourable Court is properly seized with jurisdiction to hear this matter, by virtue of the provision of Article 162(2)(b) of the Constitution of 2010 and Section 13 of the Environment and Land Court Act 2011.
  - 3) THAT the Preliminary Objection is an abuse of the court process and devoid of any merit.
  - 4) THAT the Preliminary Objection ought to be dismissed for the foregoing reasons with costs to the Plaintiffs.
4. In addition to the above the 1<sup>st</sup> Plaintiff further responded to the preliminary objection by replying affidavit sworn on 13/01/2026 largely rehashing the above grounds.
5. Pursuant to the directions of the court on disposal of the preliminary objection. The 1<sup>st</sup> defendant filed submissions dated 18/2/2026 on 18/02/2026 which I did not consider as they were filed out of time without leave of the court. The Plaintiff did not file submissions.
6. I have given due consideration to the notice of preliminary objection and the grounds of opposition reiterated in the

replying affidavit and find that the issue for determination is whether the preliminary objection is merited.

7. It is trite that jurisdiction is everything and without it a court cannot take any valid step see **The Owners of the Motor Vehicle M.V. Lillians versus Caltex Oil (Kenya) Limited (1989) KLR1**. At page 14 line 29-43 Nyarangi JA.

8. It is also trite that jurisdiction is derived from the Constitution and statute.

9. The jurisdiction of the Environment and Land Court is derived from Article 162 (1)(2)(b) of the Constitution to hear and determine disputes relating to environment, and the use and occupation of, and title to land. This article is read together with the Environment & Land Court Act Sec.13 which confers the Environment and Land Court with jurisdiction as hereunder; -

(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) .....

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, leases in action or other instruments granting any enforceable interests in land

(e) any other dispute relating to environment and land.

10. **Article 162 (2) (b)** of the Constitution provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, and shall determine the jurisdiction and functions of these courts. These courts are Employment and Labour Relations Court and the Environment and Land Court.

11. The constitution further stipulates that 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.

12. Section 26 (3) and (4) of the Environment and Land Court Act, 2011 provides

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —

a. Disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

b. Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

13. Section 9(a) of the Magistrates' Courts Act vests jurisdiction in designated magistrates to hear and determine land matters.

13. It is common knowledge that the former Chief Justice had by various gazette notices, made appointments pursuant to Section 26 (3) and (4) of the Environment and Land Court Act, 2011 to have the magistrates court handle cases

involving occupation and title to land. Therefore, there exists within the magistrates' courts, several magistrates duly gazetted and granted jurisdiction and power to handle cases involving occupation and title to land.

14. Arising from the above therefore the question that lingers is whether the various gazettments oust the jurisdiction of the ELC Court in this matter? My answer is an emphatic no. I say so because this court has original jurisdiction to determine issues of ownership and occupation of land.
15. Applying the afore set out principles of law and case law to the rival arguments herein on jurisdiction or lack of it, I am satisfied that this court is clothed with requisite jurisdiction to entertain the case before it. Moreover, the ELC is a court with equal status as the High Court thus this Honorable Court has original and unlimited jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
16. However, I must hastily add that it is proper for cases to be filed in the lowest court taking into account pecuniary jurisdiction. In the event that a suit finds its way before this court and it is proved by evidence that the value of the property is way below the pecuniary jurisdiction of this court, then the court will always in the interest of justice transfer a suit in this regard to the lower court but not strike it out as prayed on this basis.

17. I have seen the plaint filed in the matter. The claim is for specific performance of an agreement for sale of land valued at Kshs.1.4 million. I think this is a matter that ought to be heard in the Magistrates Court. I also see no complexity with the issues to warrant this suit remaining in this court.

18. Section 18 of the Civil Procedure Act gives powers to this court to transfer matters to withdraw and transfer cases suo moto or on the application of a party. Section 18(1)(a) provides that the

**High Court may at any stage transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same**

19. The preliminary objection is therefore disposed in the following terms;-

1) That the suit herein is hereby transferred to the Chief Magistrates Court at Bondo for trial and disposition.

2) There shall be no orders as to costs.

It is so ordered.

Orders accordingly.

**Dated at Siaya this 20<sup>th</sup> Day of February 2026**

**HON. JUSTICE A. E. DENA**

**JUDGE**

**20/02/2026**

**Ruling delivered virtually through Microsoft Teams  
Video Conferencing Platform in the Presence of:**

No appearance for the Plaintiff

Mr. Mramba Holding Brief for Mr Waziri for the Defendants

Court assistant: Ishmael Orwa

ORIGINAL