



Angwenyi & another v County Government of Kisii & 5 others (Environment and Land Case E016 of 2025) [2026] KEELC 1240 (KLR) (4 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND CASE E016 OF 2025**

**DO OHUNGO, J
MARCH 4, 2026**

BETWEEN

SAMUEL BOSIRE ANGWENYI 1ST PLAINTIFF

ABDULLAHI ABDI ADEN 2ND PLAINTIFF

AND

THE COUNTY GOVERNMENT OF KISII 1ST DEFENDANT

DOMINIC MAROKO ALIAS RAMBO 2ND DEFENDANT

THE COUNTY ASSEMBLY OF KISII MCA ICHUNI WARD ... 3RD DEFENDANT

KISII MUNICIPAL COUNCIL 4TH DEFENDANT

THE COUNTY EXECUTIVE MEMBER KISII TRANSPORT, ROADS & PUBLIC WORKS 5TH DEFENDANT

THE COUNTY EXECUTIVE MEMBER KISII LANDS, HOUSING & PHYSICAL PLANNING 6TH DEFENDANT

RULING

1. The Plaintiffs moved the Court through Plaintiff dated 30th May 2025 in which they averred that the First Plaintiff was the owner of the parcels of land known as East Kitutu/Keroka Market Plot No..7B, Keroka/Township/67 and/or 116, and Kisii County Market Plot 20A hereinafter the “suit properties.” The Plaintiffs further averred that the First Plaintiff developed the suit properties and leased them to the Second Plaintiff and that the Defendants trespassed on and destroyed the properties.



2. The Plaintiffs therefore prayed for judgment against the Defendants jointly and severally for the following orders:

An Order of Declaration that ownership of all the property known as Title Deed No. East Kitutu/Keroka Market Plot No.. 7B, Keroka/Township/67 and/or 116 and Kisii County Market Plot 20A owned and possessed legally and legitimately vests in the Plaintiff, and is a Leasehold property.

An Order permanently Prohibiting, Preserving/Restraining the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants by themselves, their agents, employees, servants, accomplices and/or any other person from interfering with trespassing to the Plaintiff's property herein, quiet possession/ownership and/or entering upon the suit property East Kitutu/Keroka Market Plot No.. 7B, Keroka/Township/67 and/or 116 and Kisii County Market Plot 20A to continue to construct the purported road and declare the said road closed.

An Order for compensation of malicious damage to property, trespass and/or compensation for illegal demolition of property on Plot No. Keroka Market Plot No. 20A.

General damages for trespass to Kisii County Market Plot 20A in favour of the Plaintiffs, General damages for forcible eviction from the property.

An Order declaring Parcels of Land East Kitutu/Keroka Market Plot No.. 7B, Keroka/Township/67 and/or 116, and Kisii County Market Plot 20A are squarely in Nyamira County and not in Kisii County.

An Order directing the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants jointly and/or severally to pay costs of the suit and interest at court rates.

Any other relief this Honourable Court may deem fit and just to grant.

3. Simultaneously with the Complaint, the Plaintiffs filed Notice of Motion dated 30th May 2025, which is the subject of this ruling. The following orders are sought in the application:

That this matter be certified urgent and same be heard ex-parte in the first instance.

That upon and pending the hearing and determination of this application this Honourable Court may be and is hereby pleased to issue an Interim Injunction/Order against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants/Respondents either by themselves their agents, servants, employees, assigns from trespassing onto, constructing any Road or use there from and/or demolishing any building or structure on the Plaintiff's parcels of Land Tite No. Keroka Township Plot No. 67 and/or 116, East Kitutu/Keroka Market Plot No.. 7B, Keroka Market Plot No. 20A Keroka.

That pending the hearing and determination of this suit, this Honourable Court be and is hereby pleased to issue a Temporary Injunction/Order of injunction Restraining the Defendants/ Respondents either by themselves their agents, servants, employees, assigns from Trespassing onto, Constructing any Road or use therefrom and/or demolishing any building or structure on the Plaintiff's parcel of Land Tite No Keroka Township Plot No. 67 and/or 116, East Kitutu/Keroka Market Plot No.. 7B, Keroka Market Plot No. 20A Keroka.

That The Honourable Court is hereby pleased to direct the O.C.S Keroka Police Station to ensure compliance of the Order of this Court.

That the Court be pleased to issue any orders deem fit and in the circumstances.

Costs be in the cause.



4. I have reproduced the prayers in the Plaint and the application as presented.
5. The application is supported by an affidavit sworn jointly by the Plaintiffs and is based on the grounds listed on its face.
6. The Plaintiffs deposed the First Plaintiff was the registered owner of the suit properties and that that he had developed a Petrol Station on Keroka/Township/67 and/or 116 which he leased to one Samuel Nyamweya Omwenga, a three storey building on East Kitutu/Keroka Market Plot No.. 7B and kiosks, a hotel and a shop on Kisii County Market Plot 20A. That on 23rd May 2025, the Defendants' agents and officers earmarked several buildings around Keroka Town including on East Kitutu/Keroka Market Plot No.. 7B for demolition.
7. They added that no notice was served on them and that no compulsory acquisition process had taken place. That the unilateral decision by the Defendants to demolish the property to pave way for the construction of a road was illegal and unless this court came to their aid, they stood to suffer irreparable loss. They also annexed copies of several documents.
8. The Third Defendant opposed the application through a Replying Affidavit sworn on 24th July 2025 Hon. Wycliff Siocha. He deposed that he was a Member of the County Assembly of Kisii representing Ichuni Ward and that as part of development of Keroka Town, there was need to construct a permanent Market and modern toilets for Market use among other issues raised by residents of Keroka Town within his area of jurisdiction. That there was shortage of land for infrastructure and the traders raised concerns regarding persons believed to have grabbed public land.
9. He further deposed that was aware that Keroka Township Plot Number 116 was allocated to the First Plaintiff for purposes of constructing a modern toilet only, but the First Plaintiff had never constructed a public toilet on the said parcel thus raising a serious health concern and a violation of the purpose for which the allotment was issued.
10. Hon. Siocha also deposed that save for parcel number 7B, all the other were located in Kisii County and that the leasehold and rates documents provided by the Plaintiffs were all in respect of County Government of Kisii. That, consequently, this case should be before the Environment and Land Court at Kisii. He added that no officer from his office had ever been instructed to mark any building on the suit properties for demolition.
11. The First, Fourth, Fifth and Sixth Defendants opposed the application through Grounds of Opposition dated 19th September 2025 in which they stated that parcel number 20A was purportedly sold to the Plaintiff in breach of the provisions of Sections 45 and 82 (b) (ii) of the Law of Succession Act, that the Plaintiff was an intermeddler in the estate of Onyiego Mageto (deceased) thus rendering this suit an abuse of court process, that plot numbers 20A and 116 were public land and that the suit was incompetent. They also contended that plot numbers 20A, 116 and 67 were located in Kisii County while 7B was located in Nyamira County thereby complicating the jurisdiction of the Court. It will be noted that some of the issues raised in the Grounds of Opposition are allegations of fact whose proper place is an affidavit.
12. The First, Fourth, Fifth and Sixth Defendants also filed Notice of Preliminary Objection dated 19th September 2025 in which they restated the grounds listed in the Grounds of Opposition. This ruling is also in respect of the Notice of Preliminary Objection.
13. Both the Notice of Preliminary Objection and the application were canvassed through written submissions. The Plaintiffs filed submissions dated 14th February 2026 while the Third Defendant filed



submissions dated 23rd February 2026. The rest of the parties did not file any submissions. In essence, the First, Fourth, Fifth and Sixth Defendants did not argue their Notice of Preliminary Objection.

14. I have carefully considered the Notice of Preliminary Objection, the application, the affidavits, the Grounds of Opposition and the submissions. The issues that arise for determination are whether the Court has jurisdiction and whether the reliefs sought in the application should issue.
15. Jurisdiction, as has been restated by the Courts severally, is the life and soul of any judicial proceedings. Without jurisdiction, the proceedings come to a certain end and the Court cannot take any further step. See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR.
16. The Supreme Court held in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR thus:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents . . . that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.....Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*.”

17. On its part, the Court of Appeal held in National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others [2023] KECA 80 (KLR) as follows:

“Jurisdiction, a mantra in adjudication connotes the authority or power of a court to determine a dispute submitted to it by contending parties in any proceeding. A Court of law is invested with jurisdiction to hear a matter when: (a) it is properly constituted as regards numbers and qualifications of members of the bench, and no member is disqualified for one reason or another; (b) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and, (c) the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. The three ingredients must co-exist in order to infuse jurisdiction in a Court. Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected into it, will be marooned in the intractable web of nullity.”

18. The essence of the objection by the First, Fourth, Fifth and Sixth Defendants is that plot numbers 20A, 116 and 67 are located in Kisii County and that in the circumstances, this Court lacks jurisdiction.
19. The law relating to preliminary objections was succinctly summed up in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 by Law JA as follows:

“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."

20. It follows therefore that for a preliminary objection to be valid, it must raise a pure point of law which is argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. If it is upheld, a valid preliminary objection should result in summarily terminating the suit or application against which it is raised.
21. The objection on jurisdiction is founded on the supposed location of the suit properties. To establish the location, the Court would need to receive evidence on that issue. Thus, the objection has not raised a pure point of law. It is therefore not a valid preliminary objection.
22. Further, even assuming that the suit properties were not located in Nyamira, that per se would not deprive this Court of jurisdiction. Pursuant to Article 162(2) (b) of *the Constitution* of Kenya, 2010 and Section 13 of the *Environment and Land Court Act*, this Court has jurisdiction to hear and determine disputes relating to the environment and the use and occupation of and title to land.
23. The foregoing provisions do not limit the jurisdiction to any particular part of the country. The import is that the Court has throughout the country and geographical delimitations of the various stations of the Court are for administrative purposes as opposed to ousting the Court's jurisdiction. In other words, the Court has discretion on whether to entertain a suit concerning property not located within the territorial limits of Nyamira County. A matter that is subject to the exercise of judicial discretion is outside the province of preliminary objection.
24. In view of the foregoing, I find that Notice of Preliminary Objection dated 19th September 2025 is not a valid preliminary objection. I dismiss it.
25. I now turn to the application. The Plaintiffs have sought an interlocutory injunction. The principles applicable while considering such an application are that the applicants must establish a prima facie case with a probability of success. Even if they succeed on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience.
26. All the foregoing conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicants are expected to surmount sequentially. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
27. The Third Defendant has argued in his submissions that the Plaintiffs have not raised any issue against him in the Plaint. He is of the view that he was wrongly joined. He also filed a Replying Affidavit to counter the Plaintiffs' application. He conceded that the First Plaintiff was issued with an allotment. He however cast doubt on whether the First Plaintiff had complied with the terms of the allotment.
28. On the other hand, none of the other Defendants filed any affidavit to challenge the Plaintiffs' case on oath. The Plaintiffs' allegations of fact against them remain wholly unchallenged.
29. In view of the foregoing, I am persuaded that the Plaintiff has established a prima facie case against all the Defendants save for the Third Defendant. As the Court of Appeal held in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (supra), an applicant need not establish title and it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. Since the dispute concerns land with the attendant threats of demolition, damages will not be an adequate remedy to the Plaintiffs.



30. In the result, I make the following orders:

Notice of Preliminary Objection dated 19th September 2025 is dismissed with costs to the Plaintiffs.

Pending the hearing and determination of this suit, an injunction is hereby granted restraining the 1st, 2nd, 4th, 5th and 6th Defendants either by themselves, their agents, servants, employees and assigns from trespassing onto, constructing any road or demolishing any building or structure on the parcels of land known as Keroka Township Plot No. 67 and/or 116, East Kitutu/Keroka Market Plot No.. 7B and Keroka Market Plot No. 20A Keroka.

In line with Order 40 rule 6 of the Civil Procedure Rules, the injunction shall, unless extended by the Court, remain in force for a period of only twelve months from the date of this ruling. Consequently, parties are reminded to expeditiously prosecute the suit.

The Plaintiffs shall have costs of the application. The costs shall be borne by the 1st, 2nd, 4th, 5th and 6th Defendants.

Dated, signed, and delivered at Nyamira, this 4th day of March 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Ms Omwenga for the Plaintiffs

Ms Nyaboke holding brief for Mr Nyambega for the 1st, 4th, 5th and 6th Defendants

Ms Nyaboke holding brief for Mr Ongeru for the 2nd Defendant

No appearance for the 3rd Defendant

Court Assistant: B Kerubo

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