



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. E130 OF 2025

1. MULE MUTIE KAVITI

2. JOSEPH MUMO MUTIE

3. SAMMY J. MUTIE

4. ELIZABETH TATU MUTIE

.....PLAINTIFFS

-VERSUS-

1. THE ATTORNEY-GENERAL

2. THE DIRECTOR OF LAND ADJUDICATION

3. KILIFI COUNTY LAND REGISTRAR

4. KILIFI COUNTY LAND SURVEYOR

5. SAMUEL KASIKALI.....

DEFENDANTS

RULING

1. Before the Court is the plaintiff's Notice of Motion dated 22nd September, 2025, seeking several orders against the defendants:

a) Spent

b) Spent

c) Pending the hearing and determination of this suit, an injunction be issued against the 5th defendant, restraining him, whether by himself, his servants, and/or agents, from interfering with, trespassing into, cultivating, developing, building, selling, disposing of, and/or otherwise dealing with the properties in any manner whatsoever that could affect the possession and quiet enjoyment of the suit properties, namely Mariakani/Kawala, which comprise Title Numbers: Mariakani/Kawala B'/113 and B'/110.

d) The Officer in Charge of the Police Station Mariakani (OCS Mariakani) be authorized to

enforce compliance with the court orders concerning the suit properties, specifically Title Numbers: Mariakani/Kawala B'/113 and Mariakani/Kawala B'/110.

e) the costs of this application be provided for.

2. The application is grounded on the supporting affidavit of Elizabeth Tatu Mutie, the 4th applicant/plaintiff.
3. The 5th defendant filed a replying affidavit sworn on 7th October, 2025, in opposition to the prayers sought in the instant application.
4. Subsequently, the 5th defendant has filed a Notice of Preliminary Objection (PO) dated 7th October, 2025, on the following grounds:
 - a) **The suit in its entirety is bad in law as it offends the provisions of Sections 29 and 30 of the Land Adjudication Act.**
 - b) **The plaintiff's suit is premature and violates the doctrine of exhaustion.**
 - c) **The suit is frivolous, vexatious, and scandalous and ought to be dismissed.**

d) That the plaintiff doesn't raise a cause of action against the 5th defendant, thus an abuse of process of the Court.

5. On October 8, 2025, the court directed the parties to canvass the application and PO via written submissions. I acknowledge receipt of submissions from counsels representing the parties with much appreciation, as they went a long way toward resolving the issues raised in the application and the PO.
6. From the materials and submissions before me, I frame the following issues for the court's determination: whether the PO is sustainable, whether the orders sought in the application are germane to grant, and who should bear the costs of the PO and the application.
7. For clarity, I will begin by addressing the PO, as it could potentially dispose of the application and the entire case.
8. 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 (**Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors [1969] EA 69**).

9. The PO challenges this court's jurisdiction, as held by Nyarangi JA, in **Owners of the Motor Vessel "Lilian S" v Caltex Oil Kenya Limited [1989] KLR**: A question of jurisdiction should be raised at the earliest opportunity, and the court handling the matter was then obligated to decide the issue immediately based on the available evidence. Jurisdiction is everything. Without it, a court has no power to take any further steps. If a court lacks jurisdiction, there is no basis to continue proceedings while awaiting additional evidence. A court of law halts proceedings on the matter as soon as it determines it lacks jurisdiction.

10. The 5th defendant/respondent states that the main point of the PO is that the Land Adjudication Officer's consent was not obtained before filing these proceedings. The plaintiffs are essentially interfering with the implementation process outlined in Section 29(3) of the Land Adjudication, as set out in the 5th defendant's response to the application. Around April 28, 2010, the plaintiffs and the 5th defendant were declared the owners of their respective parcels via the Land Adjudication process. Around 2016, the 1st plaintiff filed an appeal with the Minister, Appeal No. 37 of 2016, against the

5th defendant. Around April 25, 2017, a decision was made regarding the 5th defendant's portion, and it was ordered that the suit property remain registered in the 5th defendant's name. Through a letter dated March 18, 2025, the Land Registrar was authorized to verify the boundary of the suit property in accordance with the adjudication section, and this implementation process is still ongoing. Therefore, according to the 5th defendant, if the plaintiffs intend to challenge this implementation process, they must obtain the Land Adjudication Officer's consent. See **Chindoro & 20 others v Sub-County Land Adjudication & Settlement Officer, Kinango Sub-County & 2 others [2025] KEELC 6410 (KLR)**.

11. , The plaintiffs argue that the PO raised is based on a significant misunderstanding of the relevant laws. It cannot resolve the matter before this court. The plaintiffs' case, as outlined in the plaint, seeks the cancellation and rectification of the titles to the suit properties based on fraud. Land titles are acquired through a process, and the plaintiffs contend that this process was flawed and corrupted by fraud, resulting in the denial and suppression of property rights.

The plaintiffs have properly invoked the jurisdiction of this court and are prepared to present their evidence for review and decision.

12. Plaintiffs further argue that titles obtained through land adjudication, such as titles to the suit properties, can be canceled by a court if acquired through fraudulent means. Section 30 of the Land Adjudication Act does not remove the court's jurisdiction. The adjudication process is complete, and titles have been issued. However, this does not prevent challenges to the process under the Land Registration Act. The law explicitly states that a title can be challenged or declared invalid if it was acquired through fraud, misrepresentation, or illegality (Land Registration Act, 2012, Section 26(1)).

13. The plaintiffs' pleadings are clear, comprehensive, and detailed, meeting the expected threshold for allegations of fraud. Likewise, issues related to limitation or capacity to sue are not a concern. The subject title that gave rise to the cause of action, as pleaded, was first issued in 2014, and the ongoing acts to alter boundaries continued up to 2024. Courts have a duty not to uphold or endorse illegal acts. The

Plaintiffs seek intervention to cancel and rectify titles obtained through fraud or other illegalities to ensure justice and uphold principles of land ownership. In **Swalehe & another v Land Registrar Kwale & 2 others [2025] KEELC 4187 (KLR)**, the court considered a similar PO raised on comparable grounds and dismissed it.

- 14.** I have reviewed the pleadings submitted by the parties. Importantly, the orders requested by the plaintiffs are to be directed to the Director of Land Adjudication, the Land Registrar, and the Kilifi Land Surveyor. These orders include amending and/or resurveying to modify the adjudication and registration records for Mariakani/Kawala B'/113 and Mariakani/Kawala B'/110, canceling the registration of Mariakani/Kawala B'/110, consolidating it with Mariakani/Kawala B'/113, and ultimately issuing title to the plaintiffs against the 5th defendant.
- 15.** The parties agree from the pleadings that the titles resulted from a thorough adjudication process, and each party has a unique title, with the process having ultimately proceeded with an appeal all the way to the Minister.

- 16.** What seems to remain between the parties is the boundary separating the two parcels needed for effectively implementing the adjudication outcome.
- 17.** What the plaintiffs seek is to have a second bite of the adjudication process via the current suit.
- 18.** I agree with the 5th defendant, citing the case of **Chindoro & 20 others v Sub-County Land Adjudication & Settlement Officer, Kinango Sub-County & 2 others [2025] KEELC 6410 (KLR):**

“When tasked with determining issues on jurisdiction similar to the ones in the present suit, Okongo J., commenting on the role of the Court vis-a-vis that of the adjudicating bodies under the Act, in the case of: - “Tobias Achola Osindi & 13 others - Versus - Cyprian Otieno Ogalo & 6 Others [2013] eKLR, held as follows: -

“The whole process leading up to the registration of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-

judicial bodies set up under the Act...The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot, however, usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in the land..."

19. Whereas titles already issued in this matter can be challenged. From the plaint as framed, it seeks to act as a further appeal and challenge to the adjudication process; in fact, it seeks a total review of that process by substituting the adjudication outcomes with fresh ones.

20. This court does not have the jurisdiction to do that. After appealing to the Minister, the plaintiffs should have sought judicial review rather than proceeding as they did here.

21. Consequently, the PO dated October 7, 2025, hereby succeeds to the extent that the pending application dated September 22, 2025, and the entire suit are hereby struck out with costs.

Dated, signed, and delivered electronically in Nyeri on this 11th day of March, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Ms. Nduku for the Applicant

Mr. WagumbaH/B for Ms. Amugune for the Respondent

Kendi: Court Assistant