



Karingi v Mwangi t/a Ngugi Mwangi & Co Advocates (Land Originating Summons E044 of 2025) [2026] KEELC 1443 (KLR) (6 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1443 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND ORIGINATING SUMMONS E044 OF 2025**

TW MURIGI, J

MARCH 6, 2026

BETWEEN

IRERI KARINGI PLAINTIFF

AND

NGUGI MWANGI T/A NGUGI MWANGI & CO ADVOCATES DEFENDANT

RULING

1. This ruling in respect of a Notice of Preliminary Objection dated 10th September 2025, in which the Defendant challenges this Court's jurisdiction to hear and determine this matter. The Defendant argues that the dispute between the parties relates to advocates' fees and professional conduct and therefore falls within the jurisdiction of the Advocates Disciplinary Tribunal.
2. The Defendant argued that the cause of action stemmed from the Plaintiff's alleged failure to pay professional fees and the Defendant's exercise of an advocate's lien. The Defendant further contended that the suit offends the doctrine of exhaustion of administrative remedies and is therefore an abuse of the court process. Based on the foregoing, the Defendant urged the Court to strike out the suit for lack of jurisdiction.
3. The preliminary objection was canvassed by way of written submissions.

The Plaintiff's Submissions

4. The Plaintiff filed his submissions dated 15th January 2026.
5. On behalf of the Plaintiff, Counsel submitted that the Court has jurisdiction under Article 162(2) (b) of *the Constitution* of Kenya because the dispute involves an advocate's lien over original title documents, which directly hindered a land transaction. Counsel maintained that the matter concerns the wrongful withholding of the original land documents for Nairobi Block 229/599 and is therefore squarely within the jurisdiction of the Environment and Land Court.



6. To support this argument, Counsel relied on Order 52 Rule 4(1) of the Civil Procedure Rules, which authorizes the Court, when there is or has been an advocate-client relationship, to order the delivery of cash accounts, the payment or transfer of monies or securities, and the transfer of papers and documents to which the client is entitled. Counsel argued that these provisions assume that disputes concerning advocates' fees and liens can be properly resolved by the Court, including through taxation, and are not limited solely to the Advocates Disciplinary Tribunal.
7. Counsel further submitted that the Defendant's objection misrepresents the dispute as purely disciplinary, whereas the core issue was the unlawful withholding of original title documents, thereby obstructing the completion of a land sale. Counsel cited *Ondeng v Okoth t/a GS Okoth Advocates* [2025] eKLR to support the proposition that a client may seek release of documents and resolve fee disputes through taxation within the Court's jurisdiction.
8. Regarding the law on advocates' liens, Counsel relied on Section 51 of the *Advocates Act* and the decision in *National Bank of Kenya v Kang'ethe George Joseph & Another* [2015] eKLR, to submit that an advocate's lien is limited to amounts lawfully owed and cannot be exercised in a way that undermines a client's proprietary or contractual rights, especially when the client is willing to subject the dispute to taxation.
9. Regarding the application for temporary injunction, Counsel cited the principles established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, as reaffirmed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
10. Counsel argued that a prima facie case had been established by evidence showing the Defendant was paid Kshs 990,000 in legal fees and was unlawfully withholding the original title documents due to a disputed exorbitant demand of Kshs 16,240,000. It was asserted that the Plaintiff had received the full purchase price from a buyer and was under strict contractual deadlines to complete the transaction. Counsel argued that failure to release the documents could lead to a breach of contract, damages, and irreparable harm to reputation that cannot be fully compensated. Conversely, the Defendant's claim was solely monetary and could be protected through taxation and appropriate orders securing any amounts legally owed.
11. In conclusion, Counsel urged the Court to dismiss the Preliminary Objection and allow the Plaintiff's application with costs.

The Defendants Submissions

12. The Defendant filed its submissions dated 13th December 2025.
13. On behalf of the Defendant, Counsel submitted that the preliminary objection raises pure points of law as defined in *Oraro v Mbaja* [2005] eKLR, where the Court held that a preliminary objection must raise a pure point of law, not blurred with contested factual matters requiring evidentiary proof, and that where investigation of facts is necessary, the matter cannot properly be taken as a preliminary point. Counsel argued that the objection met that threshold, as it was undisputed that an advocate-client relationship existed between the parties and that the Defendant's professional fees remained unsettled.
14. Counsel submitted that the dispute arose from non-payment of advocates' fees and the Defendant's exercise of an advocate's lien, which falls under the jurisdiction of the Advocates Disciplinary Tribunal. Counsel contended that the jurisdiction of the Environment and Land Court under Article 162(2)(b) of *the Constitution* is limited to disputes related to land ownership, use, and contracts incidental to land use. Counsel argued that the current dispute relates to professional fees and liens, which fall outside



the jurisdiction of the ELC. It was further argued that the suit offends the doctrine of exhaustion of remedies and should be struck out in limine.

15. Regarding the substantive issue of the lien, Counsel submitted that the Plaintiff had admitted the existence of an advocate-client relationship and that the Defendant was entitled to exercise a general retaining lien over documents in its possession pending settlement of outstanding fees. To support this point, reliance was placed on *Booth Extrusions (Formerly Booth Manufacturing Africa Limited) v Dumbeya Nelson Muturi Harun t a Nelson Harun & Company Advocates* [2014] eKLR, where the Court recognized that a general lien entitles an advocate to retain a client's papers, money, or chattels until costs and charges due are paid. Further, the policy underlying such a lien is to prevent a client from enjoying the benefit of an advocate's work without payment.
16. Further reliance was placed on *Re Taylor* [1891] 1 Ch 590 at 596 to argue that the existence of a lien does not depend on a bill having been rendered, as long as costs have been incurred. Reference was also made to *Barratt v Gough Thomas* [1950] 2 All ER 1048 at 1053, where it was held that a general lien provides only a passive right to retain property and does not entitle the advocate to actively enforce the demand. It was argued that, once the taxable costs are paid, the client is entitled to receive the retained documents.
17. To support this position, Counsel cited *Clement Munyao v Florence Mwangangi*, ELC E01 of 2021, where the Court held that in the absence of a Certificate of Taxation or proof of payment of taxed costs, no order for the delivery of retained title documents could be issued. Additionally, the Court stated that the applicant was required to settle the taxed costs before such relief could be granted.
18. Counsel argued that there was no evidence of taxation or payment of the Defendant's costs. Counsel asserted that the Defendant was entitled to retain the title documents as collateral for unpaid fees. It was argued that the application violated Articles 47(1) and 159(2)(a) and (b) of *the Constitution*, as well as Sections 1A and 1B of the *Civil Procedure Act*, because it sought to engage the Court unnecessarily and inefficiently, contrary to the overriding objective.
19. Based on the foregoing, Counsel urged the Court to uphold the Preliminary Objection and strike out the suit for lack of jurisdiction.

ANALYSIS AND DETERMINATION

20. Having considered the preliminary objection and the rival submissions, the issue for determination is whether this Court has jurisdiction to hear and determine this suit.
21. The law on preliminary objections is well settled. A Preliminary Objection must be based on a pure point of law.
22. In *Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd* (1969) EA 696, Law JA stated;

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



23. Further on, Sir Charles Newbold JA stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

24. In *Oraro Vs Mbaja* (2005) eKLR Ojwang J (as he then was), described it as follows;

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

25. The Court of Appeal in *Nitin Properties Ltd Vs Singh Kalsi & Another* (1995) eKLR also captured the legal principle when it stated as follows

“A preliminary objection 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.”

26. The Defendant argued that this Court lacks jurisdiction to hear and determine this matter. The Defendant's preliminary objection aligns with the description of a preliminary objection as outlined in the *Mukisa Biscuits* case supra.

27. It is trite law that jurisdiction is everything, and without it, the court cannot proceed further in the case. In the celebrated case of *Owners of Motor Vessel ‘Lillian S’ Vs Caltex Oil (Kenya) Limited* (1989) eKLR, the Court held that:

“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...”

28. Similarly, the Supreme Court in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others* [2012] eKLR stated as follows:

“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. 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....”



29. A Court derives its jurisdiction from *the Constitution*, legislation, or both. The jurisdiction of this Court is derived from Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
30. The Defendant argued that the dispute between the parties falls under the jurisdiction of the Advocates Disciplinary Tribunal. The Advocates Disciplinary Tribunal is established under Section 57 of the *Advocates Act* and has disciplinary authority over advocates regarding professional misconduct. Section 60 of the Act outlines the sanctions that the Tribunal can impose, including admonition, suspension, striking an advocate off the Roll, fines, or compensation to an affected party.
31. The current dispute does not involve allegations of professional misconduct that require disciplinary action. Instead, it arises from the Defendant's retention of original title documents after the advocate-client relationship ended, and the Plaintiff's request for those documents to complete a land transaction.
32. Although the Defendant describes the dispute as one involving unpaid professional fees and an advocate's lien, such disputes are usually resolved through taxation under the *Advocates Act* and the Advocates Remuneration Order. These taxation processes determine the amount of fees owed, but do not necessarily resolve proprietary disputes related to title documents or the completion of land transactions.
33. In the present case, the main issue concerns the continued detention of land title documents, which are essential to completing the transfer of an interest in land.
34. In the Court's view, a dispute over the withholding of original title documents that directly affects the completion of a land transaction falls within its jurisdiction as it is related to title and land transfer. The relief sought, including mandatory orders for the delivery of completion documents and instructions regarding the taxation of legal fees, comprises remedies that are within the jurisdiction of a court of law and are not typically available before the Advocates Disciplinary Tribunal.
35. The Court is therefore not convinced that the doctrine of exhaustion applies in this case. The Plaintiff is not requesting disciplinary action against the Defendant but is seeking judicial intervention to obtain documents necessary to complete a land transaction. Such relief cannot be effectively provided through disciplinary procedures under the *Advocates Act*.
36. In light of the foregoing, I find that the dispute falls within the jurisdiction of this Court.
37. The upshot of the foregoing is that the Preliminary Objection lacks merit and is dismissed with costs to the Plaintiff.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF MARCH, 2026.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Otieno for the Applicant

Ahmed – Court Assistant

