



**Nyaga & another v Kibe & another (Environment and Land Case E022 of 2023) [2025] KEELC 5673 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5673 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E022 OF 2023**

**NA MATHEKA, J**

**JULY 29, 2025**

**BETWEEN**

**ELIAS MURIUKI NYAGA ..... 1<sup>ST</sup> PLAINTIFF**

**LILIAN NKATHA NYAGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARY WAMBUI KIBE ..... 1<sup>ST</sup> DEFENDANT**

**MOSES MACHARIA KONJE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The 2nd Defendant raised Preliminary Objections as follows:
  1. No summons have been served in this matter.
  2. This suit is time barred under the *Limitation of Actions Act* Cap 22 Laws of Kenya and the same is bad in law null and void ab initio thus should be dismissed with costs.
  3. This suit is ill-conceived, misconceived and is bad in law and fact for the reasons that there is misjoinder and non-joinder of fundamental parties for determination of this matter to wit Embakasi Ranching Co. Ltd and John Jonathan Mwalili in this matter as such there is failure to enjoin a crucial party which party is fundamentally party to the litigation being the initial of the property.
  4. This court does not have the territorial nor the pecuniary jurisdiction to determine this matter also this is the wrong court and this court does not have jurisdiction to determine company affairs the same is within the jurisdiction of the Commercial Courts since fundamentally the issue revolves around share certificates of a public company which should be determined by the issuing Company and the Registrar of Companies and Commercial Courts.



5. The subject properties in this matter in court are worth more than twenty million (Kshs. 20 million) and the jurisdiction of this court is not more than Kshs. 20 million and as such this court does not have the jurisdiction to determine this matter.
  6. The Plaintiff did not go to seek any transfers from the concerned issuing Company and a such does not have locus standi to sue for share certificates issued by a public Company which has not been made a party to the suit and also cannot purport to be able to depend on a share certificate which is issued by a Company which is not party to the suit.
  7. That there is no privity of contract between the Plaintiffs and the 2<sup>nd</sup> Defendant who is a bona fide purchaser for value and the 2<sup>nd</sup> Defendant did follow the due process and procedure to transfer the shares and property to himself in the concerned Company.
  8. The Plaintiffs were indolent and are guilty of laches where Embakasi Ranching Co. Ltd being a public Company people were invited to come and assert their claims through advertisements in the media the Plaintiffs were indolent not their rights and now cannot be heard to assert their rights when this matter has already been determined.
2. This court has considered the Preliminary Objection and submissions therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;
 

In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
  3. The above legal preposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the court held that;
 

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 demurer 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 in 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.”
  4. In the case of Attorney General & Another vs Andrew Mwaura Githinji & another (2016) eKLR the court outlined the scope and nature of preliminarily objection as;
    - (i) A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
    - (ii) A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
    - (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
  5. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter. I find that the filed preliminary objection by the 2<sup>nd</sup> Defendant herein was properly brought before the court.



6. The point of law the 2<sup>nd</sup> Defendant argue is that this court does not have territorial jurisdiction and they quoted section 12 of the *Civil Procedure Act*. They emphasize that the dispute relates to two parcels of land that form the subject matter are titled Nairobi/Block 105/673 and Nairobi/Block 105/674 are situated in Nairobi and not Machakos County. The Respondent concedes to this and states that the matter should be transferred to Nairobi and not struck off.
7. In the case of Owners of the Motor Vessel M.V Lillian S. vs Caltex Oil (K) Limited (1989) KLR 1 the court held that without jurisdiction it has to down its tools. The jurisdiction of the ELC court flows from Article 162 (2)(b) of *the Constitution* of Kenya 2010. Section 13 (2) of the ELC Act vests this court with wide powers over any dispute relating to land it provides that;

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. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - e. any other dispute relating to environment and land
8. The jurisdiction of this court to hear and determine this suit flows from *the Constitution* and the law. The jurisdiction of court is not conferred upon it by parties nor can the court confer upon itself jurisdiction. The Supreme Court in Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 others (2012) eKLR held that;

A court’s jurisdiction flows from either *the constitution* of 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 in his submission 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.”

9. I have perused the court record and find that this property is situate in Nairobi County and this is not disputed. Section 12 of the *Civil Procedure Act* Cap 21 provides for guidelines on choosing territorial jurisdiction. When filing a case, it provides thus;

Subject to the preliminary or other limitations prescribed by any law,

- a. for the recovery of immovable property; with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;



- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business, or personal works for gain.”

10. Section 13 provides; -

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.”

11. In the instant case the suit property is in Nairobi County which is served by Milimani Environment and Land Court in Nairobi County. Given that the suit property is located within Nairobi County Government, subject to Section 12 as stated above, the correct forum is the Milimani Environment and Land Court. Having found that this court has no territorial jurisdiction in the matter this court cannot determine the other points in the preliminary objection. Consequently, I transfer this matter to the Environment and Land Court Milimani for hearing and determination. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF JULY 2025.**

**N.A. MATHEKA**

**JUDGE**

