

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**ELC CASE NO. E018 OF 2024 (OS)**

**MOSES MURAYA LIVINGSTONE KARUWE**  
**(DECEASED).....PLAINTIFF**  
**(Substituted by JACQUELINE RUTH WAMUYU MURAYA)**

**VERSUS**

**CHARLES GATOTO KABOCHI.....1<sup>ST</sup>**

**DEFENDANT**

**RUTH GATOTO.....2<sup>ND</sup>**

**DEFENDANT**

**SUSAN CATHERINE GITIRI MWANIKI.....3<sup>RD</sup>**

**DEFENDANT**

**HERBERT NJERU NGUNJU.....4<sup>TH</sup>**

**DEFENDANT**

**JAMES KARIUKI BORANA.....5<sup>TH</sup>**

**DEFENDANT**

**CHRISTOPHER MWEMA MAINA.....6<sup>TH</sup>**

**DEFENDANT**

**JACKSON MUIRURI KIMANDO.....7<sup>TH</sup>**

**DEFENDANT**

**JACOB NJERU KAMAU.....8<sup>TH</sup>**

**DEFENDANT**

**STEPHEN NJUE KARANI.....9<sup>TH</sup>**

**DEFENDANT**

**GICOVI MUGERA.....10<sup>TH</sup>**

**DEFENDANT**

**LAND REGISTRAR EMBU.....11<sup>TH</sup>**

**DEFENDANT**

**THE HON. ATTORNEY GENERAL.....12<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. Vide a Preliminary Objection dated 08/08/2024, the 11<sup>th</sup> and 12<sup>th</sup> defendants raised a preliminary objection on the plaintiff's suit on the grounds that the suit offends the mandatory provisions of section 18 (2) of the Land Registration Act and; that this Honorable Court lacks statutory jurisdiction to hear and determine the matter.
2. The parties agreed to have the preliminary objection canvassed through written submissions which the Court has considered. The plaintiff filed submissions dated 10/12/2025 through the firm of Muthoni Ndeke and Company Advocates. They submitted that section 18(2) of the Land Registration Act presupposes that the Land Registrar is able to carry out a determination on a boundary dispute whereas in the instant case, the Registrar visited the land, carried out an assessment, identified discrepancies and reached a clear conclusion that the existing boundary could not be marked due to inconsistencies between the RIM, the register and the situation on the ground.

3. They averred that at the end of the process, the Registrar advised the Plaintiff to seek guidance from the Court and therefore the Plaintiff is not bypassing the administrative process but rather, he is following the directive of the Land Registrar. They submitted further, that the 11<sup>th</sup> and 12<sup>th</sup> defendant's position that the Registrar did not determine the boundary is not a pure point of law but a contested factual proposition that is against the principle set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* 1969 EA 696. They averred that whether the Registrar made a determination, whether he undertook the process contemplated under sections 18 and 19 and whether his recommendation constitutes administrative action requiring the Courts intervention are not issues capable of being resolved at a preliminary stage.
4. They further stated that the Plaintiff is not asking the Court to determine or fix a boundary but seeks an order directing the Land Registrar to complete the process he already initiated and to mark the boundary using the RIM as he himself recommended. They submitted further, that this Court retains supervisory jurisdiction over statutory bodies including Land Registrars under Article 165(6) and (7) of the Constitution. That in circumstances where the Registrar is unable to complete the boundary marking exercise because of legal or technical limitations, the Court is empowered to issue the appropriate guidance.

5. They maintained that the claim therefore does not offend section 18(2) but rather fits squarely within the Court's supervisory mandate to ensure that statutory processes are completed lawfully and effectively. They averred that the Defendants want to weaponize section 18(2) to prevent the resolution of a legitimate grievance where the Registrar has already done what the law requires of them and only seeks the Courts guidance on the final step. They termed the objection as an attempt to shut the door of justice and asked that it be dismissed with costs.
6. The 9<sup>th</sup> and 10<sup>th</sup> defendants filed their submissions dated 01/12/2025 through the firm of Njeru Ithiga and Company Advocates. They submitted that their Preliminary Objection meets the threshold set out in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd 1969 EA 696. They argued that under Section 18(2) of the Land Registration Act, the court is barred from entertaining boundary disputes unless the same have first been determined by the Land Registrar.
7. They averred that in this case, the Plaintiff brought this suit on account that he had lodged a boundary dispute with the Land Registrar and when the Land Registrar visited the ground and the disputed boundary, he found discrepancies between the RIM area, registered area and the ground area. That the Land Registrar could not mark the disputed boundary due to the discrepancies along the disputed boundary. Relying on Sections 18(3) and 19(1) & (2) of the Land Registration Act,

they emphasized that the mandate to determine a boundary dispute is a preserve of the Land Registrar. In support of their submissions, they cited the case of Kilanga Ole Sekento versus Meitiaki Ole Sayo & 2 Others 2025 (KLR) and urged that the Plaintiff's suit be struck out with costs.

8. The 11<sup>th</sup> and 12<sup>th</sup> defendants filed their submissions dated 26/08/2025 through the Office of the Attorney General. They submitted that the subject matter of the Preliminary Objection raised meets the criteria set out in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd 1969 EA 696 as it raises a straightforward point of law. They averred that the gist of the objection is that the court lacks statutory jurisdiction as provided for under section 18(2) of the Land Registration Act which is a matter of law and that the facts as pleaded by the Plaintiff confirm that the Land Registrar has not made a determination and therefore no fact finding is required.
9. They submitted further, that the language of section 18(2) of the Land Registration Act is couched in mandatory terms that the court is barred from entertaining involving boundary disputes until and unless the Land Registrar has made a determination. They averred that in the present case, the Plaintiff expressly pleads at paragraph 16-20 of the Plaint that he lodged a boundary complaint with the Land Registrar who noted discrepancies in the RIM, registered and ground areas but did not make a determination.

10. They expressed that, such cannot override the provisions of section 18(2) of the Land Registration Act as the statutory mandate requires the Land Registrar to first determine the boundary before the court can assume jurisdiction. They maintained that it was clear that the present dispute was a boundary dispute that had not been determined by the Land Registrar therefore the court lacks jurisdiction to proceed with the suit as it is. They urged that the Preliminary Objection has merit and should be allowed.
11. I have considered the application and the rival submissions. The issue for determination is whether the Preliminary Objection has merit.
12. The circumstances in which a preliminary objection may be raised was laid out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696, as follows:

“A Preliminary Objection is in the nature of what used to be a demurrer. 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 is the exercise of judicial discretion.”
13. In this matter, the 11<sup>th</sup> and 12<sup>th</sup> Defendants’ main ground of objection is that the suit offends the mandatory provisions of Section 18(2) of the Land Registration Act, and that consequently, this Court lacks jurisdiction to entertain it. The objection is anchored on the question of jurisdiction, which is a

pure point of law. It follows therefore, that the objection properly falls within the scope of a preliminary objection.

14. Section 18(2) of the Land Registration Act provides as follows:

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

15. The plaintiff instituted a suit vide a plaint dated 25/04/2024 seeking an order that the Land Registrar Embu marks the existing boundary of land parcels no Gaturi/Weru/8268, 1211, 1212, 6298, 6929, 3873, 4757, 4756, 3542,3543 and 3544 as per the RIM map. The record shows that the Land Registrar visited the suit lands and made a report dated 15/06/2022 making the following findings:

“From the above analysis it evident that:-

- The disputed boundary is visible and marked on the ground with finger euphorbia (kariaria)
- The ground area, registered area and map area for the three blocks differ.
- The ground area is sufficient to accommodate the three blocks ie Gaturi/weru/100, 18 and 205 if the Registry index map was to be used.
- If the existing boundary on dispute was to remain in its position as it is currently, parcel no 100 would suffer great loss in size

Attached find the working diagram annexed "D" for reference.

## **CONCLUSION**

This office seeks further guidance from the court whether to move the existing boundary and mark it using the map.”

16. The Plaintiff’s position is that the Land Registrar visited the land, examined the boundary, noted differences between the map, the register, and what is on the ground, and then advised that the matter be taken to Court for guidance. On the other hand, the 11th and 12th Defendants argue that the Land Registrar did not make a final decision on the boundary and therefore, under Section 18(2) of the Land Registration Act, this Court has no jurisdiction to hear the case.

17. In my view, the Plaintiff is not asking this Court to determine the boundary dispute itself. The evidence shows that the Land Registrar had already gone to the ground, carried out an assessment, and established the position of the boundary, but was unable to complete the process due to the inconsistencies noted. What the Plaintiff seeks is for the Court to give directions so that the process already started by the Land Registrar can be completed. In *Kibuchi v Githinji* (Environment and Land Appeal E020 of 2021) [2024] KEELC 6299 (KLR), the Court, in similar circumstances, stated that:

“I have referred to the above Court of Appeal decision extensively to illustrate that indeed Section 18(2) of the Land

Registration Act, 2012 cannot be looked at in isolation in determining whether or not a Court has jurisdiction to entertain a suit that touches on a boundary dispute. What I understand the provision to underscore is that a Court cannot assume the role of the Surveyor and the Land Registrar to determine a boundary dispute as that obviously requires some technical expertise. Where it is demonstrated the boundary has been ascertained as required under the provisions of Section 19 of the Land Registration Act, 2012 the Court can entertain the suit and render a decision taking into account the findings of the Land Registrar and the Surveyor as envisaged under Section 19 of the Land Registration Act 2012”

18. Guided by the foregoing authority, it is evident that Section 18(2) of the Land Registration Act does not operate as an absolute bar to the Court’s jurisdiction in all matters touching on boundary disputes. Rather, it precludes the Court from usurping the technical mandate of the Land Registrar and the Surveyor in the first instance. Where, however, the Land Registrar has already undertaken the statutory process and ascertained the boundary, but is unable to complete the exercise due to some challenges, the Court is properly clothed with jurisdiction to intervene and issue appropriate directions.
19. In the circumstances, I find that the Preliminary Objection lacks merit. It is hereby dismissed with costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 19<sup>TH</sup> DAY  
OF MARCH, 2026.**

.....  
**HON. E.C CHERONO**  
**ELC JUDGE**

In the presence of;

1. Githinji H/B Njeru Ithhiga for the 9<sup>th</sup> & 10<sup>th</sup> Defendants.
2. M/S Kamochu H/B Muthoni Ndege for the Plaintiff.
3. Mr. Muriithi H/B for Mr. Kiongo for the 11<sup>th</sup> & 12<sup>th</sup> Defendants.
4. Diana Kemboi C/A.