



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC SUIT NO E364 OF 2025

J. K HARIA INVESTMENTS1ST
PLAINTIFF/APPLICANT
AFRAN SHARIFF.....2ND
PLAINTIFF/APPLICANT

-VERSUS-

HASMUKHLALA SHANTILAL SHAH1ST DEFENDANT
/RESPONDENT
TARABAL HASMUKHLAL.....2ND
DEFENDANT/RESPONDENT
ALIF HOMES LIMITED.....3RD
DEFENDANT/RESPONDENT

RULING

Introduction

1. The Plaintiff filed the instant suit via the plaint dated 15th July 2025 seeking the following orders
 - a) That this honourable court be pleased to issue an order of permanent injunction restraining the defendants/respondents by themselves, their agents, servants, employees or anyone under their instruction or authority from entering, trespassing on, taking possession of, wasting, constructing, alienating, evicting the plaintiff or otherwise interfering or dealing with the suit property known as Nairobi/Block 35/457 (formerly known as LR NO 209/8364).

- b) The honourable court be pleased to issue a declaration to the effect that the defendants unlawfully and illegally trespassed upon parcel known as Nairobi/Block 35/457(formerly known as LR NO 209/8364).
- c) The honourable court be pleased to issue a declaration to the effect that the defendants unlawfully and illegally tore down the perimeter wall demarcating Nairobi/Block 35/457(formerly known as LR NO 209/8364) and the adjacent portion Nairobi/Block 35/672(formerly LR NO 209/8365) and be pleased to issue general damages for the same
- d) The honourable court be pleased to issue a declaration to the effect that the defendants unlawfully and illegally commenced construction within parklands area without the necessary county and NEMA permits
- e) The Officer commanding station parklands to supervise and ensure compliance with the injunction orders.
- f) Costs of the suit

2. The 3rd respondent responded by filing a notice of preliminary objection dated 25th August 2025 indicating that the court lacked the jurisdiction to entertain the suit as it offended the provisions of section 18 and 19 of the land registration Act

3. The plaintiff in objecting to the notice of preliminary objection filed grounds of objection dated 1st December 2025 on grounds inter alia that the preliminary objection did not threshold for a preliminary objection as it did not submit on points of law

4. The notice of preliminary objection was dispensed off by way of written submissions

3rd respondent's submissions

5. Counsel submitted that the dispute at hand was touching on boundaries and demarcation which falls under the purview of the Land registrar as per section 18 of the Land registration Act relying on the case of **Kilasi Vs Opiyo (Environmental and Land Appeal 31 of 2022)(2024)KEELC 3439(KLR)**. That the issue raised was one touching on jurisdiction and the court is not permitted to adjudicate on the same unless it has already been decided by the Land registration Act also relying on the case of **Samuel Kamau Macharia & Another Vs Kenya Commercial Bank limited & Others (2012)Eklr**

Plaintiff's submissions

The plaintiff submitted that at the core of the suit is the interference of quiet possession by the 3rd respondent hence the need to seek for injunctive orders which orders were granted based on an application that had filed with the plaint dated 15th July 2025 Counsel submitted that the court was vested with jurisdiction to hear matters in relation to use and occupation of land as captured in Articles 162(2)(b) of the constitution of Kenya and section 13 of the environment and Land court Act

Counsel submitted that the 3rd respondent was pegging the issue to look like purely a boundary issue when the real issue was on occupation and the use of the suit property, environmental

planning and protection which matters fell within the jurisdiction of this court.

That on the issue of misjoinder, the same was not enough to dismiss a suit as it was curable and hence did not amount to an issue of law.

Analysis and determination

6. Having considered the Preliminary objection and the submissions herein the only issue for determination is whether the Notices of Preliminary Objection dated 25th August 2025 is merited .The threshold of a preliminary objection was set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** as follows:“...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. “The Court went further to note that:
-“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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”

The preliminary objection in this matter is founded on the notion that the court lacks jurisdiction to entertain the suit as it touches on issue of boundary which falls under the jurisdiction of the land registrar.

It goes without saying that without the requisite jurisdiction a court of law down sits tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law.

Under Section 18 (2) of the Land Registration Act, the jurisdiction to hear and determine boundary disputes is vested on the land registrar. This is a matter that is well settled beyond peradventure by various decisions of the Superior Courts of this country. The Court of Appeal in **Azzuri Limited vs Pink Properties Limited (2018) eKLR**, was categorical on the issue stating that; *“Under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution”*.

In **George Kamau Macharia vs Dexka Limited (2019) eKLR**, Kemei J held that; *“It is manifestly clear that the above Section 18(2) of the Land Registration Act gives the mandate to the Land Registrar to resolve boundary disputes of land with general boundaries...the framers of Section 18(2) of the Land Registration Act placed this matter before the Land Registrar who has the technical advice and resources of the District Land Surveyor to determine and ascertain the boundaries.*

From the reading of the Plaintiff's plaint dated on 29th April 2025, it is pretty clear that the dispute between the Plaintiff and the Defendant is one touching on encroachment where the plaintiff avers the 3rd respondent has trespassed on its suit property , and caused to come down the perimeter wall that separated the suit property from land parcel Nairobi/Block 35/672(formerly L.R NO 209/8365) and hence adjusting the boundaries that had been in place. The Plaintiff laments that the 3rd defendant based on this illegal trespass has constructed unlawfully on the suit property thereby denying the plaintiff its rights over the same. That the construction activities have further been a health hazard to the plaintiff's tenants. The Plaintiff consequently prays for an order of injunction to stop the 3rd defendant from dealing with the suit property, and declaratory orders that the 3rd defendant has illegally trespassed on and caused illegal construction and tearing down of the perimeter wall that acted as a boundary as between the two suit properties. The substance of the Plaintiff's claim in this matter is the boundary dispute. The issue of encroachment is peripheral and subject to the determination of the boundary dispute and the inclusion of the peripheral prayers cannot confer jurisdiction on this court to determine what is clearly a boundary dispute that has led to the alleged trespass. Consequently, the court finds and holds that it lacks the jurisdiction to entertain this matter.

Final disposition

7. The upshot is that;

- a) The Plaintiff's suit herein is struck out for want of jurisdiction.
- b) I make no orders as to costs considering the stage at which the suit had reached and, in a bid, to promote reconciliation between the parties who are neighbours. Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13th day** of **April 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Bulima..... for the Plaintiffs/Applicants

N/A..... for the 1st Defendant/Respondent

N/A..... for the 2nd Defendant/Respondent

Mr. Ontegi..... for the 3rd Defendant/Respondent

Philomena W..... Court Assistant