



**Rehimtulla v Bhudia (Environment and Land Appeal E205 of 2024)
[2026] KEELC 2184 (KLR) (20 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2184 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E205 OF 2024**

JG KEMEI, J

APRIL 20, 2026

BETWEEN

ZAILI MOHAMMED REHIMTULLA APPELLANT

AND

RATAN SHIVJI BHUDIA RESPONDENT

(Appeal from the Ruling of Hon Lucy Njora SPM dated 12/8/2024 in CMELC NO 1452 of 2020)

JUDGMENT

1. The Respondent filed a suit by a plaint dated 1/9/2020, in which he sought orders of mandatory injunction against the current Appellant, restraining him from interfering with the suit land, being LR No 36/111/993, and for vacant possession, mesne profits and general damages for trespass.
2. On the 12/10/2020 the Appellant filed a preliminary objection on the grounds that;
 - a. The application and the suit before the court is an abuse of the process, unmerited and unjust
 - b. The court lacks jurisdiction to entertain the matter as the subject matter exceeds this court's jurisdiction.
 - c. The application is misplaced, improper, and wrongful before this honourable court.
3. In its Ruling dated the 12/8/24, the court stated as follows;

“In my view, the issue in dispute is whether the court has pecuniary jurisdiction to hear and determine this dispute and to determine this dispute. I have to inquire into the existence of a particular state of facts in order to decide whether it has jurisdiction. In this case, I will have to examine the valuation reports submitted by the parties and decide which prevails, as the issue of pecuniary jurisdiction is highly disputed. In light of this, it is clear to me that this was not an issue to be dispensed with by way of a notice of preliminary objection; not



only are the facts disputed, but the court will also have to ascertain the factual matters to determine the question of jurisdiction.

In light of the above, I find the notice of preliminary objection is not a true preliminary objection and owing to this, it is hereby dismissed.”

4. Aggrieved by the above decision, the Appellant preferred this appeal on the grounds;
 - a. The Learned Magistrate erred in both fact and Law in making a finding that the Lower Court has jurisdiction to entertain, hear and determine the entire suit/matter to its conclusion.
 - b. The Learned Magistrate erred in both fact and Law in making a finding that the value of the property falls within its mandate and powers, despite 2 valuation reports exhibiting the value as beyond the Court’s jurisdiction.
 - c. The Learned Magistrate erred in both fact and Law over her ruling in finding that she has jurisdiction in her rank being Senior Principal Magistrate [SPM], whereas the 2 valuation reports exceed her pecuniary jurisdiction [i.e Kshs. 20,00,000/= and Kshs. 25,000,000/=]
 - d. The Learned Magistrate erred in both fact and Law and in fact in failing to consider and have due regard to the submissions and the ELC – Court Directives on jurisdiction over property exceeding Kshs. 20,000,000/= is a reserve for the Environment and Land Court [ELC] Nairobi.
 - e. The Learned Magistrate erred in both fact and Law and in fact in failing to establish the true proper value of the subject property via a Government Valuer on the current market price of the said property.
 - f. The Learned Magistrate erred in both fact and Law and in fact in failing to discharge substantive justice in the matter, which she would have done in allowing the preliminary objection dated 12/10/2020 or directing for an independent valuation report from a Government Valuer.
5. Regarding whether the court had jurisdiction to determine the subject matter, the Appellant argued that the trial magistrates’ pecuniary jurisdiction was Kshs 15 million, while the value of the land in question was Kshs 25 million and Kshs 20 million according to the valuation reports provided by the Appellant and the respondent, respectively. The Appellant contended that the trial magistrate should have recognised this and directed that the matter be heard in the ELC Court, asserting that proceedings in a court without proper jurisdiction are essentially a nullity.
6. The Respondent failed to file any submissions despite service.

Analysis and determination

7. Having considered the appeal in its entirety together with the written submissions, the key issues for determination are;
 - a. Whether the tribunal erred in disallowing the preliminary objection.
 - b. Who meets the cost of the appeal?



8. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated as thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect....”

9. Having set out the background of the dispute in the preceding paragraphs, and with the above principles in mind, I will proceed to analyse the appeal.

Whether the tribunal erred in disallowing the preliminary objection

10. Regarding what constitutes a Preliminary Objection, in the case of *Hassan Ali Joho & Another -Vs- Suleiman Said Shabal & 2 others* SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case of *Mukisa Biscuit Manufacturers Ltd vs West End Distributors Ltd* (1969) E.A, where the Court of Appeal said 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 need to be ascertained or if what is sought is the exercise of judicial discretion.”

11. Before addressing the question raised as a Preliminary point, the Court must first establish that the issue involves a pure point of law.

12. The required threshold for distinguishing between questions of law and fact for the purpose of sustaining a preliminary objection is also a well-established point. In the case of *George Oraro –vs- Eston Mbaja* [2005] eKLR, the Court held that:

“A preliminary objection is ... 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 processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears 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...”

13. In this case, the gist of the preliminary objection, as outlined in the trial court, was that the court lacked jurisdiction to entertain the matter because the value of the subject matter exceeded the court's pecuniary jurisdiction. The jurisdiction of the Magistrates is outlined in Section 7 of the Magistrates Act, which provides as follows;

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —

- a. twenty million shillings, where the court is presided over by a chief magistrate;
- b. fifteen million shillings, where the court is presided over by a senior principal magistrate;



- c. ten million shillings, where the court is presided over by a principal magistrate;
 - d. seven million shillings, where the court is presided over by a senior resident magistrate; or
 - e. five million shillings, where the court is presided over by a resident magistrate.
- (2) The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.
- (3) A magistrate's court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law —
- a. land held under customary tenure;
 - b. marriage, divorce, maintenance or dowry;
 - c. seduction or pregnancy of an unmarried woman or girl;
 - d. enticement of, or adultery with a married person;
 - e. matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and
 - f. intestate succession and administration of intestate estates, so far as they are not governed by any written law.
14. It is borne out by the record that each of the parties presented valuation reports in relation to the subject matter, with the aim of persuading the court. To determine the objection, the court was called upon to inquire into a fact-dependent aspect of the property: its value. The court was then expected to examine the two contested valuations to determine the property's value.
15. By the very nature of the objection, the court was correct to determine and dismiss the objection on the grounds that it was fact-dependent. I therefore find no grounds to fault the trial court's decision.
16. I agree with the decision in Henry Wanyama Khaemba –vs- Standard Chartered Bank Ltd & Another (2014) eKLR, where the court pronounced itself as follows: -
- “The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of jurisdiction on Preliminary Objections
17. The appeal is unmerited. It is dismissed in its entirety.
18. I make no orders as to costs
19. Orders accordingly

DATED, SIGNED & DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 20TH DAY OF APRIL 2026.

J G KEMEI
JUDGE



Delivered Online in the presence of:

1. Mr Mwaura for the Appellant
2. N/A for the Respondent
3. CA – Ms. Yvette

