



**Koira v Naisewa (Environment and Land Case 592 of 2017)
[2025] KEELC 5535 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5535 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 592 OF 2017**

**MD MWANGI, J
JULY 24, 2025**

BETWEEN

COSMAS GICHARISHA KOIRA PLAINTIFF

AND

MEELI OLE NAISEWA DEFENDANT

RULING

(In respect of the preliminary objection by the defendant dated 9th April 2024 contesting the jurisdiction of the court on the basis of the provisions of section 18 of the [Land Registration Act](#))

Background

1. The defendant has raised what he terms as a preliminary objection, in which he objects and opposes the entire suit and seeks to have the same struck out on the grounds that:
 - a. The plaintiff's suit is bad in law, incompetent and an abuse of the court process as the plaintiff and defendant own completely different and distinct plots; and
 - b. That this Honourable court lacks the initial jurisdiction to hear and determine this suit.
2. The preliminary objection was canvassed by way of written submissions. Accordingly, both sides filed their respective submissions which now form part of the record of this court. The court has had the benefit of perusing and considering the same.

Issues of Determination

3. In framing the issues for determination, it is worth restating that a preliminary objection correctly understood is a point of law which must not be blurred by factual details liable to be contested and to be proved through the process of evidence.



4. The court in the case of Mukisa Biscuit Manufacturing Company Ltd. Vs West End Distributors Limited (1969) eKLR, defined a Preliminary Objection as follows:

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

5. The defendant’s preliminary objection is set out in the form of three points. The first issue in my considered view does not meet the criterion set forth in the case of Mukisa Biscuits case (Supra). The issue whether the plaintiff and defendant own completely different and distinct plots is a factual issue and cannot be considered as a preliminary objection.
6. In his written submissions the Defendant frames as the first issue what I consider to be the second point; whether the non-joinder of a critical party to this suit renders the application and the suit under which it is founded incapable of adjudication and is wholly an abuse of the court process and procedure. The Defendant then goes ahead to give a narration in his submissions about a previous suit filed in Machakos. This is not allowable in a preliminary objection. In any event the provisions of Order 1 rule 9 of the Civil Procedure Rules are clear that a suit cannot be defeated by reason of non-joinder. The rule categorically states that ‘no suit shall be defeated by reason of the misjoinder or non-joinder of parties’.
7. By dint of the aforementioned analysis, the court finds that the only point that requires determination as a preliminary objection is the third point on whether this court has original jurisdiction to hear and determine this suit.

Analysis and Determination

8. The defendant contests this court’s jurisdiction on the ground that the plaintiff’s cause of action in this instant suit is a boundary dispute and as such this Honourable court lacks the original jurisdiction to hear and determine this suit by virtue of the provisions of Section 18 and 19 of the [Land Registration Act](#). Section 18(2) of the [Land Registration Act](#) provides that;

“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.”

9. This provision in essence bars the court from entertaining any proceedings relating to a boundary dispute with respect to registered land. It is imperative that the aforementioned provision only applies as regards registered land.
10. Whereas the plaintiff relies on this provision in contesting the court’s jurisdiction it is quite obvious that the land, Plot No. 138/ Oloosirkon Trading Centre, which is the subject of the dispute between the parties herein is not registered land. Therefore, the provisions of the [Land Registration Act](#) do not apply to the said land.



11. Statutes must be read as a whole and not in isolated snippets. In the case of Adrian Kamotho Njenga - vs- Kenya School of Law (2017) eKLR, the court referenced the principle set out in the case of Engineer Board of Kenya -vs- Jesse Waweru Wahome & 5 others, as follows;

“One of the canons of statutory interpretation is a holistic approach... no provision of any legislation should be treated as ‘stand-alone’ ... An Act of Parliament should be read as a whole, the essence being that a proposition in one part of the Act is by implication modified by another proposition elsewhere in the Act.”

12. Whereas the provisions of section 18(2) dictate the mode of resolution of boundary disputes, the wholesome reading of the section discloses that it applies to registered land. It cannot therefore apply in this case. The Court therefore has the requisite jurisdiction to hear and determine this suit. Accordingly, the preliminary objection by the defendant lacks merit and is hereby dismissed with costs to the Plaintiff.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kinoti h/b for Mr. Mwiti for the defendant

Ms. Okumu h/b for Mr. Nyangito for the plaintiff

Court Assistant: Edwin

M.D. MWANGI

JUDGE

