

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC MISC. NO. E036 OF 2025

AUGUSTINE MUNYWOKI (Suing as the legal representative and the administrator of the estate of Miili Mumo Mukuu Deceased) ...APPLICANT

-VERSUS-

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST RESPONDENT
THE LAND ADJUDICATION AND SETTLEMENT OFFICER MAKUENI..... 2ND RESPONDENT
THE COUNTY SURVEYOR MAKUENI..... 3RD RESPONDENT
THE LAND REGISTRAR..... 4TH RESPONDENT
THE ATTORNEY GENERAL..... 5TH RESPONDENT

AND

PETER MASOKA.....INTERESTED PARTY

RULING

1. This is a ruling in respect of a notice of preliminary objection dated 15th December, 2025 by the Interested Party who raises the following grounds:

1. **That this court lacks the jurisdiction to handle this case since the subject parcel of land is still under the adjudication system.**
2. **That the Applicant has not obtained a consent from the Land Adjudication Officer as is required under the provisions of the Land Adjudication.**

2. The Applicant had filed a notice of motion dated 23rd October, 2025 in which he sought the following orders:

1. **That this honourable court be pleased to compel the Respondents to implement the Minister's decision on land parcel number 426 Kaumoni Adjudication Section.**
2. **That the Officer- In- Charge Mukuyuni Police Station to supervise the exercise.**

3. That costs be in the cause.

3. At the hearing of the Applicant's application, the Interested Party informed the court that he had filed a preliminary objection as well as a replying affidavit to the Applicant's application. The court directed the parties to file written submissions. The Applicant filed his submissions dated 11th February, 2026. The Interested Party filed his submissions dated 25th February, 2026.
4. As the preliminary objection raises the issues of jurisdiction of this court to deal with the Applicant's application, I will first deal with the preliminary objection.
5. The Interested Party contends that the Applicant did not seek consent of the Land Adjudication Officer to bring this application as the subject matter of the application herein is still under adjudication and the Applicant ought to have obtained consent of the Land Adjudication Officer before filing the same.
6. A preliminary objection was described in the case of **Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors Ltd (1969) EA 696** as follows:

“A preliminary objection consists of a point in 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..... 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”.

7. Section 30(1) of the Land Adjudication Act states as follows:

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29(3) of this Act”.

8. It is clear from the annexures to the Applicant’s supporting affidavit that as late as November, 2009, Kaumoni Adjudication Section had not been completed. This explains why the Applicant’s mother through letter dated 18th November, 2009 sought consent from the Adjudication Officer to file a case for eviction of the Interested Party among others from parcel 426.

9. In the instant case, the Minister’s appeal was determined on 2nd May, 1986. Section 29 (3) provides as follows:

“When the appeals have been determined, the Director of Land Adjudication shall—

- a. Alter the duplicate adjudication register to conform with the determinations; and**
- b. Certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.**

10. As at 22nd September, 2009, the Director of Land Adjudication had not complied with the provisions of Section 29(3) of the Land Adjudication Act. This is because as at 22nd September, 2009 parcel No. 426 was still registered in the name of Miili Mumo the Applicant’s father.

11. The Applicant has brought the application herein seeking an interest in parcel 426. The Interest which he is seeking is $\frac{1}{3}$ of parcel 426 as decreed by the Minister in his judgment of 2nd May, 1986. The term interest is defined in the Act as follows:

“"interest", in relation to land, includes absolute ownership of the land and any right or interest in or over the land which is capable of being registered under the Registered Land Act (Repealed)”.

12.As the Adjudication process at Kaumoni Adjudication Section is yet to be completed, the Applicant had first to seek consent of the Adjudication officer before filing the present application. The Applicant cannot argue that the interest in respect of parcel 426 had been determined and surveyors demarcated the land and what was remaining is for the implementation of the decision.

13.There can be no implementation without completion of the adjudication register which will be the basis of generation of titles. Section 30(1) ousts the jurisdiction of court from entertaining proceedings in court unless with consent of the Adjudication Officer. I therefore uphold the preliminary objection and proceed to strike out the Applicant’s Notice of Motion dated 23rd December, 2025 with costs to the Interested Party.

It is so ordered.

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HON. E. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 14TH DAY OF MAY, 2026.

IN THE PRESENCE OF:

Mr. Kithuka for Applicant.

Mr. Hassan for Interested Party.

Court assistants Musyoki and Kilonzo