



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC L JR CASE NO. E006 OF 2024

ORIANE RACHAEL OBBONIZIO.....

PETITIONER

*(Suing as the Executor of the Estate of **JAMES WILLIAM EDGAR SIMONS**)*

VERSUS

B. K.LEITICH, DISTRICT LAND REGISTRAR.....

RESPONDENT

AND

KASAINE OLE SOLITEI.....INTERESTED

PARTY

RULING

1. By leave of Court, the Petitioner filed an application dated **10th July 2024** seeking, inter alia, an order of certiorari to quash the decision of the Respondent dated 3rd May 2024. Subsequently, the Applicant herein was enjoined as an Interested Party on 23rd June 2025 and thereafter filed a Preliminary Objection dated 2nd October 2025, which is now before this Court for determination.
2. The **Preliminary Objection** is premised on the grounds that the Petitioner failed to exhaust the dispute resolution and appellate mechanisms provided under **Section 18 of the Land Registration Act and Regulation 40(6) of the Land Registration (General) Regulations, 2017**. The Interested Party further contends that the dispute had already been conclusively determined in a ruling delivered on 13th June 2025 in Kajiado ELC Misc. Application No. E005 of 2024: ***Quadco One Hundred and Twenty Ltd & 5 Others vs The District Land Registrar, Kajiado (B. K Leitich) & Kasaine Ole Solitei.***
3. It is the Interested Party's submissions that following a boundary dispute lodged before the Land Registrar, a site

visit was conducted and a ruling delivered on 3rd May 2024. It is his contention that dissatisfied parties ought to have pursued the statutory appellate mechanisms provided under Section 18 of the Land Registration Act. In the alternative, any departure from that procedure required leave of the Court pursuant to **Section 9(4) of the Fair Administrative Action Act**. As such, this Court lacks jurisdiction to entertain the present Judicial Review proceedings and the same should be dismissed with costs.

4. **Section 18(1) of the Land Registration Act** provides that the court shall not entertain any action or proceedings relating to a dispute as to boundaries of registered land unless the boundaries have first been determined in accordance with the Act. Section 19 empowers the Land Registrar to ascertain and fix boundaries after giving notice to affected proprietors and conducting investigations and surveys. Importantly, **Section 86(1) of the Land Registration Act** provides:

“If any person is dissatisfied by the decision of the Registrar, the person may appeal to the Court in the prescribed manner.”

5. The sole issue for determination at this stage is whether the preliminary objection is merited. The Judicial Review application is not challenging the merits of the boundary determination. Rather, it challenges the legality and procedural propriety of the process adopted by the Land Registrar, specifically the alleged failure to notify or invite the Petitioner to participate in the survey exercise despite the estate’s proprietary interests being directly affected.
6. Judicial review concerns the decision-making process rather than the merits of the decision itself. A party alleging denial of the right to be heard, procedural unfairness, breach of natural justice, illegality, irrationality, or abuse of power properly invokes the courts Judicial Review jurisdiction even where an appellate mechanism exists.
7. **Article 47 of the Constitution** guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. **Section**

4(3) of the Fair Administrative Action Act obligates an administrator to give affected persons prior and adequate notice of the nature and reasons for the proposed administrative action and an opportunity to be heard.

8. A further issue arises regarding the nature of the preliminary objection itself. The locus classicus case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** settled that a preliminary objection must raise a pure point of law. This position has been buttressed severally including by the Supreme Court in **Odinga v Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR)**.

9. The Petitioner claim is that she was neither notified of nor involved in the proceedings before the Land Registrar culminating in the ruling dated 3rd May 2024, which determined the boundary between parcels Kajiado/Kaputiei South/50 and Kajiado/Kaputiei South/48 despite her parcels Kajiado/Kaputiei South/1674 and 1678 which are located between the disputed parcels being directly affected. She therefore contends that the Ruling was erroneous and in

violation of her rights under **Article 47 and 50 of the Constitution** as well as **Section 19 of the Land Registration Act.**

10. Factual interrogation is necessary to determine whether notice was issued, whether the estate was represented and whether the Petitioner was an affected party. These issues cannot be resolved merely by reference to the pleadings. Such an inquiry falls outside the proper scope of a Preliminary Objection.

11. For this reason and also the fact that the Judicial Review challenges procedural fairness and violation of the right to a fair hearing, I find that the **Preliminary Objection** dated **2nd October 2025** is devoid of merit and is hereby dismissed. Costs shall be in the cause.

Dated, Signed and Delivered virtually at Kajiado this 7th day of May 2026.

JUDY OMANGE

JUDGE.

In presence of

MS Nyawira for the Respondent .

MS Minik for Interested Party.

Peter - Court Assistant.