



**Ngonde v Kigoji & 2 others (Environment and Land Case
E014 of 2024) [2025] KEELC 5609 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND CASE E014 OF 2024**

BM EBOSO, J

JULY 21, 2025

BETWEEN

GERALD MUTHEE NGONDE PLAINTIFF

AND

TARASISIO MWENGA KIGOJI 1ST DEFENDANT

**THE DISTRICT LAND ADJUDICATION OFFICER, THARAKA 2ND
DEFENDANT**

THE DISTRICT LAND REGISTRAR, MARIMANTI 3RD DEFENDANT

RULING

Introduction

1. The plaintiff initiated this suit through a plaint dated 22/11/2024. He sought the following reliefs against the defendants: (i) a declaration that the purported ownership of parcel number 6787 in Kathangachini, Tharaka North, measuring 10 acres (the suit land) by the 1st defendant is fraudulent, illegal, wrongful, null and void; (ii) an order directing the 1st defendant to surrender ownership documents he holds over the suit land for revocation; (iii) an order of vacant possession of the suit land; (iv) a permanent injunction restraining the defendants against interfering with the plaintiff's right of possession, advertising for sale, disposing, selling or interfering with the plaintiff's ownership of the suit land; and (v) an order awarding the plaintiff costs of the suit.
2. Together with the plaint, the plaintiff filed a notice of motion dated 22/11/2024, seeking an interlocutory injunction against the defendants in relation to the suit land. As an alternative plea in the application, the plaintiff sought an order of inhibition barring registration of dealings in the land register relating to the suit land. The said application is one of the two items that fall for determination in this ruling.



3. The second item falling for determination in the ruling is the 1st defendant's preliminary objection dated 10/3/2025, through which the 1st defendant objects to this suit and invites the court to dismiss the suit in limine on the ground that the court lacks jurisdiction to entertain the suit in the absence of a consent granted to the plaintiff under Section 8 of the [Land Consolidation Act](#) and Section 30 of the [Land Adjudication Act](#). Because the preliminary objection raises a jurisdictional issue, the court will dispose it before dealing with the plea for interlocutory injunction.

Preliminary Objection dated 10/3/2025

4. Through the notice of preliminary objection dated 10/3/2025, the 1st defendant invited the court to dismiss this suit on the following verbatim grounds:
 - “1) The Honourable Court lacks jurisdiction to hear this case for lack of the mandatory statutory consent to file this case by dint of Section 8 of the [Land Consolidation Act](#), Cap 283 and Section 30 of the [Land Adjudication Act](#), Cap. 284, Law of Kenya.
 - 2) The plaintiff did not exhaust the remedies set out as Section 13, 14 and 26 of the [Land Consolidation Act](#), Cap 283 and Section 26 and 29 of the [Land Adjudication Act](#), Cap. 284, Laws of Kenya.
 - 3) The application dated 22/11/2024 is fatally defective.”
5. The preliminary objection was canvassed through written submissions dated 17/4/2025. The case of the 1st defendant (the objector) is that the suit land is the subject matter of adjudication and is subject to the provisions of Section 30 of the [Land Adjudication Act](#) and Section 8 of the [Land Consolidation Act](#). He contends that in the absence of a written consent by the relevant Land Adjudication Officer, authorising the plaintiff to institute a suit in relation to the suit land which is still the subject matter of adjudication and consolidation under the two statutes, the court does not have jurisdiction to entertain this suit. The plaintiff did not file submissions in opposition to the preliminary objection.
6. The court has considered the preliminary objection. The single issue to be determined in the preliminary objection is whether this court is seized of jurisdiction to entertain the dispute in this suit at this point.
7. Through his plaint, the plaintiff pleaded that land demarcation [under the [Land Adjudication Act](#)] in Kathangachini Section, began in 2019. On or about 22/2/2019, he was summoned to a hearing before the Land Adjudication Committee in Marimanti, relating to two different complaints lodged by the 1st defendant and one Zakayo Mutegi, respectively. The complaints were heard and dismissed by the Land Adjudication Committee. He was subsequently issued with an allotment letter on 20/7/2022. Subsequent to that, the 1st defendant lodged “a complaint” with the “Lands Adjudication Review Committee” where the complaint was heard ex-parte without his knowledge and a decision was rendered in which it was held that the suit land was to be divided into two halves. He pleaded that, aggrieved by that decision, he lodged an appeal to the Minister, adding that his appeal to the Minister was pending disposal by the Minister.
8. It is, therefore, clear from the plaint that, at the time of lodging this suit, the suit land was still the subject matter of land adjudication and land consolidation under the [Land Adjudication Act](#) and the [Land Consolidation Act](#), respectively. Secondly, at the time of lodging this suit, the plaintiff's appeal to the Minister under Section 29 of the [Land Adjudication Act](#) was still pending hearing and disposal by the Minister.



9. Does this court have jurisdiction to entertain a suit of this nature at this point? The suit before court was initiated by way of plaint. It is neither a judicial review motion seeking judicial review writs nor a constitutional petition raising constitutional issues. The suit before court is principally a land ownership dispute seeking a determination of the question of ownership of the suit land. The suit land is still the subject of adjudication under the [Land Adjudication Act](#).
10. The jurisdiction of this court in relation to parcels of land that fall within declared adjudication sections is regulated by Section 30 (1) of the [Land Adjudication Act](#) and Section 8 (2) of the [Land Consolidation Act](#). For clarity, Section 30 (1) of the [Land Adjudication Act](#) provides as follows:
- “ 30 Except with the consent in writing of the adjudication officer, no person shall
 (1) 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.”
11. Section 8 (2) of the [Land Consolidation Act](#) provides as follows:
- “No officer of any court whatever shall issue any plaint or other legal process for the institution or continuance of any proceedings which by virtue of the provisions of subsection (1) of this section are for the time being prohibited, except upon being satisfied that the consent required by those provisions has been given.”
12. The Court of Appeal interpreted the provisions of Section 30 (1) of the [Land Adjudication Act](#) in [Bhaijee & another v Nondi & another](#) (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment) and made the following pronouncement:
- “Section 30 of the [Land Adjudication Act](#) requires consent to be given before the institution of civil proceedings concerning an interest in land in an adjudication section. The consent was a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically required the suits to be discontinued if started without consent. Section 30 therefore affected the power and jurisdiction of courts to hear and determine such disputes. The rationale for Section 30 of the [Land Adjudication Act](#) was that there was an elaborate process that was laid down by the [Land Adjudication Act](#), on how to determine which persons were, and the extent to which, they were entitled to interests in the land under adjudication. It was necessary that Section 30 was first employed before resort was made to the courts, and also shielded from unnecessary and unjustified abuses. Where a dispute resolution mechanism existed outside courts, it had to be exhausted before the jurisdiction of the courts was invoked.”
13. The plaintiff initiated this suit while his appeal was pending before the Minister. He chose to prosecute both the appeal and this suit. He wants to obtain parallel determinations. Clearly, by moving to this court without the consent of the Land Adjudication Officer and before exhausting the redress mechanism available to him under Section 29 of the [Land Adjudication Act](#), the plaintiff violated the mandatory provisions of Sections 29 and 30(1) of the [Land Adjudication Act](#) and Section 8 (2) of the [Land Consolidation Act](#). Secondly, he violated the principle of exhaustion of remedies which has become a key pillar of Kenya’s civil legal system.
14. Our courts have umpteen times stated that where Parliament has, through statute, established a primary dispute adjudication mechanism, that mechanism ought to be exhausted before the



jurisdiction of the superior courts is invoked. In *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* (2015) eKLR the Court of Appeal reiterated this principle in the following words:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts.”

15. Similarly, in *Speaker of the National Assembly V Njenga Karume* the Court of Appeal stated as follows:

“...In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that Order 53 of the *Civil Procedure Rules* cannot oust clear constitutional and statutory provisions...”

16. The above principle was also outlined in *Secretary, County Public Service Board & another v Hulbhai Gedi Abdille* [2017] eKLR as follows;

“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”

17. It is clear from the plaint and from the above legal frameworks and from the prevailing jurisprudence that, the plaintiff prematurely invoked the jurisdiction of this court. In the absence of consent of the Land Adjudication Officer, this court does not have jurisdiction to entertain this suit at this point. That is the finding of the court on the preliminary objection dated 10/3/2025.

18. The result is that the preliminary objection dated 10/3/2025 is upheld and the plaintiff's suit is hereby struck out in limine on the ground that the court does not have jurisdiction to entertain this dispute at this point. The same fate befalls the application dated 22/11/2024 which was a motion within the ill-fated suit.

19. There are no special circumstances that warrant a departure from the general principle in Section 27 of the *Civil Procedure Act* – that costs follow the event. Consequently, the plaintiff shall bear costs of the ill-fated suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 21ST DAY OF JULY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Plaintiff – Absent

Mr. Atheru for the Defendants

Court Assistant – Mr. Mwangi

