



REPUBLIC OF KENYA



KENYA LAW
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Joseph & 2 others v Musau & another (Environment and Land Case E022 of 2021) [2025] KEELC 5350 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE E022 OF 2021**

**EO OBAGA, J
JULY 17, 2025**

BETWEEN

**JACKSON MUSYOKI JOSEPH 1ST PLAINTIFF
KIOLI JOEL KALYOKI 2ND PLAINTIFF
JOSEPH SILA MUIVA 3RD PLAINTIFF**

AND

**EZEKIEL MWAKA MUSAU 1ST DEFENDANT
MUTIE MUIVA 2ND DEFENDANT**

RULING

1. This is a ruling in respect of a Notice of Preliminary Objection dated 21st August, 2024 in which the 1st Defendant raises the following grounds:
 1. That the suit offends the provisions of Section 18 (2) of the *Land Registration Act*.
 2. That the suit offends the provisions of Section 29 of the *Land Adjudication Act* in respect to judgment of the Appeal to the Minister is amenable by way of a Judicial Review.
 3. That this suit is an abuse of the Court process and the same ought to be struck out with costs.
2. The parties were directed to dispose of the preliminary objection by way of written submission. The 1st Defendant filed his submissions dated 10th December, 2024. On 27th February, 2025 the 3rd Plaintiff was granted 14 days within which to file his submissions. As at the time of writing this ruling on 28th June, 2025, he had not filed any submissions.



3. The 1st Defendant contends that this suit offends Section 18(2) of the *Land Registrar Act* which states as follows:

“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”.
4. The 1st Defendant further submits that this suit offends the provisions of Section 29 of the *Land Adjudication Act*. Section 29 of the *Land Adjudication Act* deals with appeals to the Minister as relates to objection to the adjudication register pursuant to Section 26 of the *Act*.
5. I have perused the court file and I cannot see any decision which was made by the Minister. I can only see the decision of the committee made pursuant to Section 20 of the *Act*. There was no appeal to the arbitration board as provided for under Section 21 of the *Act*.
6. As was stated in the case of *Nitin Properties Ltd –vs- Singh Kalsi & Another* (1995) eKLR, a preliminary objection raises a pure point of law, which is argued on the assumption that all the acts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion.
7. As pointed out hereinabove, there is no evidence to show whether there was a decision rendered by the Minister. It was therefore wrong for the 1st Defendant to raise a preliminary objection which will call for ascertainment of certain facts.
8. A quick perusal of the pleadings herein show that the 1st Defendant claims to have purchased the entire plot number 1625 and 1662 from the 3rd Plaintiff in 1997. If this be the case, the issue of boundary dispute does not arise as to take away the jurisdiction of this court as envisaged under Section 18(2) of the *Land Registration Act*. I therefore find no merit in the preliminary objection which is hereby dismissed with no order as to costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF JULY, 2025.

In the presence of:

Ms. Mwikali for Mr. Murango for 1st Defendant.

Court assistant – Steve Musyoki

