



REPUBLIC OF KENYA



Muindi v District Land Adjudication Officer Makueni; Muindi & 4 others (Interested Parties) (Petition E001 of 2022) [2024] KEELC 520 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 520 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
PETITION E001 OF 2022
TW MURIGI, J
JANUARY 31, 2024**

BETWEEN

ALEXANDER KYALO MUINDI PETITIONER

AND

DISTRICT LAND ADJUDICATION OFFICER MAKUENI RESPONDENT

AND

ESTHER KETHI MUINDI INTERESTED PARTY

VICSTAN MUTUKU ANNAH INTERESTED PARTY

JAMES MBINDA ANNAH INTERESTED PARTY

DOROTHY MUTUMI MUINDI INTERESTED PARTY

GEORGE SILA KING'OLA INTERESTED PARTY

RULING

1. This ruling is with respect of the Notice of Preliminary Objection dated 28th February 2022 raised by Respondent on the following grounds:-
 - a. That the Petition is incompetent, bad in law as it offends the mandatory provisions of Section 26 and 29 of the *Land Adjudication Act* Cap 284 as the Petitioner has not explored the avenues for redress provided under the said Section.
 - b. That the *Land Adjudication Act* Cap 284 provides for an elaborate procedure of handling disputes emanating from the adjudication process and as such this Honourable Court does not have the jurisdiction to entertain this Petition.



The Petitioner's Response

2. The Petitioner filed grounds of objection dated 5th April 2022 in response to the preliminary objection and cited the following grounds:-
 1. The Preliminary Objection does not constitute a proper Preliminary Objection in substance that can dispose the suit in limine as it is intertwined in factual aspects calling for proof, authentication and ascertainment.
 2. The Preliminary Objection is blurred with factual details liable to be contested and in any event, to be proved through the process of evidence.
 3. The Respondent is laboring under a misapprehension of the Petitioner's case in raising the Preliminary Objection.
 4. The gist of the Petitioner's case is the Respondent's acts and/or omissions in collusion with the Interested Parties which made it impossible for the Petitioner to make use of the elaborate process and/or procedure set out under Sections 26 and 29 of the Land Adjudication Act Cap 284 Laws of Kenya.
 5. The Respondent's Preliminary Objection is an attempt to derail the fair, just, expeditious and affordable determination of the Petitioner's Petition contrary to the provisions of Sections 1A and 1B of the Civil Procedure Act.
3. The parties were directed to canvass the Preliminary Objection by way of written submissions.

The Respondent's Submissions

4. The Respondent's submissions were filed on 12th October 2023.
5. On its behalf, Learned State Counsel outlined the following issues for the court's determination:-
 - a. Whether this application contravenes the provisions of Sections 26 and 29 of the Land Adjudication Act Cap 284.
 - b. Whether the Applicant has exhausted the procedure of redress provided under the Land Adjudication Act Cap 284.
 - c. Whether this Honourable Court has jurisdiction to entertain this matter.
6. On the first issue, Learned State Counsel submitted that Sections 26 and 29 of the Land Adjudication Act provide for an elaborate dispute resolution mechanism for resolving disputes arising from the adjudication process. It was submitted that the Petitioner did not file any objection in respect of Plot No. 1845 in accordance with Section 26 of the Land Adjudication Act.
7. Learned State Counsel submitted that the Applicant ought to have exhausted the dispute resolution mechanism laid down in Sections 26 and 29 of the Act before approaching the court. To buttress this point, reliance was placed on the case of Speaker of National Assembly v Karume (1992) KLR where the Court of Appeal held that:-

“When there is a clear procedure for redress of any particular grievance prescribed by the Constitution or Act of Parliament that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedure”.



8. On the second issue, Learned State Counsel submitted that under the [Land Adjudication Act](#), the court has no jurisdiction to entertain matters arising from the adjudication process unless when exercising its supervisory jurisdiction through judicial review proceedings. It was submitted that the court lacks jurisdiction to entertain the Petition since the Petitioner has not exhausted the dispute resolution mechanism provided under the [Act](#).
9. Concluding her submissions, Learned State Counsel submitted that the Petition herein is premature and ought to be dismissed with costs to the Respondent.

The Petitioner's Submissions

10. The Petitioner's submissions were filed on 11th November 2022.
11. On his behalf, Counsel identified the following issues for the Court's determination:-
 - a. Whether this Honourable Court has the jurisdiction to hear and determine this Petition?
 - b. Whether the Preliminary Objection has met the legal threshold for a proper preliminary objection?
12. On the first issue, Counsel submitted that jurisdiction is the cornerstone in any judicial proceedings and without which a court or any tribunal exercising any judicial authority must down its tools. To buttress this point, Counsel relied on the case of [Kakuta Maimai Hamisis vs Peris Tobiko & 2 Others](#) (2013) eKLR where the Court of Appeal held that:-

“so central and determinative is the jurisdiction that it is at once fundamental and overarching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren *cui-de-sac*. Courts like nature must not sit in vain”.
13. Still on jurisdiction, Counsel further relied on the Supreme Court case of [Samuel Kamau Macharia & Another vs Kenya Commercial Bank & Others](#) (2012) eKLR.
14. Counsel submitted that Article 23(1) of the [Constitution](#) grants authority to courts to uphold the bill of rights and provides that:-

“The High Court has jurisdiction in accordance with Article 165 to hear and determine applications for redress of a denial, violation or infringement of or threat to, a right or fundamental freedom in the bill of rights”.
15. Counsel submitted that the jurisdiction of this court flows from the [Constitution](#) and the statute. Counsel further submitted that Article 162(2) of the [Constitution](#) and Section 13 of the [Environment and Land Court Act](#) confers jurisdiction upon this court to hear and determine disputes relating to the environment, the use, occupation of and title to land. Counsel asserted that the jurisdiction of this court has been properly invoked since the Petition herein is in respect of the infringement of fundamental rights and disputes relating to land.
16. Counsel further submitted that jurisdiction of this court is enshrined under Section 30 of the [Land Adjudication Act](#) as the Petitioner obtained consent to institute the present suit. Concluding his submissions, Counsel submitted that the preliminary objection is blurred with contested facts which can only be proved by evidence.



17. Counsel argued that the Petitioner is calling upon the court to exercise its supervisory powers and not to usurp power of the respondent. Counsel submitted that the Petitioner did not file an objection as he was fully satisfied with his share. It was submitted that the Respondent in collusion with the Interested Parties acted on a non-existent objection to deny the Petitioner his legitimate share of land in question. That the Respondent invited the Petitioner to the meeting but turned him away knowing fully well that the Petitioner's interest in the land in question would be affected by the objection.
18. Counsel submitted that the Petitioner is aggrieved by the decision made by the Respondent following the objection by the Interested Parties in which the Petitioner was prevented from participating. That the Petitioner's rights were violated and can only be determined by this court.
19. On the second issue, Counsel relied on the definition of a preliminary objection as set out in the case of *Kenya Breweries Limited & Another v Keroche Breweries Limited* (2020) eKLR and in the case of *Omondi v National Bank of Kenya Ltd & 2 Others* (2001) KLR.
20. Counsel submitted that the Petition herein gives an account of how the Respondent irregularly, illegally and unlawfully made it impossible for the Petitioner to make use of the alternative dispute resolution mechanism under the *Land Adjudication Act*. Counsel submitted that the Preliminary Objection is blurred with factual details which can only be proved by way of evidence. That the arguments raised in the Preliminary Objection can only be sustained in a proper response and not in a Preliminary Objection.
21. Lastly it was submitted that in allowing the Preliminary Objection would not only embarrass the trial but would also orchestrate a grave injustice to the Petitioner.

Analysis and Determination

22. Having considered the Preliminary Objection, the grounds of objection and the rival submissions, the only issue that arises for determination is whether this court has jurisdiction to hear and determine this Petition.
23. The law on Preliminary Objection is well settled. A Preliminary Objection must be on a pure point of law. The principles as to what constitutes a Preliminary Objection were laid down by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* (1969) EA 696, where Law JA stated as follows:-

“So far as I'm aware, a preliminary objection consists of point of law which have 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 submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
24. Further on Sir Charles Newbold JA stated:-

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing



but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

25. For a preliminary objection to be valid, it must be on a pure point of law and must be founded on facts that are not in dispute. It should not be proved through facts or evidence or deal with disputed facts.
26. The Respondent’s Preliminary Objection is based on the grounds that this Court lacks jurisdiction to hear and determine this suit since the Petitioner has not exhausted the elaborate dispute resolution mechanism set out in Sections 26 and 29 of the [Land Adjudication Act](#).
27. The issue of jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. This Court is satisfied that the Respondent’s Preliminary Objection is based on a point of law.
28. This court is called upon to determine whether it has jurisdiction to hear and determine this suit. It is trite law that jurisdiction is everything and without it the court cannot take one more step in the case. The locus classicus on jurisdiction is the celebrated case of [Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil \(Kenya\) Limited](#) (1989) eKLR where Justice Nyarangi held as follows:-

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”

29. Similarly, the Supreme Court in the case of [Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others](#) [2012] eKLR pronounced itself thus:

“A Court’s jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where the [Constitution](#) exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

30. It is trite that a court derives its jurisdiction from the [Constitution](#) or legislation or both. Jurisdiction of this court is derived from Article 162(2)(b) of the [Constitution](#) and Section 13 of the [Environment and Land Court Act](#).

Article 162(2) (b) of the [Constitution](#) provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.

31. To give effect to Article 162 (2) (b) of the [Constitution](#), Parliament enacted the [Environment & Land Court Act](#). Section 13(1) and (2) of the said [Act](#) provides as follows:-

“ 13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the [Constitution](#) and with the provisions of this [Act](#) or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of the [Constitution](#), the Court shall have power to hear and determine disputes—



- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b. relating to compulsory acquisition of land;
- c. relating to land administration and management;
- d. relating to public, private and community land and contracts, chose in action or other instruments granting any enforceable interests in land; and
- e. any other dispute relating to environment and land.”

32. The Petitioner instituted this Petition and sought the orders therein. The Petitioner averred that he sought and obtained consent from the Land Adjudication officer before he instituted the instant Petition.

The [Land Adjudication Act](#) deals with all matters pertaining to adjudication. In its preamble it states that;

“It is an Act of Parliament to provide for the ascertainment and recording of rights and interest in Trust Land, and for purposes connected therewith and purposes incidental thereto.”

33. The Respondent submitted that the Petition herein is premature since the Petitioner has not exhausted the dispute resolution mechanism available under the [Land Adjudication Act](#). The Respondent argued that the Petitioner ought to have filed an objection but failed to do so. Section 26 to 29 of the [Act](#) provides for an elaborate dispute resolution mechanism for solving any dispute arising from the adjudication process.

34. Section 30(1) of the [Land Adjudication Act](#) provides that;

“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](#).”

35. The wording in Section 30(1) of the [Act](#) is mandatory. It sets out the conditions under which a party can approach the court before the adjudication process is complete. The requirement for consent to be granted by the Land Adjudication Officer before a suit can be filed is a statutory requirement.

36. In the case of *Benjamine Okwaro Estika vs Christopher Anthony Ouko & Another* the Court of Appeal held that: -

“That being so, the mandatory requirement of section 30(a) had to be complied with i.e. consent of the Land Adjudication Officer has to be obtained before filing a case in respect of a dispute on land in that adjudication section or before the court could be clothed with jurisdiction to hear it. From what we have discussed above, it will be clear that we are in full



agreement with the learned judge that the court had no jurisdiction to entertain the matter that was before him as no consent had been obtained.”

37. In the matter at hand, the Petitioner in his affidavit in support of the petition averred that he obtained consent from the Land Adjudication Officer as required by Section 30 of the [Land Adjudication Act](#). In this regard, he annexed a consent letter dated 6th January 2022(AKM1) to his supporting affidavit. In the consent letter, the Land Adjudication Officer Makueni granted the Petitioner consent under Section 30(1) of the [Land Adjudication Act](#) to file a civil suit against Plot No. 1845 Kyamuoso Adjudication Section within a period of three months. The consent to file a civil suit was in writing. The letter indicates that the consent was valid for use within three months from the date of its issue. In the instant case, it is evident that the Petitioner obtained consent from the Land Adjudication Officer to file a civil suit claiming for an interest on land as required. The consent was obtained before the Petitioner filed the present suit. The Respondent did not challenge its authenticity.
38. In the circumstances, this court finds and holds that the Petitioner complied with the mandatory provisions of Section 30(1) of the [Land Adjudication Act](#) before approaching this court. Having complied with provisions of Section 30(1) of the Act, I find that the Petitioner is properly before the court. I also find that this court has jurisdiction to hear and determine this suit.
39. Consequently, the Respondent’s preliminary objection dated 28th of February 2022 is hereby dismissed with costs to the Petitioner.

RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAMS THIS 31ST DAY OF JANUARY 2024.

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HON. T. MURIGI

JUDGE

In the presence of;

Mutua for the Petitioner.

Court Assistant - Kwemboi.

