



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 54 OF 2017**

**JOHN KIPRONO KETER.....PLAINTIFF**

**VERSUS**

**MAURICE OGERO NYAKUNDI.....DEFENDANT**

**RULING**

1. The suit herein was commenced by way of plaint dated **16/3/2017** on **17/3/2017**. By the order of this court dated **13/7/2017** in this matter this court ordered that the ruling in this case and in **ELC No. 53/2017** would be delivered together. The preliminary objection in that suit, which is similar to the one herein, was argued on the same day as the instant objection.

2. I have already dismissed the preliminary objection in **ELC No. 53/2017** on the basis that the same does not fit the proper description of a preliminary objection.

3. The preliminary objection raised here is on exactly the same terms as that one raised in **ELC No. 53/2017** for understandable reasons: The subdivision process in respect of parcel no 309 which gave birth to parcel **No. 352** which is the subject matter of **ELC No. 53/2017** is the same one that gave rise to parcel **No 353**. This preliminary objection cannot be sustained for the same reasons as those that I gave in **ELC No. 53/2017**.

4. Accordingly, the preliminary objection is hereby struck out. The Notice of Motion dated **16/3/2017** shall proceed to hearing on its merits. There shall be no orders as to costs.

**Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of July, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**Ruling read in open court in the absence of the parties who had been notified of the date but failed to turn up.**

**Court Assistant – Isabellah.**

**MWANGI NJOROGE**

**JUDGE**

**31/07/2017.**