



**Lemayan (Suing on Their Own Behalf and on Behalf of 13 other Owners of Various
Parcels of Land Surrounding Kajiado/Elangata Wuas/ 4) v District Surveyor, Kajiado
& 4 others; Commission on Administrative Justice (Interested Party) (Environment
& Land Case E022 of 2023) [2024] KEELC 3468 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3468 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E022 OF 2023**

**LC KOMINGOI, J
APRIL 29, 2024**

BETWEEN

**TAIKO LEMAYAN (SUING ON THEIR OWN BEHALF AND ON BEHALF OF
13 OTHER OWNERS OF VARIOUS PARCELS OF LAND SURROUNDING
KAJIADO/ELANGATA WUAS/ 4) PLAINTIFF**

AND

**DISTRICT SURVEYOR, KAJIADO 1ST DEFENDANT
DISTRICT LAND REGISTRAR KAJIADO 2ND DEFENDANT
DIRECTOR OF SURVEYS 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
THE ADMINISTRATOR OF THE ESTATE OF LOONTASAT OLE
LOOWOUYA 5TH DEFENDANT**

AND

THE COMMISSION ON ADMINISTRATIVE JUSTICE INTERESTED PARTY

RULING

1. This is the Preliminary Objection dated 18th May 2023 raised by the 5th Defendant. The ground are;
 - a. That this Honourable court has no jurisdiction on the basis of Article 162 (2) (b) of *the Constitution* and Section 18 and 19 of the *Land Registration Act* No. 3 of 2012.
 - b. Whether that the Plaintiffs have exhausted the dispute resolution mechanism provided by statute.



2. On the 27th June 2023, the court with the consent of parties directed that the Preliminary Objection be canvassed by way of Written Submissions.

The 5th Defendant's Submissions.

3. They are dated 25th July 2023. They raise four issues for determination;
 - a. Whether or not this Honourable Court has jurisdiction to entertain the dispute herein.
 - b. Whether the Applicant herein exhausted the dispute resolution mechanisms provided by the statute.
 - c. Whether or not the Preliminary Objection is merited.
 - d. Who shall bear the costs of the Objection?
4. Counsel submitted that this is a boundary dispute revolving around Kajiado/Elangata/ Wuas/4 and that section 18(2) of the *Land Registration Act* NO. 3 of 2012 ousts the Jurisdiction of this court. He has put forward the cases of Reuben Kioko Mutyaene Vs. Hellen Kiunga Miriti and 4 Others & 2 Interested Parties; ELC E002 of 2020 which reiterated the case of Azuri Limited Vs. PMK Properties (2018) eKLR; George Kamau Macharia Vs. Dexka Limited (2019) eKLR.
5. Counsel further submitted that where the law has given a legal obligation to a department of Government, it is important for courts to let that department proceed to meet the legal obligation. He has put forward the cases of Speaker of the National Assembly Vs. Karume (1992) eKLR; Geoffrey Muthinja Kabiru & 2 Others Vs Samuel Munga Henry & 1756 Others (2015) eKLR.
6. Counsel further submitted that for a litigant to bypass the dispute resolution mechanism provided under a statute, he must apply for exemption from the court.
7. Counsel also submitted that this Honourable court ought to dispense of the Preliminary Objection at the earliest opportunity, especially where the objection touches on the jurisdiction of the court.
8. He prays that the Preliminary Objection be upheld and that the suit be dismissed with costs.

The Plaintiffs Submissions.

9. They are dated 17th August 2023. Counsel submitted that his court has jurisdiction to hear this dispute.
10. It is also submitted that the plaintiff has exhausted all the available mechanisms and has now approached this court seeking justice.
11. He prays that the Preliminary Objection is dismissed.
12. I have considered the Preliminary Objection, the rival submissions, the authorities cited. The issue for determination is whether the Preliminary Objection is merited.
13. It is trite law that a Preliminary Objection should be a pure point of law which can be discerned and determined on the face of pleadings. The Supreme Court of Kenya in Kenya National Commission on Human Rights Vs. Attorney General; IEBC and 16 Others (Interested Parties) (2020) eKLR pronounced itself as follows;

“(78)Thus a preliminary objection may only be raised on a “pure question of law.” To discern such a point of law, the court has to be satisfied that there is no



proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record....”

14. I have gone through the Plaint dated 22nd March 2023. One of the prayers is that the report prepared by the 3rd Defendant and filed with the court to be applied in establishing the correct beacons and/or boundaries of Kajiado/Elangata/Wuas/4.
15. It is on the record that the District Surveyor Kajiado visited the site and attempted to fix the boundaries on the dispute land. The Land Registrar upon going through the surveyor’s Report gave his ruling dated 15th September 2022. He also gave parties who were not satisfied thirty (30) days to appeal to this court.
16. It is my view that nothing prevents the 1st to 3rd Defendants from going back to the site to ascertain the boundaries on the said land.
17. From the court record, Mr. Kago for the 5th Defendant on the 27th July 2023 proposed that a joint survey can be undertaken in the presence of all the parties.
18. The upshot of the matter is that I find no merit in the Preliminary Objection and the same is dismissed. The costs do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29TH DAY OF APRIL 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Wanjala for the Plaintiffs.

N/A for the 1st – 4th Defendants.

Mr. Kago for the 5th Defendant.

Ms. Musembi for the Interested Party.

Court Assistant – Mutisya.

