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THE JURISDICTION OF THE ENVIRONMENT & LAND COURT (ELC) TO HEAR A CASE STATED UNDER SECTION 86 (1) OF THE LAND REGISTRATION ACT

Lessons from the Court of Appeal decision in Estate Sonrisa Limited v Macharia & Another [2026] KECA 39 (KLR)

The Land Registration Act, 2012 ("**the Act**") vests the Land Registrar with extensive statutory powers that are central to the administration of registered land in Kenya. Those powers include the registration and transfer of interests in land, rectification of the register, determination of boundaries, registration of cautions and restrictions, partition, and other functions that directly affect proprietary rights. Recognizing the significance of these powers, Parliament established a statutory mechanism through which questions arising from the Registrar's exercise of those functions may be referred to the courts. One of those mechanisms is the "**Case Stated**" procedure under **Section 86** of the Act which confers on the Environment and Land Court ("**the ELC**") a specialized supervisory

jurisdiction to determine questions of law arising from the Registrar's decisions.

This article examines the scope and operation of **Section 86** of the Act. It considers the jurisdiction of the ELC to hear and determine a Case Stated, explores the purpose and scope of the procedure, and analyses the principles governing its application. It draws on the Court of Appeal's decision in *Estate Sonrisa Limited v Macharia & Another* [2026] KECA 39 (KLR) delivered on 30th January 2026 and the Ruling of the **Environment and Land Court** in *Samuel Kamau Macharia v Ali Khan Ali Muse & 2 Others, Mombasa ELC No. 30 of 2014*

delivered on 16th July 2026 which together provide the most comprehensive judicial exposition of Section 86 to date.

CASE STUDY: Estate Sonrisa Limited v Macharia & Another [2026] KECA 39 (KLR)

The litigation in *Estate Sonrisa Limited Vs Samuel Kamau Macharia & Land Registrar, Kwale, Civil Appeal No. EO76 of 2023* and the consequential Ruling of the **Environment and Land Court at Mombasa** in *Samuel Kamau Macharia v Ali Khan Ali Muse & 2 Others, ELC No. 30 of 2014* provides the clearest judicial illustration of how Section 86 of the Land Registration Act operates in practice.

The dispute concerned two neighboring parcels in Diani: Kwale/Galu/Kinondo/50, claimed by Samuel Kamau Macharia, and Kwale/Galu/Kinondo/48, registered in the name of Estate Sonrisa Limited. The Environment and Land Court found that Macharia held the lawful title, that Estate Sonrisa's title was founded on fraud, and that its parcel measured 0.9 hectares, not 1.9 hectares as claimed. The Court further ordered the demolition of structures found to have encroached onto Macharia's land.

On appeal, the Court of Appeal upheld the findings on ownership, fraud and acreage but set aside the demolition order. It held that the Land Registrar, together with the County Surveyor, had first to determine the existence and extent of any encroachment under Sections 19 and 20 of the Land Registration Act. The Court further observed that any party dissatisfied with the Registrar's determination could invoke the procedure under Section 86.

The Land Registrar conducted the exercise and issued a report on 2nd July 2021. Dissatisfied with

the report, Estate Sonrisa filed a Case Stated under Section 86 challenging the Registrar's findings.

The Environment and Land Court struck out the Case Stated, holding that it was functus officio and lacked jurisdiction because the Registrar had acted pursuant to the Court of Appeal's directions. The Court of Appeal overturned that decision and clarified three important principles;

- i) The ELC was not functus officio. The question of encroachment had deliberately been left unresolved and referred to the Registrar. Consequently, proceedings arising from that determination remained part of the original litigation
- ii) The ELC confirmed that Section 86 entitled an aggrieved party to challenge the Registrar's determination by way of a Case Stated. Since the issue of encroachment had been expressly remitted by the Court of Appeal, the Environment and Land Court had jurisdiction to hear and determine the reference.
- iii) Any Case Stated arising from the Registrar's implementation of a court decree must be filed within the original suit. A parallel Case Stated filed in the Kwale Environment and Land Court had properly been struck out because it amounted to a separate execution proceeding contrary to Section 34 of the Civil Procedure Act. The correct forum was the original Mombasa suit in which the decree was being executed.

The appeal was therefore allowed, and the Case Stated was remitted to the Environment and Land Court, Mombasa, for hearing on its merits. On 16th July 2026, Hon. Lady Justice B. A. Akello delivered a Ruling scheduling the Case Stated dated 5th September 2022 for hearing 4th November, 2026.

THE STATUTORY FRAMEWORK

Section 86 of the Land Registration Act provides:

“86. Review of the decision of the Registrar

- 1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.*
- 2) The Rules Committee shall make rules on the procedures to be followed by the Registrar or an aggrieved person under subsection (1).”*

Two features stand out. First, the trigger is any “question” arising from the exercise of a power or the performance of a duty that the Act itself confers or imposes on the Registrar. The Court of Appeal confirmed in ***Estate Sonrisa (supra)*** that the Registrar in fact has the power to fix boundaries, determine encroachment under Sections 19 and 20 of the Act and that either the Registrar or an aggrieved party may initiate the Case Stated.

In ***Estate Sonrisa (supra)***, the Court of Appeal repeatedly read Section 86 together with Section 79(3A), Section 80 and Section 91(9) of the Act. We consider these provisions, read together, form a gateways by which a Registrar's exercise of discretion can be brought before the ELC.

JURISDICTION OF THE ENVIRONMENT AND LAND COURT

Section 101 of the Act gives the ELC (and subordinate courts) jurisdiction over disputes and proceedings concerning land under the Act, and read together with Section 86 and the definition of “Court” in Section 2, a Case Stated on the

Registrar's exercise of power falls squarely within that jurisdiction.

In ***Estate Sonrisa (supra)*** the Court of Appeal explained that if the Land Registrar is carrying out instructions given by a Court, any dispute about the Registrar's decision is treated as part of the enforcement (execution) of that court's Judgment. It is not a new dispute that can be filed as a separate case. This means that the challenge must be brought within the same case in which the original Judgment was made, before the Court responsible for enforcing that Judgment. The practical lesson is simple; where the Registrar's decision was made pursuant to a Court Order, any Case Stated challenging that decision should be filed in the original suit that gave rise to the order, not as a separate suit elsewhere.

THE NATURE AND PURPOSE OF A CASE STATED

A Case Stated is a procedure provided for under Section 86 of the Act that allows one to refer a specific question of law arising from the Registrar's exercise of statutory powers to the ELC for a final opinion or determination. A Case Stated is not intended to re-litigate the underlying dispute. Rather, its purpose is to obtain the Court's authoritative interpretation or guidance on a legal issue. We consider Section 86 of the Act as serving the following purposes:

a) To obtain a binding determination on a question of law

Section 86(1) enables the ELC to determine a specific question of law arising from the Registrar's decision. The Court's opinion is binding on the parties, providing certainty and finality on the legal issue referred.

b) To ensure judicial oversight of the Registrar's decisions

Section 86 provides a mechanism for the Court to review legal questions arising from the Registrar's

exercise of statutory powers. However, as affirmed in *Estate Sonrisa*, it cannot be used to reopen issues already conclusively determined by a court, such as ownership, fraud, or acreage. It is confined to the legal issue arising from the Registrar's decision.

c) To enable the Registrar to seek the Court's guidance

The provision allows the Registrar, as well as an aggrieved party, to refer a question of law to the Court where clarification is required for the proper administration of the Act.

d) To resolve legal questions without commencing a fresh suit

A Case Stated provides a streamlined procedure for determining a specific legal issue arising from the Registrar's statutory functions, avoiding the need for full-scale litigation while allowing the Court flexibility in the manner of hearing where appropriate.

CONCLUSION

Section 86 of the Land Registration Act establishes an important supervisory jurisdiction of the Environment and Land Court by enabling the Court to determine questions of law arising from the Land Registrar's exercise of statutory powers and duties. Whether initiated by an aggrieved person or by the Registrar, the procedure provides a mechanism for obtaining a binding judicial determination on discrete legal issues, thereby promoting certainty, consistency, and accountability in the administration of the land registration system.

Read together with Sections 101 and 150 of the Land Registration Act, and the constitutional jurisdiction of the Environment and Land Court under Article 162(2)(b) of the Constitution, Section 86 confirms that the Environment and Land Court is the proper forum for determining

Cases Stated.

The *Estate Sonrisa* litigation provides the leading illustration of the operation of Section 86. It demonstrates that while the provision affords an effective means of challenging the Registrar's exercise of statutory powers, it is not a vehicle for re-litigating issues that have already been conclusively determined. Rather, a Case Stated must remain confined to the specific question of law arising from the Registrar's decision and, where that decision is made pursuant to a court decree, must be brought within the original proceedings from which the decree arose. Properly invoked, Section 86 serves as an important safeguard of the rule of law by ensuring that the Registrar's decisions are subject to judicial oversight while preserving the finality of litigation and the integrity of Kenya's land registration system.

HOW CM ADVOCATES LLP CAN HELP

Our team at CM Advocates LLP has extensive experience in land related litigation, judicial review, boundary and encroachment disputes, title rectification and trial advocacy before the Environment and Land Court and the superior courts.

We advise and represent landowners, developers, financial institutions, investors, and public bodies in disputes arising from the exercise of the Land Registrar's statutory powers. We can advise on whether a Case Stated under Section 86 is the appropriate remedy, ensure that it is commenced in the correct forum and within the timeline.

CM Advocates LLP is well placed to help YOU navigate complex land disputes efficiently while safeguarding your proprietary rights.

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way constitute legal advice. Specific legal advice should be obtained for individual matters. If you need any further clarifications or require legal advice, please do not hesitate to contact **Kelvin Mwaniki, Senior Associate** (kmwaniki@cmadvocates.com), or your usual contact at our firm.

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