



REPUBLIC OF KENYA



**Omu v Kizo Enterprises Limited & 3 others (Environment & Land  
Case 3 of 2016) [2025] KEELC 1461 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1461 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 3 OF 2016**

**FM NJOROGE, J**

**MARCH 24, 2025**

**BETWEEN**

**AGGREY ANZALA OMU ..... PLAINTIFF**

**AND**

**KIZO ENTERPRISES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**KETAN DOSHI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. For determination is a notice of preliminary objection dated 21/2/2025 premised on the following grounds: -
  1. That the court does not have jurisdiction to issue the orders sought in law in light of the orders of stay of execution/status quo issued in Malindi Court of Appeal Civil Application No. E102 of 2024; Ketan Doshi v Kiso Enterprises Limited & others;
  2. That the costs awarded to the Plaintiff are yet to be taxed and no leave has been sought to execute before taxation under Section 94 of the *Civil Procedure Act*.
2. The objection was raised as a response to the Plaintiff's notice of motion applications dated 5/2/2025 and 16/12/2024. Briefly, the said motions were filed under Order 22 Rule 40 of the Civil Procedure Rules seeking execution against the 4<sup>th</sup> Defendant following judgment delivered in this suit and in ELC No. 134 of 2016.
3. The preliminary objection was canvassed by way of written submissions.



#### 4<sup>th</sup> Defendant's submissions

4. In the submissions dated 28/2/2025, counsel identified two issues for determination namely: -whether the execution process can be undertaken when there is an order of status quo issued by the Court of Appeal; and whether the execution process can be undertaken before the taxation of costs without leave of the court.
5. Quoting the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR and Kenya Airline Pilots Association (KALPA) v Cooperative Bank of Kenya Limited & another [2020] eKLR, counsel submitted that the Plaintiff cannot proceed with the execution process when there exists an order of status quo issued by the Court of Appeal in relation to this suit in Civil Appeal No. E006 of 2025- Ketan Doshi v. Kiso Enterprises Limited & others and in Civil Appeal Application No. E102 of 2024; Ketan Doshi v. Kiso Enterprises Limited & others.
6. In relation to the second issue, counsel argued that since the costs awarded to the Plaintiff are yet to be taxed and that no leave has been sought and granted as required under Section 94 of the [Civil Procedure Act](#) so as to enable the Plaintiff to proceed with the execution process before the taxation of costs, the execution process being undertaken by the Plaintiff is irregular, null and void for all purposes. To buttress this point, counsel relied on the case of Commercial Bank of Africa v. Lalji Karsan Rabadia & 2 others [2012] eKLR.
7. The Plaintiff did not file written submissions in response thereto.

#### Analysis

8. I have considered the grounds advanced in support of the Preliminary Objection and the submissions thereto. The parameters for consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of a Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700 Law JA stated:

“A Preliminary Objection consists of a point of law which has 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 a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

9. In the same case, Sir Charles Newbold P. further stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure 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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.”

10. The issue that arises for determination herein is whether the Preliminary Objection raised is sustainable. There is no doubt that judgment was entered against the 4<sup>th</sup> Defendant; and that the Plaintiff has sought execution orders against the said Defendant. The 4<sup>th</sup> Defendant however, contests that this court has no jurisdiction to entertain the execution process since there exists an order by the



Court of Appeal to maintain status quo and that the costs awarded to the Plaintiff are yet to be taxed; also, that no leave has been sought to execute before taxation.

11. As already established, preliminary objections must only raise issues of law. They cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should also, if successful, dispose of a suit, or, in this case, the applications. While there is no proof that the orders were issued on appeal as stated, the grounds as raised would in themselves call upon this court to inquire into evidence whether there exists an order to maintain status quo and its scope, and to interrogate whether costs are yet to be taxed or whether or not leave was granted under Section 94 of the *Civil Procedure Act*. The necessity for such inquiries ousts the objection from the category of one arising from a pure point of law. There are factual issues to be ascertained. The issues raised in the notice of preliminary objection ought to be canvassed in the pending applications.
12. The outcome is that the notice of preliminary objection dated 21/2/2025 lacks merit and it is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 24<sup>TH</sup> DAY OF MARCH 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

