



**Mgeno Grazers Intergrated CBO v Deputy County Commissioner
Mwatate Sub-County & 7 others (Environment & Land Case
E006 of 2022) [2023] KEELC 18216 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 18216 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E006 OF 2022**

LL NAIKUNI, J

MAY 23, 2023

BETWEEN

MGENO GRAZERS INTERGRATED CBO PLAINTIFF

AND

**DEPUTY COUNTY COMMISSIONER MWATATE SUB-COUNTY 1ST
DEFENDANT**

CHIEF NICOLAS KAMBUCHÉ MWATATE LOCATION 2ND DEFENDANT

MR. OKINA - THE MWATATE DISTRICT SURVEYOR 3RD DEFENDANT

MR. BOSIRE -LAND & AJUDICATION OFFICER 4TH DEFENDANT

**DIRECTOR OF LAND, PHYSICAL PLANNING AND
HOUSINGS 5TH DEFENDANT**

LAND REGISTRAR TAITA TAVETA COUNTY 6TH DEFENDANT

**THE CHIEF EXECUTIVE COUNTY MINISTER-MINISTRY OF LAND
PHYSICAL PLANNING & HOUSING 7TH DEFENDANT**

COUNTY GOVERNMENT OF TAITA-TAVETA 8TH DEFENDANT

RULING

I. Introduction

1. The ruling before this Honourable Court for its determination of the Notice of Preliminary Objection dated 15th February, 2022 raised by the 7th and 8th Defendants herein. The Objection is challenging the capacity of the Plaintiff to institute this suit in its own name.



2. The 7th and 8th Defendants raised the objection on the following grounds:-
 - a. That the Plaintiff is not a legal entity capable of suing in its own name.
 - b. That the suit and all the proceedings taken against the Defendants including the application dated January 24, 2022 are a nullity ab-initio.
 - c. That the Suit is defective and untenable for failure to exhaust the alternative dispute resolution mechanisms provided in the [Community Land Act](#) and the [Land Adjudication Act](#).
 - d. That the Honourable Court does not jurisdiction to deal with un-alienated public land, and by extension, the Suit Property.

II. The Directions By Court On The Written Submissions.

3. On 16th June, 2022, the Honourable Court directed that the parties canvass the Notice of Preliminary Objection dated 15th February, 2022 by way of written submissions. Having satisfied itself that that the 7th and 8th Defendants had complied with the directions on September 20, 2022 and the Honourable Court set the ruling to be delivered on Notice.

a. The Written Submission By The 7th and 8th Defendants

4. On 8th June, 2022 the 7th and 8th Defendants through the Law firm of Messrs. John Bwire and Associates Advocates filed their written submissions dated 7th June, 2022 submitting that the submissions are made in support of the 7th and 8th Defendant's Preliminary Objection dated 15th February, 2022 which was now before this Honourable Court.
5. The Learned Counsel submitted that the Plaintiff alleged to be the caretaker and management committee of the land known as LR.No.3880/3 located at Mgeno area within Mwatate Sub-County in Taita Taveta County (hereinafter referred to as "the Suit Property"). The Plaintiff further alleged in the Application that it represented communities living in six sub-locations which are within Kishamba Location, Mgeno Location and Mwatate Location.
6. Since the year 1974 the Suit Property was given to the community as trust land and they were in the process of registering the Suit Property in favour of the community however, the Defendants were allegedly frustrating the process. The Plaintiff claimed that the Defendants intend on beginning an adjudication process in the said land. However, the Plaintiff was opposed to the process as it was illegal and misguided since due process had allegedly not been followed and adhered to. Hence the Application, the Plaintiff in its Notice of Motion Application dated 24th January, 2022 therefore seeks the following reliefs against the Defendants:
 - (a) That the Application be certified as urgent and be heard ex-parte in the first instance.
 - (b) That this Honourable court be pleased to issue orders for temporary injunction restraining and/or stopping jointly and/or severally the Defendants in person or their servants or agents or any representative from surveying and sub-dividing the parcel of land known as LR. No. 3880/3 located in Mgeno which belongs the Taita Community living in Kishamba Location, Mengo Location and Mwatate Location within Mwatate Sub - County in Taita Taveta County pending hearing and determination of this Application;
 - (c) That this Honourable Court be pleased to issue orders for temporary injunction restraining and/or stopping jointly and/or severally the Defendants in person or their servants or agents or any representative from surveying and sub-dividing the parcel of land known as LR.



No. 3880/3 located in Mgeno which belongs the Taita Community living in Kishamba Location, Mengo Location and Mwatate Location within Mwatate Sub-County in Taita Taveta County pending hearing and determination of this suit;

- (d) That this Honourable Court be pleased to issue orders directing the OCS Mwatate Police Station to make sure that the orders issued herein are followed and adhered to until this matter is heard and determined; and
 - (e) Costs of the Application be provided.
7. The Learned Counsel submitted that the Application was opposed by the 7th and 8th Defendant's Notice of Preliminary Objection which sought to have the Application dismissed on the following grounds:
- a. The Plaintiff was not a legal entity capable of suing in its own name;
 - b. The suit and all the proceedings taken against the Defendants including the Application dated 24th January, 2022 was a nullity "ab – initio";
 - c. The suit was defective and untenable for failure to exhaust the alternative dispute resolution mechanisms provided in the Community Land Act and the Land Adjudication Act; and
 - d. The Court never had jurisdiction to deal with un-alienated public land, and by extension the Suit Property.
8. The Learned Counsel submitted that the issues arising for determination in their humble view were framed as follows:
- a. Whether the Plaintiff is a legal entity capable of suing in its own name.
 - b. Whether the Plaintiff had exhausted the procedure for redress provided in the Community Act and the Land Adjudication Act.
 - c. Whether this court had jurisdiction to deal with the suit property herein.
9. On the issue of whether the Plaintiff was a legal entity capable of suing in its own name, the Learned Counsel submitted that Paragraph 2 of the Supporting Affidavit sworn by Mr. Patrick Mwavula Jonathan (hereinafter referred to as "Mr. Mwavula's Affidavit) who described himself as the Chairman of the Plaintiff described the Plaintiff as: "A registered Community Based Organization which represents the communities living in Kishamba Location, Mengo Location and Mwatate Location.
10. The Learned Counsel submitted that a Certificate of Registration bearing numbers 38011 issued by the Ministry of Labour Social Security and Services was annexed to Mr. Mwavula's Affidavit. At this point, the important question that arises is whether Mgeno Grazers Integrated CBO, the Plaintiff herein, as a Community Based Organization (CBO) or a self-help group can institute proceedings of this nature.
11. To address the issue, the Learned Counsel relied on and referred to the provisions of Article 22(1) of the Constitution which provides as follows:
- "Every person has the right to institute court proceedings claiming that a right of fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened".



12. The provision of Article 22 (2) of the [Constitution of Kenya, 2010](#) proceeds on to show how a suit should be presented. It provides as follows:

“In addition to a person in their own interest, court proceedings under clause (1) may be instituted by:

- (a) A person acting on behalf of another person who cannot act in their own name;
- (b) A person acting as a member of or in the interest of a group or class of persons.
- (c) A person acting in the public interest.
- (d) An association acting in the interest of one or more of its members”.

13. The honourable Court addressed itself on the provision of Article 22 of the [Constitution of Kenya, 2010](#) in the case of “[Kirinyaga United Bar owners Organization – Versus - County Secretary Kirinyaga County Government & 6 Others](#) {2014} eKLR and stated the following:-

“The above constitutional provision for me indicate that a person named with a capacity to act on his own can bring a representative suit on his own behalf and on action under Article 22 (1). Through another person. The person bringing the action should clearly indicate his name in the suit stating that he/she is bringing the action clarity must be named and must give authority or mandate if they wish to benefit or obligated from the reliefs sought. In the absence of a named person, then it becomes difficult to know whether legal capacity is vested or not. Under Article 260 of the [Constitution](#) a “person” includes a company , association or other body of persons whether incorporated or not. Of course bodies have capacity to sue or be sued as the law vests them with legal capacity. What the [Constitution](#) addresses here are unincorporated bodies or class of persons such as self help groups. The law does not bestow them with the legal capacity per se but Constitution provides for an avenue through which they can competently appear in court and this is through person(s) vested with legal capacity. It is a bit absurd to imagine that the new Constitution has opened doors for anybody including people of sound mind, minors, bankrupts etc to institute proceedings without a next friend or a person with legal and sound capacity to represent them Self help groups or community based organizations were created by the government to address poverty eradication and other noble causes but were not clothed with the capacity to sue but can do so through its elected officials whose description should be given to show who they are and who they represent.”

14. In the case of “[Dennis Olooihero and 2 Others – Versus - The Art Of Ventures Ltd And 2 Others](#), Nairobi HCCC 1353 of 2005 (2006) eKLR, a suit was brought by persons who described themselves as members of a Community based Organization (C.B.O) registered under the Ministry of Gender, Sports Culture & Social Services. The court held that such organization lacked legal capacity to institute a suit and the suit was struck out.

15. The Learned Counsel argued that the same legal position was replicated in the case of “[Kipsiwo Community Self Help Group – Versus - Attorney General & 6 others](#); Eldoret E & L Petition No. 9 of 2013. In this case, a Constitution Petition was presented to Court by a self - help group representing squatters at an Agricultural Development Corporation – ADC farm claiming that their rights had been infringed through historical land injustices. In the said suit, Honourable Justice Sila Munyao was called upon to make a decision on the capacity of the self-help group to bring the said action. While



making a determination, the Judge was clear and categorical that the group lacked legal capacity and stated as follows:

“Self-help groups having no legal personality, cannot therefore instate proceedings in their own name.

KIPSIWO Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of KIPSIWO Self help Group and such members had to be named and identified with precision. The person bringing the action has to demonstrate that he has permission to bring the action on behalf of the members of the group or on behalf of the people he seeks to represent, if it is representative suit. The importance of this is so as to recognize the persons who seek legal redress and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own orders, for it will never be clear who the beneficiary of the order was or who had obligation to obey or enforce such order”.

16. In addition to the above, the Learned Counsel submitted that the case herein was one that could not be cured through the provisions of Article 159 of the [Constitution of Kenya, 2010](#) as the issue of capacity to sue was not a matter of technicality or form but one of law and substance. See the case of “[Kituo Cha Sheria – Versus - John Ndirangu Kariuki & another](#) [2013] eKLR as cited with approval by Honourable Justice Munyao Sila in the case of “[Kipsiwo Community Self Help Group – Versus - Attorney General & 6 Others](#); Eldoret E & L Petition NO. 9 of 2013. It was their submissions that the Application and the Plaintiff’s suit be struck out as the Plaintiff has no legal existence.
17. On the issue of whether the Plaintiff has exhausted the procedure for redress provided in the Community Act and the [Land Adjudication Act](#), the Learned Counsel submitted that the doctrine of exhaustion required a party to exhaust any alternative dispute resolution mechanisms provided by statute and/or law before resorting to the courts. They would demonstrate to the Court that in the foregoing case, the doctrine of exhaustion was not adhered to.
18. The purpose of the principle was earlier stated by the Court of Appeal in the case of “[Geoffrey Muthinja Kabiru & 2 others – Versus - Samuel Munga Henry & 1756 others](#) [2015] eKLR which was cited with approval by Honourable Justice Mbogo in the case of “[Samparuan Ole Kijape & 30 others – Versus - Cabinet Secretary, Ministry of Lands & Physical Planning & 25 others](#) [2022] eKLR. The court stated as follows:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews.... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the [Constitution](#) which commands Courts to encourage alternative means of dispute resolution.”
19. In the foregoing case, and as averred in Paragraphs 12 to 15 of Mr. Mwavula’s Affidavit, it was apparent that the Plaintiff was aggrieved by the land adjudication process allegedly carried out by the 2nd, 3rd and 4th Defendants. The Plaintiff lamented as follows:



- a. Went to the ground and begun picking and sub - dividing the land without involving them nor asking for their consent;
 - b. The adjudication process was illegal and misguided since due process had not been followed nor adhered to, for example they had not seen any gazette notice or any notice of the aforesaid adjudication process being conducted in Mgeno area; and
 - c. They had not been involved or any legitimate or bonifide member of the Kishamaba Location, Mgeno Location and/or Mwatate Location who were supposed to be the first people to be considered for any legal adjudication since they were locals.
20. In that regard the Learned Counsel referred the Court to relevant provisions of the law. Under the provision of Sections 26 and 29 of the *Land Adjudication Act*, Cap. 284 it is provided that:-

“26. Objection to adjudication register

- (1) any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing saying in what respect he considers the adjudication register to be incorrect or incomplete.
- (2) the adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.

29. Appeal

- (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by-
 - (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and
 - (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
- (2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
- (3) When the appeals have been determined, the Director of Land Adjudication
 - (a) alter the duplicate adjudication register to conform with the determinations; and
 - (b) certify on the duplicate adjudication register that it has become final in all respects, and send details



of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

- (4) Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”

21. In the case of “*Kinyamal Ole Tare – Versus - Sotua Sakana Muyia* [2015] eKLR, the Honourable Justice Okong’o stated that:

“...this court has no jurisdiction in these proceedings to interfere with or impeach the Defendant’s title to the suit property on account of any error that was committed during the land adjudication process. A party with such grievance has to follow the dispute resolution mechanism set out in the *Land Adjudication Act* that I have outlined above...”

22. The Counsel referred Court to the case of “*Samparuan Ole Kijape & 30 others – Versus - Cabinet Secretary, Ministry of Lands & Physical Planning & 25 others* [2022] eKLR. The *Land Adjudication Act*. Cap. 284 set out an elaborate and comprehensive procedure for dealing with disputes arising from an adjudication process. It was very clear that the jurisdiction of courts could not be invoked unless the process under the Act had been exhausted or the provision dealing with the alternative dispute resolution had been declared unconstitutional.

23. The Learned Counsel on the issue of whether this court had jurisdiction to deal with the suit property herein submitted that Section 30 of the *Land Adjudication Act*, Cap. 284 provides that:

“

- “(1) 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.[Rev.2012] Land Adjudication cap. 284 L5- 17 [Issue 1].
- (2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.
- (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) writing to the Minister whose decision shall be final.”

Refer to the case of *Kiroket Ole Punyua – Versus - Umash Ole Mwaniki & 2 others* [2021] eKLR.



24. In light of the foregoing, the Learned Counsel submitted that Plaintiff had bypassed the dispute resolution mechanisms provided under the [Land Adjudication Act](#). Therefore, the jurisdiction of this court had been invoked prematurely.
25. As to who bears the costs follows the events, the Learned Counsel submitted that they had demonstrated that the Application was not merited and should be dismissed with costs to the 7th and 8th Defendants.

III. Issues For Determination

26. I have considered the gist of the Preliminary objection dated 15th February, 2022 raised by the 7th and 8th Defendants herein, the written submissions, cited authorities thereof, the relevant provisions of the [Constitution of Kenya, 2010](#) and Statutes. In order to arrive at an informed, just, fair and reasonable decision, the Honourable Court has framed the following three (3) issues for determination are:-
 - a. Whether the Preliminary objection dated 15th February, 2022 by the Defendant herein meets the threshold of an Objection based on Law and Precedents.
 - b. Whether the parties are entitled to the relief sought from the filed objection.
 - c. Who will bear the costs of the objection

Issue No. A). Whether The Preliminary Objection Dated 15th February, 2022 By The Defendant Herein Meets The Threshold Of An Objection Based On Law And Precedents.

27. According to the [Black Law Dictionary](#), a Preliminary Objection is defined as being: -

“In case before the tribunal, an objection that if upheld, would render further proceedings before the court/tribunal impossible or unnecessary.”

The decision of [Attorney General & Another –versus- Andrew Mwaura Githinji & Another](#) (2016) eKLR on plain clear and concise manner further defined what constitutes the scope and meaning of a Preliminary inter alia”

1. A Preliminary Objection raised a pure point of law which is argued on the assumption that all facts pleaded by other side are correct.
 2. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion and.
 3. The improper raising of points by way of Preliminary Objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute
28. An objection to the court’s jurisdiction may be raised as a preliminary objection as it is a pure point of law and may arise by clear implication out of pleadings. It is also an elementary principle in law that a court cannot adjudicate on matters in which it lacks jurisdiction. The jurisdiction of the Court is derived from the [Constitution](#) or Statute. If a court finds that it lacks jurisdiction to hear and determine a matter, it is obligated to halt the proceedings. It cannot expand or arrogate to itself jurisdiction which is not conferred upon it by the law. This position was stated by the Supreme Court in the case of [“Samuel Kamau Macharia & Another – Versus - Kenya Commercial Bank Limited & 2 Others](#) (2012) eKLR”.



29. The threshold of a preliminary objection was set in the case of “*Mukisa Biscuit Manufacturing Co. Limited – Versus - West End Distributors Limited* [1969] E.A 696” relied on by the Respondent herein. In the case the court held that:

“...a Preliminary Objection consists 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 disposed of the suit.

Examples are on objection to the jurisdiction of the court or plea of limitation or a submission that the parties are bound by contract giving rise to the suit to refer the dispute to arbitration.”

30. Sir Charles Newbold in the same matter stated thus:

“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 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 had to be ascertained or what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increases costs and, on occasion confuse the issue. The improper practice should stop.”

31. From the foregoing decision, a preliminary objection must be based on pure points of law, must arise from the pleadings, may dispose of the suit if argued as a preliminary point and must be argued on the assumption that all facts pleaded by the opposite party are correct; it cannot succeed if any fact has to be ascertained; or if what is sought is the exercise of the court’s discretion.

32. In the case of “*Artar Singh Bhamra & Anor – Versus - Oriental Commercial Bank – Civil Suit No. 53 of 2004 – High Court Kisumu* the Court held:

“A preliminary objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

33. Having laid – down the legal principles aforesaid, I now wish to apply the same to the instant case. A keen perusal of the filed Plaintiff under Paragraph 1 where it states “The Plaintiff is a registered Community Based Organisation duly registered under the relevant Laws of Kenya and having it registered offices in Mwatate within the Republic of Kenya.....”, list of documents including in particular its Certificate of registration bearing numbers 38011 issued on 29th September, 2016 based at Mwatate, Clause number 1 of its Constitution and the other filed pleadings including the Notice of Motion application dated 24th January, 2022, there is no doubt that the Plaintiff is registered as a Community Based Organisation. The Plaintiff is registered under the Ministry of Labour, Social Security and Services. Relevant laws of Kenya. Being a society under the *Societies Act*, the issue being raised in the preliminary objection is whether the Plaintiff has a legal capacity “Locus Standi”) to sue in its own name, as it has done. Fundamentally, this to me is a noble legal question which goes to the root of the matter herein. It is a point of law which could dispose of the case depending on how it goes. I therefore find the issue raised satisfy the principle set out in the case of “Mukisa Biscuit case.



34. The provision of Article 260 of the *Constitution of Kenya, 2010* defines a person as:
- “Person” includes a company, association or other body of persons whether incorporated or unincorporated.”
35. In the case of: “*Trustees Kenya Redeemed Church & Anor – Versus - Samuel M’Obiya & 5 others* [2011] eKLR it was held thus:-
- “It is trite law that a society under the *Societies Act* is not a legal person with capacity to sue or be sued. A society can only sue or be sued through its due officers’ orders. It has not been pleaded that the 2nd defendant has been sued in the capacity of an official of Kenya Redeemed Church nor has it been pleaded that he has been sued in his personal capacity.”
36. Further in the case of: “*Free Pentecostal Fellowship in Kenya – Versus - Kenya Commercial Bank Nairobi HCCC No. 4116 of 1992 Justice Bosire* (as he then was) stated thus:
- “The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 rule 8 Civil Procedure Rules.”
37. Therefore, the instant matter the suit is instituted in the name of a community-based organization. It is not a body corporate with perpetual succession for it to sue as a legal personality. That being so it lacks the capacity to institute proceedings in its own name.
38. It is clear that there is a dispute within the Plaintiff’s organisation as to who the officials are. The laid down procedure in resolving this impasse is set out in the provision of Section 18 of the *Societies Act* and should be adhered to. Thus the action taken by the Plaintiff in filing this suit when it lacks capacity to do so was a short cut and certainly erroneous. For these reasons, I hold that the Preliminary Objection raised by the 7th and 8th Defendants herein is meritorious and well founded in Law. It is sustained.

Issue No. C). Who Will Bear The Costs Of The Objection

39. The issue of Costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action and/or proceedings in any litigation. The provision of Section 27 (1) provides that costs follow the event. By event it means the results or out come of the legal action or proceedings. See the decision of Supreme Court case of “*Jasbir Rai Singh – Versus – Tarchalans* (2014) eKLR; *Rosemary Wambui Munene – Versus – Ibururu Dairy Co – operatives Societies Limited* (2014) eKLR and *Kenya Sugar Board – Versus – Ndungu Gathini* (2013) eKLR where Courts held that:-
- “The basic rule on attribution of costs is that costs follow the event.....It is well recognised that the principles costs follow the events is not be used to penalise the losing party rather it is for compensating the successful party for the trouble taken in presenting or defending the case”.
40. In the instant case, the case filed by the Plaintiff has to be struck out having been instituted by persons who for lack legal capacity to do so. This legal anomaly was appropriately pointed out by the 7th and 8th Defendants through filing a Preliminary Objection. For that reason, the said 7th and 8th Defendants are entitled to costs.



VI. Conclusion & Findings

41. In conclusion, having caused a critical analysis of the framed issues herein, the Honourable Court is fully satisfied that the Preliminary Objection raised by the 7th and 8th Defendants herein is within the ambits of the “*Mukisa Biscuits* case” (*supra*) and therefore is founded and meritorious. Specifically, the Honourable Court proceeds to make the following orders:-
- a. That the Notice of Preliminary Objection raised by the 7th and 8th Defendants, dated 15th February, 2022 is found to have merit and is hereby upheld.
 - b. That an order be and is hereby made that the suit through the Plaintiff band the Notice of Motion application both dated 24th January, 2022 be and are hereby struck out with costs to the Defendants. The matter is closed.
 - c. That Costs be awarded to the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Defendants herein to be borne by the Plaintiffs.

It is so ordered accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 23RD DAY OF MAY, 2023.

HON. JUSTICE L. L. NAIKUNI, (JUDGE)

ENVIRONMENT AND LAND COURT AT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Yumna, Court Assistant;
- b. No appearance for the Plaintiff
- c. No appearance for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Defendants.

