



Ganda v Suba North Sub County Fisheries Officer (Miscellaneous Civil Application E003 of 2022) [2022] KEHC 14458 (KLR) (26 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E003 OF 2022**

KW KIARIE, J

OCTOBER 26, 2022

BETWEEN

BENARD ODHIAMBO GANDA APPLICANT

AND

SUBA NORTH SUB COUNTY FISHERIES OFFICER RESPONDENT

RULING

1. The respondent herein raised a preliminary objection dated 24th March, 2022 premised on the following grounds:
 - a. That the applicant failed to serve the respondent with Notice of Intention to Institute proceedings against it pursuant to Section 13 (a) of the [Government Proceedings Act](#) (Chapter 40 of the Laws of Kenya).
 - b. That the applicant's application is premature in law as he has not exhausted all mechanisms for redress under Section 9(2) of the [Fair Administrative Action Act](#) of 2015 read together with the Fisheries Beach Management Unit Regulations, 2017.
 - c. That the applicant's application amounts to an abuse of the Court process.
2. The preliminary objection was opposed on grounds that:
 - a. That the application herein is not subject to section 13A of the [Government Proceedings Act](#).
 - b. That provisions of section 9 (2) of the Fair Administrative Actions Act will invite the court to delve into the issues in dispute.
3. A preliminary objection must be on a point of law and nothing more. This was clearly stated in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969]EA 696. At page 700 paragraph D-F Law JA as he then was, 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.

4. Section 13A (1) of the *Government Proceedings Act* Provides:

No proceedings against the Government shall lie or be instituted until after the expiry of a period of thirty days after a notice in writing in the prescribed form have been served on the Government in relation to those proceedings.

And section 3A (3) provides:

The provisions of this section shall not apply to such part of any proceedings

as relates to a claim for relief in respect of which the court may, by virtue of proviso (i) to section 16 (1), make an order declaratory of the right of the parties in lieu of an injunction.

5. The reliefs sought herein are declaratory in nature and this therefore means that the provisions of section 13A of the *Government Proceedings Act* are applicable. The P.O. cannot turn on this point.

6. Section 9(2) of the *Fair Administrative Action Act* of 2015 provides:

The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

7. It was contended that the applicant's application is premature in law as he has not exhausted all mechanisms for redress under Section 9(2) of the *Fair Administrative Action Act* of 2015 read together with the Fisheries Beach Management Unit Regulations, 2017. I expected the offended regulation to be cited at the submission stage. Though on 20th September 2022 M/s Obwanda holding brief for Mr. Yogo informed court that both parties had filed submissions, at the time of writing of the ruling I found no submissions by Mr. Yogo for respondents. Without citing which Regulation was offended, I find that the P.O cannot stand. The same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 26TH DAY OF OCTOBER, 2022

KIARIE WAWERU KIARIE

JUDGE

