



REPUBLIC OF KENYA



**Kimonyi & 2 others v Leiro & 5 others (Land Case E037 of 2021)  
[2023] KEELC 21015 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21015 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
LAND CASE E037 OF 2021  
FM NJOROGE, J  
OCTOBER 26, 2023**

**BETWEEN**

**MUTHINI KIMONYI ..... 1<sup>ST</sup> PLAINTIFF  
ASSUMPTA WANGUI MUIRURI ..... 2<sup>ND</sup> PLAINTIFF  
JOHN MWANGI KIGUTA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ROBINSON LEIRO ..... 1<sup>ST</sup> DEFENDANT  
ELIJAH LETANGULE ..... 2<sup>ND</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT  
COUNTY GOVERNMENT OF NAKURU ..... 4<sup>TH</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling on a two limbed preliminary objection dated 8/5/2023 filed by the plaintiffs. The same states as follows:
  - a. “That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs have no locus standi to file sustain and prosecute this case for and on behalf of Nakuru Jua Kali Association.”
  - b. “That Nakuru Jua Kali Association is not a legal entity with the capacity to sue or be sued in its name or through its purported officials (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs).”
2. The preliminary objection was ordered disposed of by way of written submissions and only the objectors filed their submissions on 13/6/2023.



3. The first limb of the preliminary objection can not be determined without first determining the second limb. In this regard it is noteworthy that the objectors themselves while addressing the first limb addressed the second limb.
4. As regards the second limb, it is not the type of objection that can be raised without a lot of argument and reference to documentary evidence. As seen from the annexures which are in my view wrongly attached to the preliminary objection as though it were a sworn affidavit, it needs to be supported by evidence. I am not stating that the objection is not merited. Rather, I am of the view that the objection can not be disposed of by this court under the current conditions as a stand-alone preliminary objection without running afoul of the rule set out in *Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (1969) EA 696 which notably has not been cited by the objectors this time round. In that case the court stated as follows:

“ 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 a contract giving rise to the suit to refer the dispute to arbitration”.
5. In the same case Sir Charles Newbold, P. 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.”
6. The point raised by the objectors can not be ascertained without looking at the letters from the registrar of companies, business names, documents or associations whatever the appropriate case may be, to ascertain its status. In that case it ceases to qualify to be called a preliminary objection. I have already pointed out as herein above that the first limb is predicated on the findings regarding the second limb, and as the latter has failed the test of a preliminary objection, I do not need to examine the merits of the first limb. For the foregoing reason I strike out the notice of preliminary objection dated 8/5/2023 with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

