



REPUBLIC OF KENYA



KENYA LAW
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**Nyakundi v Munga & 2 others (Environment & Land Case
E036 of 2023) [2025] KEELC 1269 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1269 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E036 OF 2023**

**JG KEMEI, J
MARCH 13, 2025**

BETWEEN

HARON G NYAKUNDI PLAINTIFF

AND

VEREIRA WANJIRU MUNGA 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Before this Court for determination is the 1st Defendant's Preliminary Objection dated 24/1/2025 seeking the dismissal of the suit on the grounds that;
 - a. The suit is filed contrary to the express of Justice (Hon) B. M. Eboso delivered in ELC MISC. No. 240 of 2017 between Vereria Wanjiru Munga –vs- Haron G. Nyakundi on 26/2/20.
 - b. The Plaintiff herein in ELC MISC. No. 240 of 2017 above was granted 90 days from 26/2/20 to file suit but failed to do so until 2023 when he filed the current suit.
 - c. The suit herein is therefore invalid, incompetent and an abuse of the Court process and ought to be dismissed with costs as the Court lacks jurisdiction to entertain the claim.
 - d. ELC MISC. No. 240 of 2017 herein above and its judgement is admitted by the Plaintiff and forms part of his documents in the list of documents hence it is an uncontested fact.

The submissions

2. On 29/1/2025, the parties elected to canvass the Preliminary Objection by way of written submissions. Parties were directed to file and exchange their written submissions within 30 days. The 1st Defendant/



Objector complied and filed his submissions dated 5/2/25 while the Plaintiff filed submissions dated 10/3/25.

3. The 1st Defendant/ Objector submits that the existence of ELC Miscellaneous No. 240 of 2017 between Vereria Wanjiru Mungu –vs- Haron G. Nyakundi is not contested. That Judgment therein was delivered on 26/2/2020 the Court allowed the removal of the caution lodged on the title by the current Plaintiff but suspended the order for 90 days to avail the Defendant a reasonable opportunity to initiate appropriate Court proceedings.
4. It is the Objectors arguments that this suit was filed contrary to the orders of the Court issued in ELC Misc. No. 240 of 2017 hence the suit is incompetent having failed to comply with the 90-day period ordered by the Court. That the fact of filing the current suit in 2023 violated the orders of the Court given that no leave was sought and obtained to file the suit out of time.
5. The Plaintiff submitted that the 1st Defendant in its defence dated the 26/9/23 admitted the jurisdiction of this Court and cannot now turn around and assault it at the eve of the hearing of the main suit. In addition, the Plaintiff argued that the objection is not a pure point of law so much so that it calls for the Court to scrutinize and analyze the record of the Court in ELC Miscellaneous No. 240 of 2017. The Plaintiff decried the 1st Defendants failure to produce the whole record in the said Miscellaneous cause for the Court to appraise itself of the cause of action therein. Succinctly, the Plaintiff states that the 1st Defendant has misconstrued the Courts decision in the Miscellaneous cause foretasted. That the Court suspended the removal of the caution and gave 90 days to the current plaintiff to initiate appropriate Court proceedings. He admits that having failed to initiate any Court proceedings within the period of 90 days, the caution stood removed. That the Court never imposed a limitation on him as to the time within which he could initiate Court proceedings to challenge the legality of the title held by the 1st Defendant. In any event the Plaintiff argues that extension of time is an exercise of discretion which removes the objection from being a pure point of law. Lastly that no prejudice shall be occasioned to the 1st Defendant if the parties are heard on merit.

Analysis and determination

6. I have read and carefully considered the objection, the pleadings and submissions and the key issue is whether the Preliminary objection is merited.
7. On what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -Vs- Suleiman Said Shabal & 2 others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukhisa Biscuit Manufacturers Ltd vs West End Distributors Ltd (1969) E.A where the Court of Appeal said that:

“...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 needs to be ascertained or if what is sought is the exercise of judicial discretion.”
8. The effect of a preliminary objection if upheld, renders any further proceedings before the Court impossible or unnecessary. Thus, a preliminary objection may only be raised on a “pure question of law”. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
9. The 1st Defendant avers the Judgment in the previous case; ELC Miscellaneous No. 240 of 2017 between Vereria Wanjiru Mungu –vs- Haron G. Nyakundi, directed the Plaintiff herein to institute a suit within 90 days from the date of Judgment. The Plaintiff herein had registered a Caution against



the suit property. The 1st Defendant's contention is that the instant suit has been filed after the 3 years; way after the lapse of 90 days granted by the Learned Judge.

10. In order to consider the objection clearly the Court has to call for the evidence and scrutinize the record in Misc Cause No 240/2017. It is to be noted that the 1st Defendant failed to produce the record in the said cause for the Court to fully be appraised of the pleadings therein.
11. Furthermore, the Court has perused the judgement referred to and observes that Court suspended the removal of caution for a period of 90 days to allow the Plaintiff herein to institute appropriate proceedings. The mere fact of analyzing and scrutinizing the judgement of the Court and the record ousts the objection from being a pure point of law. Further I did not ascribe any interpretation of the said judgement as barring the Plaintiff from filing suit any other time. The judgment only limited the removal of caution after the 90-day period and no more.
12. The jurisdiction of the Court is sculpted inn Art 162 of the COK and read together with the provisions of Section 13 of the ELC Act which include interalia, the determination of title to land.
13. I have also perused the pleadings of the parties and it is clear that the bone of contention is who between the Plaintiff and the 1st Defendant is the legal owner of the suit land. This is a cause of action arising from ownership and title to land which evidently this Court has jurisdiction to hear and determine.
14. It is my finding that the plaintiff should not be ousted from the judgment seat as doing so will be tantamount to denying him access to justice which is a constitutionally guaranteed right under Article 48 of the Constitution and a right to a fair hearing under Article 50(1) of the Constitution.
15. Before I pen off, it has not escaped the attention of the Court that this Preliminary objection is being raised at the eleventh hour, actually at the eve of the hearing of the suit. Its bonafides is therefore highly in doubt.
16. Having carefully analyzed the Notice of Preliminary Objection and the written submissions thereof, the Court finds that it does not raise pure points of law.
17. The upshot of the foregoing is that the Court finds and holds that the Notice of Preliminary Objection dated 24/1/2025 is not merited and the same be and is hereby dismissed entirely with costs in favour of the Plaintiff.
18. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. N/A for the Plaintiff, but Ruling date taken in the presence of counsel on record.
2. Mr Muli for the 1st Defendant
3. Ms Odira for HB for Mr Ondimu
4. N/A for the 3rd Defendant
5. CA- Ms Cheronno

