



**County Government of Tana River v Wachu Ranching Company Limited (Environment & Land Petition E017 of 2025) [2025] KEELC 3230 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3230 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND PETITION E017 OF 2025  
FM NJOROGE, J  
APRIL 7, 2025**

**BETWEEN**  
**COUNTY GOVERNMENT OF TANA RIVER ..... PETITIONER**  
**AND**  
**WACHU RANCHING COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The Preliminary Objection under consideration in this ruling has been raised by the Respondent against the petition and it is dated 13/12/2024. The same was disposed of by way of written submissions.
2. I deal with the Preliminary Objection before court with the dicta of the now renowned case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors* [1969] EA 696 at the forefront of my mind. In that case it was held as follows:

“So far as I’m aware, 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.”

It was further held follows in the same case:

“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 if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but



unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”

3. Points that require much argument to establish do not meet the threshold of Preliminary Objections. So are those that need external sources of evidence to support themselves on. There would be no difference between trying a Preliminary Objection and proceeding to hearing of the issue raised if evidence were allowed in a Preliminary Objection.
4. Upon perusal this court agreed with the submissions of the respondent regarding grounds 1-3 thereof: they do not meet the threshold of Preliminary Objections since the court would require to peruse other litigation and proceedings before the National Land Commission to determine whether the matter is res judicata or res sub judice. They are hereby summarily dismissed. Also, ground 4 requires evidence to be adduced as to whether the process has commenced or not.
5. Regarding ground 5, the court, if it delved into the merits thereof, would be required to make a substantive determination of whether the respondent’s right to own property under Article 40(1) of the *constitution* has been violated. That is clearly not an issue for determination at the Preliminary stage but in the main petition, and in any event it would require evidence of occupation for generations by certain persons on the land.
6. Regarding ground 6, this court is aware that the respondent’s claim is that the lease was meant to last for 45 years with effect from 1/3/1976. Computation would be required to determine if the lease has expired; evidence would be required as I stated earlier as to whether the process under Section 13(1) of the *Land Act* has been commenced. The court would need to establish the category of land that the suit land now falls under. Consequently, this court hardly thinks that is a ground fit for inclusion in a notice of Preliminary Objection.
7. Grounds No 7 and 8 address the application dated 21/11/2024 but the same has already been settled by consent in that the parties have already agreed to maintain the status quo of the suit land.
8. Grounds no 9 and 10 are argumentative and require to be determined in the main Petition too.
9. Consequently, the Notice of Preliminary Objection dated 13/4/2024 is hereby found to lack merit and the same is dismissed with costs to the petitioner. The respondent shall file its response to the Petition and the Parties shall appear before the court on 17/6/2025 for further directions as to hearing.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF APRIL 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

