



**Pejo & 4 others v Mochoge (Environment & Land Case
E004 of 2021) [2022] KEELC 3169 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3169 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E004 OF 2021
MN GICHERU, J
JUNE 16, 2022**

BETWEEN

**JOEL DONKOL OLE PEJO 1ST PLAINTIFF
ROKOMPE LEMILTO MARUNA 2ND PLAINTIFF
NANGEENTO ENE KETUKEI 3RD PLAINTIFF
TIMA OLE KIKANAI 4TH PLAINTIFF
JEREMIAH OLE PANTO 5TH PLAINTIFF**

AND

PIUS NYABUGA MOCHOGE DEFENDANT

RULING

1. This ruling is on the preliminary objection dated 17th May, 2021. The preliminary objection is broken down into seven parts.

In summary, it is to the effect that the Plaintiffs' suit is bad in law and ought to be struck out because it is based on a claim of adverse possession of the Defendant's suit land namely Kajiado/loodariak/244 yet on 20th August, 2015, when Defendant purchased the suit land, they were not in possession.

A period of 12 years has not elapsed since then and the suit is thus bad in law.

The fifth Plaintiff has sworn a replying affidavit dated 4th March, 2022 opposing the preliminary objection deposing, inter alia, that the Plaintiffs were born on the suit land.

Only the Plaintiffs' counsel filed written submissions on 8/3/2022 urging, inter alia, that a preliminary point of law cannot be anchored on evidence but on pure points of law as per the celebrated case of *Mukisa Bisbuit Manufacturing Company, Limited –versus- West End Distributors Limited* (1969) E.A. 968.



In the above case, Newbold JA had this to say at page 701;

“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 urged 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.”

2. I have carefully considered the Preliminary Objection in its entirety including the submissions and the other material by both sides.

I find that the Preliminary Objection has no merit because the issue of when the occupation of the suit land by the Plaintiff begun is one of the issues to be decided after hearing the evidence. Before this evidence has been adduced and subjected to cross-examination and before the evidence in rebuttal is also given on oath and subjected to cross examination, it is not possible decide when the occupation began.

Given the above scenario, it is obvious that the Preliminary Objection is not on a pure point of law. I find it has no merit. I dismiss it.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

