



**Gulam Enterprises Limited v County Government of Narok &
another; Naivas Limited (Interested Party) (Environment & Land Case
E008 of 2021) [2022] KEELC 3726 (KLR) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3726 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E008 OF 2021**

**CG MBOGO, J
JULY 26, 2022**

BETWEEN

GULAM ENTERPRISES LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF NAROK 1ST DEFENDANT

**COUNTY EXECUTIVE MEMBERS OF LANDS COUNTY GOVERNMENT OF
NAROK 2ND DEFENDANT**

AND

NAIVAS LIMITED INTERESTED PARTY

RULING

1. Before this court for determination is a notice of preliminary objection dated November 9, 2021 filed by the defendants challenging the suit on the following grounds: -
 1. That this honourable court lacks the requisite jurisdiction to entertain this entire suit as section 25 of the *Rating Act*, cap 267 as read together with section 19 (b) and 29 of the *Valuation for Rating Act*, cap 266 gives the magistrates' court and not this court, the jurisdiction to hear and determine disputes relating to issues of rates at the first instance.
 2. That this entire suit is otherwise an abuse of this honourable court' process.
2. The interested party filed a replying affidavit sworn on 17th November, 2021 by Robert Supeyo- Narok Branch Manager. The interested party deposed that the preliminary objection is defective in substance for the reason that this court has status of the High Court with unlimited jurisdiction in civil matters and that the matter is properly before this court. Further, that the objection is based on the wrong understanding of the *Constitution* and the jurisdiction of courts. The interested party further deposed



- that article 162 (2) of the Constitution established this court to hear dispute relating to the environment and use of it and that a party who pleads jurisdiction must demonstrate the scope of jurisdiction of the court and indicate how this court has no jurisdiction.
3. When the matter came up for mention on November 15, 2021, parties agreed to dispose off the notice of preliminary objection by way of written submissions.
 4. The defendants filed written submissions dated March 16, 2022. The defendants raised two issues for determination which are whether this honourable court has the requisite jurisdiction to entertain the instant suit in view of the provisions of section 25 of the Rating Act, cap 267 as read together with section 19 (b) and 29 of the Valuation for Rating Act, cap 266 and whether the entire suit is otherwise an abuse of the court's process.
 5. The defendants submitted that the Rating Act is the substantive law that provides for the imposition of rates on land and buildings in Kenya and the Valuation for Rating Act is the legal statute that empower local government authorities to value land for the purpose of land rates and it is clear from the cited provisions of the Valuation for Rating Act under section 17 (4) that the magistrates court has jurisdiction at the first instance to hear and determine all disputes concerning land rates and that the only issue for determination before this court between the plaintiff and the defendants is whether any rates in respect to the three plots are due from the plaintiff and if so, the amount payable. The defendants relied on the case of Machakos County Government v Kapiti Plains Estate Limited [2021] eKLR.
 6. The defendants submitted that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should strictly be followed and as such the first port of call should be the magistrates court. The defendants relied on the case of Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020] eKLR and Speaker of the National Assembly v James Njenga Karume [1992] eKLR.
 7. The defendants further submitted that this court does not have jurisdiction to transfer this matter to the magistrates' court as it is trite law that where a court does not have jurisdiction to deal with a dispute it ought to dismiss the same and not purport to transfer that matter to the appropriate court with jurisdiction. The defendants relied on the case of Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR.
 8. On the issue of costs, the defendants submitted that it is discretionary and should be awarded to the defendants given that the defendants have been re-hauled to the seat of justice by the plaintiff in circumstances which it is not responsible for.
 9. The plaintiff filed written submissions dated June 21, 2022. The plaintiff raised one issue for determination which is whether this honourable court has the requisite jurisdiction to determine this claim. While relying on the Supreme Court decision in In the Matter of Interim Independent Electoral Commission [2011] eKLR and Patrick Ndegwa Munyua v Benjamin Kiiru Mwangi & another [2020] eKLR the plaintiff submitted that this court has jurisdiction to hear and determine disputes relating to the environment and the use and occupation of land. While relying also on the case of Karisa Chengo v Law Society of Kenya [2014] eKLR and Zipporah Njoki Kangara v Rock and Pure Limited & 3 others [2021] eKLR, the plaintiff submitted that this court is seized with the original and appellate jurisdiction to hear and determine any dispute relating to land. The plaintiff further submitted that section 25 of the Rating Act and section 29 of the Valuation for Rating Act does not provide for original



jurisdiction upon the valuation courts and the magistrates court to hear and determine this dispute and the effect of this provisions is to provide an alternative avenue for parties to address their disputes and the plaintiff should not be punished for choosing to file the suit in this court and further the said provisions applies on a party seeking recovery of rates and the appeals from the valuation courts which is not what is sought for in the plaint.

10. The plaintiff further submitted that the provisions of the *Rating Act* as well as the *Valuation for Rating Act* cannot oust the original jurisdiction of this court as vested by article 162 (2)(b) of the *Constitution*. The plaintiff relied on the case *East African Railway Corporation v Anthony Sefu* [1973] EA 237.
11. The interested party filed written submissions dated June 21, 2022. The interested party raised two issues for determination which are whether the preliminary objection should be allowed or not and who shall bear the costs.
12. The interested party submitted that this court has jurisdiction to entertain the plaintiff's suit herein and that the preliminary objection has no merit and should be dismissed with costs. As such no one should be condemned unheard and the defendants' preliminary objection is based on wrong understanding of the *Constitution* and jurisdiction of courts. The interested party further submitted that the plaintiff solely approached this court to protect itself from suffering harm which is as a result of an alleged misunderstanding between the plaintiff and the defendants regarding rates.
13. I have analysed and considered the preliminary objection, the replying affidavit of the interested party and the written submissions filed by the parties and the issue for determination is whether the notice of preliminary objection dated November 9, 2021 has merit.
14. The threshold for preliminary objections is now well settled and there would be no reason to reinvent the wheel. Courts have held that a preliminary objection deals with purely points of law and where facts are not disputed. Where the court has to look outside the case for evidence to establish the facts presented, then this falls under a case where a full hearing has to be conducted to disprove certain facts. In *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696, the court stated 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."

This was followed up by the judgment of Sir Charles Newbold 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"

15. In the case of *Lemitei Ole Koros & another v Attorney General & 3 others* [2016] eKLR, Munyao, J. stated as follows:

"Where facts are not contested, the court is able to make a determination of law on the preliminary objection, but where facts are in contest, then automatically, the issue falls out



of the ambit of a preliminary objection. It would be improper for a court to make a contested determination of fact within a preliminary objection.’

16. The defendants in this case are of the view that as per section 25 of the [Rating Act](#) as read together with section 19 (b) and 29 of the [Valuation for Rating Act](#), cap 226, the magistrates court have jurisdiction to hear and determine the dispute at hand and not this court. I have looked at the plaint dated April 15, 2021 where the plaintiff has pleaded in paragraph 11 that on October 9, 2019, it was served with invoices of exorbitant amounts and in paragraph 12, the plaintiff pleads that it was surprised to learn of the said arrears whereas it had all along been paying land rates for the three plots as they fell due.
17. The plaintiff prays for judgment to be entered against the 1st, 2nd and 3rd defendants jointly and severally for: -
 - a. An order compelling the 1st and 2nd defendants herein by themselves, their agents and/or servants to move with speed and reconcile the figures relating to the payments of land rates for the pot numbers 60,61 and 62 Narok Township Block 4 formally plot numbers 243,244 and 245 with an aim of establishing the correct figures owed by the plaintiff/applicant as land rates.
 - b. That a permanent order of injunction restraining the 1st, 2nd and 3rd defendants herein by themselves, their agents and or servants from interfering, encroaching, wasting, evicting and / or trespassing over the parcels known as plot numbers 60,61 and 62 Narok Township Block 4 Plot numbers 243,244 and 245 on account of the wrong figures being demanded as land rates.
18. The *locus classicus* on jurisdiction is the celebrated case of [Owners of the Motor Vessel “Lillian S” v Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1 where Justice Nyarangi of the Court of Appeal held as follows: -

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’
19. A close look at the claim by the plaintiff herein point towards issues relating to regularisation of the land rates previously paid by the plaintiff to the 1st defendant and circumstances that arose after allocation of the new plot numbers. Section 25 of the [Rating Act](#) provides as follows: -

“Notwithstanding anything to the contrary in the Magistrate’s Courts Act (cap 10), any magistrate empowered to hold a subordinate court of the first class shall have jurisdiction to hear and determine suits for the recovery of rates under this Act.”
20. Further section 29 of the [Valuation for Rating Act](#) provides for the jurisdiction of magistrates as follows: -

“Anything in the Magistrate Courts Act (cap 10) to the contrary notwithstanding, any Chief Magistrate, Senior Resident Magistrate or Resident Magistrate shall have jurisdiction to hear and determine an appeal under section 19”.
21. Section 13 of the [Environment and Land Court Act](#) provides: -

“(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2) (b) of the [Constitution](#) and with



the provisions of this Act or any other law applicable in Kenya relating to environment and land.

- (2) In exercise of its jurisdiction under article 162(2) (b) of the Constitution, the court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.” [Emphasis supplied]

22. Section 9 (a) of the Magistrates’ Court Act of 2015 provides:

“A magistrate’s court shall -

- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (cap 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to -
 - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (ii) compulsory acquisition of land;
 - (iii) land administration and management;
 - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (v) environment and land generally.” [Emphasis supplied]

23. The provisions of the above cited laws grant jurisdiction both to this court and the Magistrates Court to hear and determine disputes concerning the land rates. However, I am of the view, that in circumstance where such jurisdiction has been donated to the lower court or a tribunal, by an Act of Parliament, then such a court or tribunal ought to hear and determine the dispute. In this case, the Rating Act and the Valuation for Rating Act gives the magistrates’ court jurisdiction to hear and determine the dispute at hand. In Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020] eKLR, the Court of Appeal held as follows:

“A party or litigant cannot be allowed to confer jurisdiction on a court or oust jurisdiction of a competent organ through the art and craft of drafting pleadings. Even if a court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legislatively been mandated to hear and



determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a court or body to hear and determine all and sundry disputes. Original jurisdiction only means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the *dicta* in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where it was stated that where there is a clear procedure for the redress of a particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed.”

24. Arising from the above, I find that this suit should have been filed at the Magistrates’ Court first. This court does not have jurisdiction to hear the suit. As such the plaint dated April 15, 2021 is dismissed with no orders as to costs. Orders issued on April 15, 2021 are hereby vacated. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 26TH JULY, 2022.

Mbogo CG

Judge

July 26, 2022

In the presence of: -

CA: Timothy Chuma

RULING ELC CASE NO E008 OF 2021 DELIVERED VIA EMAIL ON 26TH JULY, 2022

