



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

JUDICIAL REVIEW NO. 68 OF 2010

REPUBLIC.....APPLICANT

VERSUS

NGONDI NJERU.....1ST RESPONDENT

GACHOKA LAND DISPUTES TRIBUNAL2ND RESPONDENT

ATTONEY GENERAL.....3RD RESPONDENT

DAUDI NGARI NJIRU.....EXPARTE APPLICANT

RULING

In **MUKISA BISCUIT MANUFACTURING CO. LIMITED VS WEST END DISTRIBUTORS LIMITED [1969] EA 696** at page700LAW, JA observed 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.”

Such a preliminary point is argued on the assumption that all the facts pleaded by the other side are correct. If the facts are to be ascertained or if what is sought is the exercise of judicial discretion then the objection cannot be properly raised.

In the instance case, the matters contained in the notice of preliminary objection are basically evidence which should have been contained in a replying affidavit. Secondly, both the *exparte* Applicant and the 1st Respondent appear to be saying that the award of the Lands Dispute Tribunal in regard to BLOCK 109 was quashed by the order of the court in **HC MISC. CIVIL APPLICATION NO. 34 OF 2009 (JR) at Embu**. Yet, the proceedings annexed to the application show that the motion was withdrawn. In other words, the court will have to ascertain what it is that the court decided in the case and therefore an objection cannot be properly founded on the annexed proceedings.

In short, the objection is not sustained and is dismissed with costs.

DATED, DELIVERED AND SIGNED AT EMBU THIS 18th DAY OF JULY 2011.

**A. O. MUCHELULE
JUDGE**

