



REPUBLIC OF KENYA



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Ponda (Suing in his own Capacity and in his Capacity as the Administrator of the Estate of Molino Guiseppina (Deceased)) & another v Muli & 14 others (Environment & Land Case 18 of 2024) [2025] KEELC 3220 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 18 OF 2024**

EK MAKORI, J

APRIL 2, 2025

BETWEEN

VALENTINE HINZANO PONDA (SUING IN HIS OWN CAPACITY AND IN HIS CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF MOLINO GUISEPPINA (DECEASED)) 1ST PLAINTIFF

KIVULINI VILLAGE BEACH HOTEL LIMITED 2ND PLAINTIFF

AND

LUCY MWELU MULI & 14 OTHERS DEFENDANT

RULING

1. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th defendants took out a Preliminary Objection dated 12th March 2025 to the hearing of this suit on grounds that:
 - a. This suit was filed in the High Court of Kenya at Malindi. The High Court has no jurisdiction over disputes concerning the title, use, or occupation of land.
 - b. Judges of the Environment & Land Court cannot determine disputes filed in the High Court, and a Judge of the Environment & Land Court ought not to handle this suit.
 - c. Suits filed in the High Court cannot be transferred to the Environment & Land Court, and any order in that regard is null and void.
 - d. The Complaint, Verifying Affidavit, Summons to Enter Appearance, Plaintiff's witness Statement, List of Witnesses, and List of Documents show that this suit was filed in the High Court at Malindi, and the Environment & Land Court appears in those documents as a division of the High Court. It is not. The Complaint ought to have been rejected and should be struck out with costs.



- e. This suit is time-barred under the Provisions of the *Limitation of Actions Act*, and the Court has no jurisdiction to hear and determine any part of this suit.
 - f. The 1st plaintiff, Valentine Hinzano Ponda, lacks the capacity to sue as the administrator of the estate of Molino Guiseppina, as he has not been granted Letters of Administration for her estate.
 - g. The document upon which the 1st Plaintiff has brought this suit is the Limited Grant of Letters of Administration Ad litem issued by the Chief Magistrate of Malindi on 11 September 2023. According to the letters described in Item No. 5 of the plaintiff's bundle of documents, the value of the suit premises exceeds Kshs 55,000,000.00, which is beyond the jurisdiction of the Chief Magistrates. Grant ought to have been sought and obtained from the High Court, rather than from the Chief Magistrate.
 - h. Under Sections 47 and 48 of the *Law of Succession Act*, the High Court at Malindi has exclusive jurisdiction firstly because the value of the estate exceeds Kshs 100,000,000.00 and secondly, because in any case where both the High Court and the Magistrate Courts are available, the High Court shall have exclusive jurisdiction.
 - i. The jurisdiction of the Magistrate's Court in matters of succession to estates of deceased persons is limited to estates whose gross value does not exceed Kshs 100,000.00. As disclosed by the Plaintiffs, the value of the suit premises exceeds Kshs 55,000,000.00.
 - j. The purported Limited Grant Letters of Administration Ad Litem is therefore null and void, and the 1st plaintiff could not file the suit.
 - k. In the absence of capacity and jurisdiction, this suit ought to be struck out with costs.
 - l. This suit is sub judice insofar as it concerns the 10th defendant, both the defendant and counterclaimant in Malindi ELC No. 23 of 2023, scheduled for judgment in April 2025 before this court (Makori J.) The plaintiffs cannot, therefore, re-litigate the same issue in this suit over the same subject matter.
2. Learned counsels for the parties, Ms. Muyaa for the 1st through 10th defendants and Ms. Akwana for the plaintiffs, submitted their cases orally before me on March 13, 2025.
 3. Ms. Muyaa reiterated the preliminary objection(s) highlighted above, while Ms. Akwana contended that the preliminary objection (s) raised are not solely based on pure points of law, as can be inferred from the pleadings clear
 4. The main issue is whether the Preliminary Objections (s) raised are sustainable.
 5. The principles this court is invited to use in determining the merit of a notice of Preliminary Objection were outlined in the well-known case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696. This case established the criteria for a Preliminary Objection, and the court will follow these principles in its ruling.
 6. The Court of Appeal in Attorney General & Ministry of State for Immigration & Registrar of Persons v. Andrew Maina Githinji & Zachary Mugo Kamunjiga [2016] KECA 817 (KLR) reiterated its position on what constitutes a Preliminary Objection and held as follows:

“The test to be applied in determining whether the appellants’ Preliminary Objection met the threshold or not is what Sir Charles Newbold set out above in the Mukisa Case (supra). That is first, that the Preliminary Objection raises a pure point of law, second, that there is



demonstration that all the facts pleaded by the other side are correct; and third, that there is no fact that needs to be ascertained.”

7. The thrust of a Preliminary Objection in this matter centers on the jurisdiction of this court, as articulated by Nyarangi J.A. in *Owners of the Motor Vessel “Lillian S” v. Caltex Oil (Kenya) Ltd* [1989] eKLR:

“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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. A Preliminary Objection is based on the proposition that, when raised, its fundamental purpose will affect the resolution of a matter because it raises pure points of law. It also emphasizes the importance of prudent time management as a court resource by summarily flagging weak and hopeless suits that, if allowed to proceed to full trial, would waste judicial time and not serve the interests of justice. One need not look elsewhere for an answer regarding whether a Preliminary Objection is sustainable; instead, one should examine the pleadings to discover that the suit is a non-starter – see the works of Ogola J. in *DJC v BKL* (Civil suit E021 of 2021) [2022] KEHC 10189 (KLR) (27 June 2022) (Ruling):
9. Ms. Muyaa contends the heading of the suit shows it was initiated and indicates it should have been filed in the High Court, as suggested by the title of the plaint. Judges of the ELC do not have the authority to handle High Court matters.
10. She asserts that this suit experiences delays since the bundle of documents indicates that the various sale agreements, searches, and transfers were entered into in 1996, 2003, 2006, 2007, and 2009. Regardless of whether the claim is based on a contract or recovery of land, it is time-barred.
11. She further argues that the first plaintiff lacks the capacity to bring this suit, as the letters of administration ad litem were obtained from the Magistrates Court for an estate exceeding Kshs.55,000,000.00/-. However, the Magistrate Court has jurisdiction only up to Kshs. 100,000/- in succession matters.
12. On another front, Ms. Muyaa contends that a matter similar to this one, Malindi ELC No. 23 of 2023, is awaiting judgment—before this court—where the 1st plaintiff is a party, and therefore, the current suit is sub judice.
13. On the other hand, Ms. Akwana contends that invoking the High Court in this matter was a misdescription of the pleadings. This matter was properly filed before the ELC.
14. Regarding the limitation of actions, she stated that fraud was discovered in 2022, so the claim is on time.
15. On capacity to sue counsel is of the view that the Magistrates Court has a pecuniary jurisdiction of over Kshs. 20,000,000.00. Besides, the letters administration Ad litem were taken to protect the estate.
16. On sub judice she contends that the suit referred to as pending was withdrawn – the court needs to check that position.



17. She concludes that the current Preliminary Objection will necessitate a mini-trial, particularly on fraud, to determine its appropriateness, as the court must consider numerous documents. This Preliminary Objection pertains not solely to legal points but to facts that require a full trial.
18. Regarding the Preliminary Objection(s) as raised, I agree with Ms. Akwana that the issues raised will require a probe through evidence. They are not purely on points of law per se but will require evidence. I am persuaded by the passage of See Mugo J. in *Delilah Ondari v Francis Ondieki Atandi* [2022] KEELC 1951 (KLR) on the question of reckoning fraud:

“It would defeat the purpose of this court as set out in section 1A, 1B and 3A of the *Civil Procedure Act* to not determine when the fraud was actually discovered and I refrain myself from holding a mini trial on the facts of the case in this Preliminary Objection as it would cease being a Preliminary Objection and become a Notice of Motion for striking out the suit. Furthermore, none of the parties has demonstrated that there is a criminal case on the alleged fraud or outcome emanating therefrom.

Based on the above, I am clutching at a straw and with no stilts to stand on. The facts alleged by the Plaintiff have all been disputed by the Defendant. This is the essence of a trial and the grounds in the Preliminary Objection are not sufficient enough to strike out the suit in limine.”

19. The issue of whether this is an ELC or High Court matter is neither here nor there. It was a misdescription of the court, which can be corrected but does not affect the jurisdiction of this court. Regarding the limitation of action, evidence will be required to determine when fraud was discovered; it is not straightforward. On capacity, the ad litem was taken out to protect the estate. Concerning sub judice, there have been allegations that the suit was withdrawn. When I checked the file, I found that the plaintiff in that suit had withdrawn the matter; the court has yet to issue its judgment.
20. The Preliminary Objections raised herein do not meet the Mukisa Biscuits test, as they are not purely points of law. Therefore, the same is hereby dismissed.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 2ND DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Akwana, for the Plaintiffs

Ms. Muyaa for 1st - 10th Defendants

Happy: Court Assistant

