



REPUBLIC OF KENYA



KENYA LAW
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**Rongai Rhumba House Limited v Ariwi & 8 others (Civil Suit
E131 of 2024) [2025] KEELC 4236 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CIVIL SUIT E131 OF 2024
MD MWANGI, J
MAY 29, 2025**

BETWEEN

RONGAI RHUMBA HOUSE LIMITED PLAINTIFF

AND

SHEM ARIWI 1ST DEFENDANT
DAVID NDEGWA 2ND DEFENDANT
KEN SHADRACK WAMBU 3RD DEFENDANT
NAHASHION KARIUKI 4TH DEFENDANT
DANIEL KINYWA 5TH DEFENDANT
SALOME MUNGAI 6TH DEFENDANT
SOSPETER MBURU 7TH DEFENDANT
CHARLES ARIWI 8TH DEFENDANT
MARGARET RIAROH 9TH DEFENDANT

RULING

1. This ruling is in respect to the preliminary objection dated 17th March 2025 by the 1st Defendant against the Plaintiff's suit. The gist of the preliminary objection is that the Plaintiff's suit against the 1st Defendant is res judicata given the decision of the High Court of Kenya by the late Hon. Justice D.S. Majanja in Civil Appeal No. E364 of 2023 (Rongai Rhumba House Limited –vs- Shem Eric Arungu & 3 others) of 16th November 2023 which was an appeal against the decision of the Business Premises Rent Tribunal in BPRT Cause No. E149 of 2023. It is the 1st Defendant's position that the Plaintiff's suit offends the mandatory provisions of Section 19 of the ELC Act as read together with Section 7 of the *Civil Procedure Act*.



Directions by the Court

2. The directions by the court were that the preliminary objection be canvassed by way of written submissions. Both the Plaintiff and the 1st Defendant submitted on the preliminary objection. Their submissions form part of the record of this court and I need not replicate them herein verbatim.

Issues for Determination

3. The issues that this court must determine is whether the preliminary objection by the 1st Defendant meets the threshold of a preliminary objection and if so, if it is merited.

Determination

4. No doubt that the decision in the case of Mukisa Biscuit Manufacturing Company Limited –vs- West End Distributors Limited (1969) E.A. 696, is the Locus Classicus in this part of the world on matters preliminary objections. The court in the said case defined a preliminary objection as consisting 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 objection may dispose of the suit (as per law J.A.).

5. Sir Charles Newbold P., in the same case stated that,

“A preliminary objection is in the nature of what used to be 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 has to be ascertained or if what is sought is the exercise of judicial discretion.”

6. J.B. Ojwang J (as he then was) in the case of Oraro –vs- Mbaja (2005) eKLR, elaborated that,

“A preliminary objection correctly understood is now well identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event to be proved through the process of evidence. Any assertion which claims to be preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not as a matter of legal principle a true preliminary objection which the court should allow to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary objection.”

7. Gikonyo J, in the case of Henry Wanyama Khaemba –vs- Standard Chartered Bank (K) Limited & another (2014) KEHC 480 (KLR) while embracing the definition in the Mukisa Biscuits case and the elaboration by Ojwang J categorically held that;

“The issue of res judicata, duplicity of suits and suit having been spent will require probing of evidence. They are incapable of being handled as preliminary objections because of the limited scope of the jurisdiction on preliminary objection.

Instead, those issues should be raised in a more broad-based approach like a formal application under the relevant law and procedure, or in the trial of the suit, or in reply to the application...which will allow the other party and the court sufficient room to interrogate the points raised...”

8. I fully agree with the sentiments of Gikonyo J in the above cited case. The preliminary objection by the 1st Defendant does not meet the threshold in the Mukhisa Biscuits’ case. Indeed, the 1st Defendant in



his own words at the last paragraph of the preliminary objection stated that the preliminary objection 'is firmly grounded upon the previous proceedings and the Plaintiff's own pleadings and evidence on record...'

9. Those previous proceedings and pleadings are not before this court. They must be presented to the court for it to ascertain amongst other things, the parties therein, the cause of action, and the decision of that other court; being the issues that the court must establish to determine whether this suit is res judicata. As Gikonyo J opined, those issues should be raised in a more broad-based approach like a formal application or in the trial of the suit or in reply to the application to allow the other party and the court sufficient room to interrogate the points raised.
10. That said, the preliminary objection by the 1st Defendant is hereby dismissed with costs of the Plaintiff.
It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Griffins Timbe h/b for Mr. Waigwa for the Plaintiff

Mr. Ojwang' for the 1st Defendant/Objector

N/A by 2nd to the 9th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

