



Epoloto & 3 others (Suing on behalf of the members of Kenya Police Sacco) v Ruaraka Housing Estate Ltd & 2 others (Land Case E053 of 2025) [2025] KEELC 5159 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5159 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E053 OF 2025
CG MBOGO, J
JULY 10, 2025**

BETWEEN

**MOSES EPOLOTO 1ST PLAINTIFF
PETER HONGO 2ND PLAINTIFF
DAVID NDIEMA 3RD PLAINTIFF
GEORGE MUSAMALI 4TH PLAINTIFF
SUING ON BEHALF OF THE MEMBERS OF KENYA POLICE SACCO**

AND

**RUARAKA HOUSING ESTATE LTD 1ST DEFENDANT
UTUMISHI INVESTMENT LTD 2ND DEFENDANT
KENYA NATIONAL POLICE DT SACCO 3RD DEFENDANT**

RULING

1. The 1st defendant filed the notice of preliminary objection dated 21st February, 2025 challenging the suit on the following grounds: -
 1. That the suit is filed contrary to the provisions of Section 7 of the *Limitation of Actions Act*, hence statute barred.
 2. That the suit herein has been filed upon lapse of 12 years which is the limitation period for filing suits for recovery of land, the course of action having arisen in the year 1982, according to the plaintiffs' pleadings.



3. That the suit herein further offends the provisions of Article 162(2)(b) of the Constitution as read with Section 13 of the Environment and Land Court Act since it raises issues of management of directorship management of the defendant's company, which do not fall within the realm of the jurisdiction of this court.
2. The notice of preliminary objection was canvassed by way of written submissions. The 1st defendant filed its written submissions dated 7th April, 2025 where it raised two issues for determination as follows:-
 - i. Whether this suit is time-barred.
 - ii. Whether this court has jurisdiction to entertain this suit.
3. On the first issue, the 1st defendant submitted that the case before this court falls within Section 7 of the Limitation of Actions Act since the cause of action arose as far back as 1982 which exceeds the 12-year limitation period prescribed in the Act. They submitted that the failure to initiate this action within the 12-year period, and their delay of 30 years represented a breach of the sacred trust between the law and the people it serves. Further, it was submitted that the law exists to shield us from the uncertainty of bygone events, and also to preserve the order of society itself. That time has run its course and no matter how loudly the plaintiffs may cry for justice, the law remains steadfast and unforgiving in its embrace of time. To buttress on this issue, the 1st defendant relied on the cases of Takaful Insurance of Africa Ltd v Affey [2024] KEHC 7094 (KLR), Republic v Principal Magistrate P. Ngare Gesora Principal Magistrates' Court & 2 others Ex-parte Nation Media Group Ltd [2013] KEHC71 (KLR), and Anaclet Kalia Musau (suing on behalf of the estate of Vincent Mangalo Kalia (Deceased) v Attorney General & 2 others [2015] KEHC 532 (KLR).
4. On the second issue, the 1st defendant submitted that jurisdiction is primordial in every suit, and that a suit filed devoid of jurisdiction is dead on arrival. It was submitted that pursuant to Section 13 of the Environment and Land Court Act, the prayers sought in the application do not concern any land related dispute, and that instead address matters regarding the management of companies, the removal of directors, the appointment of investigators which fall outside the jurisdiction of this court. Further, that the reliefs sought are not only against the 1st defendant but also targets the directors personally.
5. The 1st defendant submitted that the commercial and corporate governance issues are not issues this court is empowered to address being that this court's jurisdiction is firmly rooted in land and environment matters. Reliance was placed on the Matter of the Interim Independent Electoral Commission (Applicant) [2011] KESC 1 (KLR).
6. The 1st defendant further submitted that disputes between a member and a cooperative society that relates to the business of the cooperative society must be referred to the Tribunal. That by seeking redress in this court, the plaintiffs have bypassed the statutory dispute resolution process established under the Cooperative Societies Act. The 1st defendant urged the court to adhere to the principles that the right to access justice is not an open-ended invitation to anyone who desires it, but it is a matter defined by the scope of the law.
7. In conclusion, the 1st defendant submitted that the application is fundamentally flawed due to the issue of time and jurisdiction, and the suit should be dismissed with costs.
8. The plaintiffs filed their written submissions dated 27th March 2025, where they raised the following issues for determination:-
 - a. Whether this plaint offend the statute of law of limitation given the kind of prayers sought.



- b. Whether this suit has been filed upon lapse of 12 years which is the limitation period for filing suits for recovery of land, the course of action having arisen in the year 1982 according to the plaintiffs.
 - c. Whether this suit offends the provisions of Article 162 (2)(b) of the *Constitution* as read with Section 12 of the *Environment and Land Court Act* since it raises issues of management of directorship and management of the defendant's company which do not fall within the realms of the jurisdiction of this court.
9. On the first and second issues, the plaintiffs submitted that they became aware of the fraudulent transfer of properties in the year 2024, and that is the time when they began investigations. They submitted that there is fraudulent concealment and ongoing breach or ongoing tort which are exceptions to the statute of limitations. The plaintiffs submitted that the 1st and 2nd defendants were set up to manage the properties belonging to the members of the Sacco, and that there is a continuing duty to manage the properties on behalf of the Sacco members.
 10. On the third issue, the plaintiffs submitted that the issue of management of directors and management of the company falls squarely under this court because of the mismanagement of the properties and the actions of the directors which are directly tied to the ownership and control of the property in question. To buttress on their submission, the plaintiffs relied on the cases of *Salomon v Salomon & Co. Ltd* [1897] AC 22 (HL), *Regal (Hastings) Ltd v Gulliver* [1967] 2AC 134, *Percival v Wright* [1902] 2 Ch 421, *Kenya Commercial Bank v Osebe* [2007] 2 KLR 16 and *Re Vandervell's Trusts* (No. 2) [1974] Ch 269.
 11. I have considered the preliminary objection and the written submissions filed by the plaintiffs and the 1st defendant. I am of the view that the issues for determination is whether the suit is statute barred and whether this court has jurisdiction to hear and determine the suit.
 12. Law, J.A. in *Mukisa Biscuits Manufacturing Company Limited v West End Distributors* (1969) EA 696 stated as follows: -

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”
 13. Also, the case of *John Musakali v Speaker County of Bungoma & 4 others* (2015) eKLR, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”
 14. Further, Ojwang J (As he then was) in *Oraro v Mbaja* (2005) KLR 141 where after quoting the statement of Law, J.A. in the *Mukisa Biscuits* case (*supra*) went on to state that:-

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in



any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, 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. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....

Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”

15. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from pleadings and not outside of the pleadings.
16. I am of the view that the issues for determination are intertwined to the extent that they both seek to determine the jurisdiction of this court in further dealing with this matter. This court will be confined to the pleadings in a bid to confirm whether there is jurisdiction to deal with the matter.
17. The plaintiffs filed the plaint dated 13th February, 2025 seeking orders against the defendants for the following:-
 - a. A declaration that the 1st and 2nd defendants’ officials are illegally in office.
 - b. A declaration that the transfer of the properties, including the Ruaraka Housing Project (Title No. LR 8393) and Utumishi House (Title No. LR. 209/8592/4) was unlawful, fraudulent and without the knowledge or consent of the plaintiffs.
 - c. An order of specific performance compelling the 1st and 2nd defendants to reverse the unauthorized transfer of the properties back to the plaintiffs or to restore the properties to the plaintiffs’ full control and ownership.
 - d. Cancellation or revocation of all the emanating subdivisions from parcel numbers LR. 8393.
 - e. An order of permanent injunction restraining the 1st and 2nd defendants from further dealing with, transferring, or selling the properties in question without the consent of the plaintiffs.
 - f. An order for the 1st and 2nd defendants to account for all profits and dividends derived from the properties including all financial gains from the sale, leasing, or other commercial dealings involving the properties, and for the defendants to pay the plaintiffs any such profits and dividends they are entitled to including those accrued over the past 30 years.
 - g. A declaration that the actions of the 1st and 2nd defendants in holding meetings virtually excluding members and in making decisions without proper consultation, are unlawful and void.
 - h. An order compelling the 1st and 2nd defendants to provide an accurate and transparent account of how their finances are utilized all meetings, elections and decision-making processes conducted by them, and to reinstate the plaintiffs right to participate in future meeting and decision making processes.
 - i. An order for the 1st and 2nd defendants to compensate the plaintiffs for damages and losses suffered including but not limited to:- loss of dividends over the last 30 years.- loss of use and benefit from their investments.- financial and reputational harm caused by the defendants’



actions.- any other financial losses incurred due to the defendants' breach of duty, fraud, and misrepresentation.

- j. Any other order that the honourable court deems fit to grant in the interest of justice and to ensure that the plaintiffs' rights are fully restored and protected.
 - k. Costs of this suit.
18. In this case, the plaintiffs pleaded "That on or around the year 1982, the 3rd defendant (Kenya Police Savings and Credit Cooperative Society) through its management decided to start a development project for its members." I believe the wording in this paragraph is what the 1st defendant contends to be the period when the cause of action arose. A plain reading of the plaint does not expressly state when the cause of action arose, but seeks to give a narration of the events leading to the filing of the suit from 1982 to date. Equally, the plaintiffs submitted that there are fraudulent transactions which they discovered in the year 2024 when they began investigations. If say for example this statement was true, it would mean that the court would be required to comb through evidence to establish these facts which is not permitted within the dictates of the principles of a preliminary objection.
19. In my view, it is not clear when the cause of action arose, and in a situation where there is no such clarity, it is only through trial that such facts can be established. On this ground, the preliminary objection fails.
20. The jurisdiction of this court has also been drawn. Section 13 of the [Environment and Land Court Act](#) outlines the jurisdiction of this court as follows:-
- "(1) The court shall have original and appellate jurisdiction to hear and determine all dispute 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.
 - (3) Nothing in this Act shall preclude the court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the [Constitution](#)."
21. From the above, it is clear that issues relating to land administration and management falls under the jurisdiction of this court. However, the internal affairs of the company and its management thereof are not issues to be dealt with by this court. While it is clear that some of the prayers sought cannot be



granted by this court, this does not disqualify the whole suit. In any case, the court can only grant the orders which it is permitted by law to grant under its jurisdiction. These can be framed in the issues for determination as considered by the court in its judgment. Let me say that the court is called to administer justice in all its cases and in doing so, it will be guided by the principles of natural justice that ensures that a party is afforded the chance to present its grievances and heard in a court of law.

22. From the above, it is my finding that the notice of preliminary objection dated 21st February 2025, lacks merit and it is hereby dismissed.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 10TH DAY OF JULY, 2025.

HON. MBOGO C.G.

JUDGE

10/07/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Teddy Ochieng for the 2nd Defendant

Mrs. Ndung'u for the 1st Defendant

Mr. Ogude for the Plaintiff

