



Leley & 36 others v Stabex International Limited (Environment and Land Case E020 of 2025) [2025] KEELC 5074 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5074 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E020 OF 2025**

**EM WASHE, J
JULY 2, 2025**

BETWEEN

**ERICK LELEY & 36 OTHERS & 36 OTHERS & 36 OTHERS & 36 OTHERS &
36 OTHERS & 36 OTHERS PLAINTIFF**

AND

STABEX INTERNATIONAL LIMITED DEFENDANT

RULING

1. The Defendant (hereinafter referred to as “the Applicant”) filed the Preliminary Objection dated 24th March 2025 (hereinafter referred to as “the present PO”) seeking to strike out the Notice of Motion Application dated 13th March 2025 (hereinafter referred to as “the pending application”) filed by the Plaintiffs (hereinafter referred to as “the Respondents”) on the following points of law; -
 - a. That this honourable court lacks jurisdiction to determine the matter in the first instance by dint of the provisions of Section 36 of the *Energy Act* CAP 314 LOK.
 - b. That the Application is fatally defective and an abuse of the court process for being contravention of Order 1 Rule 13 and Order 4 Rule 1 of the *Civil Procedure Rules, 2010*.
2. The present PO was duly served on the Respondents who expressed their intention to oppose the same.
3. The Court directed the present PO to be canvassed by way of written submissions.
4. While dealing with Preliminary Objections generally, the Court is guided by the findings made in the case of *Mukhisa Biscuits Limited-versus- Westend Butchery Limited* (1969) EA 6969 where the Court of Appeal stated as follows; -

“A preliminary Objection is in the nature of what used to be called a demurer. It raises a pure point of law which is argued on the assumption that all 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.”

5. In essence, for a Preliminary Objection to be sustained by a Court of Law and proceed for hearing, the court must satisfy itself that the facts relied upon in the determination of the Preliminary Objection can be assumed to be correct by both sides and are not in dispute.
6. In the event the Court is called upon to ascertain which facts are to be relied upon or it is required to exercise its discretion to identify the facts to be relied upon, then a PO cannot be sustained.
7. Turning to the present PO, it is important to identify the issues pleaded by the Applicant and the Respondents in the pending Application and the Replying Affidavit sworn by the Applicant that laid the basis of the present PO.
8. A perusal of the Respondents pending Application, the following facts were pleaded in support of the prayers sought therein; -
 - i. That the Respondents in this PO are residents of Baharini Area within Eldoret Town in Uasin Gishu County.
 - ii. That the Applicant has commenced construction of a gas refilling Plant at Baharini Area in Eldoret Town within Uasin Gishu County.
 - iii. That on 26th September 2024, there was a public participation exercise convened by the National Environmental Management Authority over the proposed construction of the Applicants gas refilling Plant.
 - iv. That the process of obtaining the Environmental Impact Assessment (EIA) Report by the National Environmental Management Authority (NEMA) is not yet complete and/or the Environmental Impact Assessment Approval has not been issued.
 - v. That in the absence of the EIA licence being granted by the NEMA, the Applicants herein should be enjoined from constructing the proposed Gas Refilling Plant within Baharini area.
 - vi. That the Respondents are of the considered view that if the proposed gas refilling plant being undertaken by the Applicant will proceed, the same will cause environmental degradation through pollution and will pose a danger of explosive gases.
9. On the other hand, the Applicant in their Replying Affidavit dated 24th March, 2025 state the following facts:-
 - i. The Applicant confirms that it is in the process of setting up a gas refilling plant within Baharini Area in Uasin Gishu County
 - ii. The Applicant pleaded that this Court lacks jurisdiction to hear and determine the pending application for non-Compliance with Section 36 of the *Energy Act* Cap 314 Laws of Kenya.
 - iii. According to the Applicant, any dispute arising from the issuance of a licence to operate a gas refilling facility should first be presented to the Energy and Petroleum Tribunal for adjudication.
 - iv. Secondly, the Applicant pointed out that the Respondents have failed to comply with the provisions of Order 1 Rule 13 and Order 4 Rule 3 of the *Civil Procedure Rules, 2010* as the person known as Erick Leley is not authorised to file the Plaintiff or the Application before court.



- v. The Applicant further proceeded to indicate that the person known as Erick Leley attempted to extort money from the Applicant entity for his selfish gains which act resulted in a complaint being lodged at Langas Police Station via OB No. 15/28/2/25 by the Applicant.
 - vi. In addition to the above, the Applicant informed the Court that the project currently under construction was within an Industrial Zone based on the Zoning of Uasin Gishu County and not a residential area as alleged by the Respondents.
 - vii. The Applicants confirmed that the EIA Licence has not been issued because the EIA Comprehensive Project Report was submitted to NEMA on 4th March, 2025.
 - viii. Be as it may, the Applicants stated that the Company will develop the Project within the legal and institutional framework provided in the *Energy Act, EMCA* 2015, Kenya Bureau of Standards Rules and Regulations and the *Occupational Health and Safety Act* (OSHA).
10. Having established the facts as pleaded by the Applicant and the Respondents herein, then this Court will now proceed to evaluate the merits and demerits of the three points of law raised in the present PO.
 11. The first point of law raised by the Applicant in the present PO is that this Court has no jurisdiction to entertain and/or determine the pending application for the reason that the Respondents ought to have invoked the provisions of the *Energy Act*, Cap 314 and in particular Section 36.
 12. According to the Applicant, the reliefs sought by the Respondents in the pending Application are within the mandate and jurisdiction of the Energy & Petroleum Tribunal and not this Court at the first instance.
 13. On the other hand, the Respondents are of the view that the Applicant's construction of the Gas Re-filing Plant is one that does not have the relevant Environmental Impact Assessment License and therefore this Court has jurisdiction to hear and determine a prayer for injunction pending the hearing and determination of the main suit.
 14. Clearly, based on the facts pleaded by the Applicant and the Respondents, there is an issue of which law should be applied in the determination of the pending Application before Court.
 15. The Respondents believe that the applicable law is the *Civil Procedure Act*, Cap 21 and the *Civil Procedures Rules, 2010* and read with the *Environmental Management & Conservation Act* while the Applicant is of the view that the Applicable law in determining the pending Application and suit is the *Energy Act*, Cap 314 Laws of Kenya.
 16. This variance in facts and the law applicable is one that requires the Court to hear the matter on merit and cannot be determined through the present PO.
 17. In essence therefore, this first ground of the present PO is not merited and is disallowed.
 18. The second point of law in the present PO is whether or not the Application dated 13th March, 2025 contravenes the provisions of Order 1 Rule 13 and Order 4 Rule 3.
 19. Order 1 Rule 13(1) and (2) provides that: -
 - “(1) 1) Where there are more Plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead and act for such other in any proceeding, and in like manner, where there are more Defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.



(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”

20. The Applicant in the present PO and their submissions pleaded that the person known as Erick Leley does not have any written authority from the 2nd to 36th Respondents to either appear, plead and act on their behalf.
21. As such, the pending Application and the entire suit should be struck out for contravening the provisions of Order 1 Rules 13 of the [Civil Procedure Rules, 2010](#).
22. On the other hand, the person known as Erick Leley pleaded in the pending Application that he had a written authority from the 2nd to 36th Respondents to appear, plead and act on their behalf.
23. Consequently, all the pleadings that have been filed by him are on behalf and with the consent of the 2nd to 36th Respondents.
24. The document that the person known as Erick Leley presented to the Court as proof of complying with Order 1 Rule 13 is the document described as “The List of Participants and their corresponding Bio-Data” produced as EL-1.
25. The Court has carefully perused “the List of Participants and their Corresponding Bio-Data” produced by the 1st Respondent and it is clear that it does not conform with the provisions of Order 1 Rule 13.
26. This is because although the same contains various names, the said persons who appear in this List do not consent and/or give authority to the 1st Respondent to appear, plead and act on their behalf in this matter.
27. In the absence of the express consent and/or authority to the 1st Respondent from the 2nd to 36th Respondents giving powers to the 1st Respondent to appear, plead and act on their behalf, then the 1st Respondent has offended the provisions of Order 1 Rule 13.
28. As such, this Court is of the considered view that the names of the 2nd to 36th Respondents herein should be forthwith struck out from both the Plaintiff and the pending Application.
29. The third Point of Law raised by the Applicant is that the Respondents pleadings offend the provisions of Order 4 Rule 3 of the [Civil Procedures Rules, 2010](#).
30. The provisions of Order 4 Rule 3 of the [Civil Procedure Rules, 2010](#) state as follows; -

“Where the subject-matter of the suit is immovable property, the Plaintiff shall contain a description of the property sufficient to identify it”
31. The Applicant’s submission is that the pleadings filed by the Respondents do not disclose the accurate registrable property number that is the dispute in the matter.
32. To the Applicant, the description that the Applicant is constructing a Gas Refilling Plant within Baharini Area in Eldoret Town is not sufficient to describe the suit property.
33. The Respondents in the pending Application and the Further Affidavit sworn on 09.05.2025 stated that the area within which the Applicant is developing the Gas Refilling facility has not been subdivided and/or issued with individual title documents.



34. The Respondents stated that the Applicant is currently undertaking the construction of the Gas Refilling Facility on within Plot No. L.R. Uasin Gishu/Chemalal/208 which still belongs to an entity called Chemalal Farmers Co-Operative Limited.
35. Be as it may, the mere fact that the Applicants have not provided a description of the registrable portion of land in which the Applicants facility is being established is not a sufficient ground to uphold the preliminary objection.
36. This is because parties in any proceedings are under a duty to disclose all the facts before the court and assist in the determination of the real issues that are at hand.
37. In conclusion therefore, the Court hereby makes the following orders on determination of the PO dated 24th March, 2025;-
 - i. The PO dated 24th March, 2025 partially succeeds.
 - ii. The PO succeeds to the extent that the 2nd to 36th Respondents be and are hereby struck out from the pending Application dated 13th March, 2025 and in the Plaint dated 13th March, 2025.
 - iii. The PO seeking to strike out the pending Application dated 13th March, 2025 is hereby disallowed.
 - iv. The pending Application dated 13th march, 2025 and the Plaint dated 13th March 2025 will only be between the 1st Plaintiff Erick Leley and the Defendant Stabex International Limited.
 - v. On the issue of costs, each party will bear their own costs.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 2ND DAY OF JULY 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Plaintiff: Mr. Kigen for the Plaintiffs/Respondents

Defendant: Mr. Kiprono for the Defendant/Applicants

