



**Ndung'u (Suing as next of kin of Geoffrey Ndungu Kahura) v Mavuti & 4 others
(Land Case E179 of 2024) [2025] KEELC 6023 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6023 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E179 OF 2024
CG MBOGO, J
SEPTEMBER 17, 2025**

BETWEEN

**MARY MUGECHI NDUNG'U (SUING AS NEXT OF KIN OF GEOFFREY
NDUNGU KAHURA) PLAINTIFF**

AND

**GERALD MAKAU MAVUTI 1ST DEFENDANT
ROSEMARY NTHENYA MAVUTI 2ND DEFENDANT
KEVIN KAVUU MAVUTI 3RD DEFENDANT
COMPANY LIMITED 4TH DEFENDANT
THE LAND REGISTRAR, NAIROBI 5TH DEFENDANT**

RULING

1. Before this court, is the notice of preliminary objection dated 7th January, 2025 filed by the 4th defendant challenging the plaint dated 23rd April, 2024 on the following grounds:-
 1. That the 4th defendant is the director of Buruburu Farmers Company Limited hence he does not act in his personal capacity.
 2. That Buruburu Farmers Company Limited is a Limited Liability Company registered as such under the Company's Act 2015 Laws of Kenya.
 3. That Buruburu Farmers Company Limited is a separate legal entity capable of suing and being sued in its own capacity.
 4. That the 4th defendant is therefore wrongly enjoined in the suit herein.
 5. That the plaint dated 23rd April, 2024 raised no cause of action against the 4th defendant.



6. That there are no remedies sought against the 4th defendant in the plaint dated 23rd April, 2024.
 7. That the aforesaid 4th defendant should be struck out of the proceedings of this suit with costs thereto for misjoinder as a party.
2. The preliminary objection was canvassed by way of written submissions. The 4th defendant filed his written submissions dated 16th April, 2025. He submitted that the plaintiff asserts to have purchased Nairobi Block 102/590 from the 4th defendant with the help of Washington Gathanu and Waweru Nginya who were the officials of Buruburu Farmers Company Limited. Further, that at the time of the alleged transaction, the said directors carried out the acts on behalf of the company. In light of that, the 4th defendant submitted that he cannot be sued in his personal capacity. He relied on the case of *Salmon v Salmon & Co. Ltd* (1986) UKHL, 1897 AC22, *Vihiga Farmers Co. Ltd v Nathan Indombelo* [2018] eKLR, and *Multichoice Kenya Ltd v Mainkam Ltd & Anor.* [2013] eKLR.
 3. The 4th defendant further submitted that there is no substantial evidence provided to establish that he was involved in any fraudulent acts or that he acted ultra vires the company's constitution. To buttress on this issue, he relied on the case of *Stanley Thyaka Muindi v Matewa Agencies Ltd & 2 others* [2019] eKLR.
 4. The plaintiff filed her written submissions dated 8th July, 2025 where she raised two issues for determination as listed below: -
 - i. Whether it is proper to institute a suit against the 4th defendant.
 - ii. Whether the directors for the 4th defendant acted ultra vires.
 5. On the first issue, the plaintiff submitted that the plaint does not describe the 4th defendant as an individual but as the chairman Buruburu Farmers Company Limited. While invoking Article 159 (2) (d) of *the Constitution*, the plaintiff urged this court to allow the amendment of the plaint so as to solve the dispute in question. She submitted that striking out the 4th defendant will not cure the issues in the suit as the remedies sought in the plaint do not directly involve any individual.
 6. On the second issue, the plaintiff submitted that since the directors of the company act for the best interests of a company, it is thus the duty of the company to illustrate instances where its directors acted ultra vires in order to avoid liability.
 7. I have considered the objection and the written submissions filed by the respective parties. I am of the view that the issue for determination is whether the grounds raised in the preliminary objection have merit.
 8. Law, J.A. in *Mukisa Biscuits Manufacturing Company Limited -vs- 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...”



9. Also, the case of John Musakali vs. 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.”

10. Further, Ojwang J (As he then was) in Oraro -vs- Mbaja (2005) KLR 141 where after quoting the statement of Law, JA. 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...”

11. 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 and not outside of the pleadings.

12. The plaintiff filed the plaint dated 23rd April, 2024 suing the defendants therein. The 4th defendant in the suit refers to the Chairman Buruburu Farmers Company Ltd. It is based on this description that the 4th defendant filed the instant objection. It is trite law that a company can sue and be sued in its own name which gives it the locus standi to appear before the court. I have perused the plaint and in paragraph 3, the plaintiff identifies the 4th defendant as chairman of Buruburu Farmers Company Ltd. In the plaint, the plaintiff contends that the 4th defendant colluded with the leadership of the company to dispose and fraudulently transfer the share number of the suit property. The plaintiff went ahead to plead particulars of fraud and illegality. In paragraph 14 of the plaint, the acts of the 4th defendant are pleaded which resulted to the filing of the suit. As the plaint has been drafted, one can easily conclude that the suit against the company is well targeted to a person occupying a certain position. However, and as submitted by the plaintiff, she maintains that no individual has been directly mentioned.

13. In my view, I do not find that the error in bringing this suit against the company is capable of disposing the suit. While the suit is yet to be set down for hearing, the plaint can be cured through amendment to ensure that the proper party has been sued. I say so because, the 4th defendant admits to the description based on paragraph 2 of the statement of defence dated 22nd July, 2024.

14. Secondly, the 4th defendant has raised the issue of whether he acted ultra vires. Let me quickly point out that these are issues which can only be tried during the hearing where the parties will have the chance to produce their evidence. Thus, it is not fit to be canvassed in an objection since the court will be required to comb through evidence.



15. From the above, I find no merit in the notice of preliminary objection dated 7th January, 2025, and the same is hereby dismissed. The plaintiff is directed to amend, file and serve the plaint accordingly strictly within the next 7 days from the date hereof. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE

17/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Wangui holding brief for Mr. Mungai for the 4th Defendant

Mr. Samson Naisho for the Plaintiff/Respondent

