



REPUBLIC OF KENYA



**Okongo & another v Okero & 3 others (Environment and Land Case E007 of 2025) [2025] KEELC 6115 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6115 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND CASE E007 OF 2025  
DO OHUNGO, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**WILLIAM MATUNDWA OKONGO ..... 1<sup>ST</sup> PLAINTIFF**

**JAMES KERORE OKONGO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FRANCIS ONGWENYI OKERO ..... 1<sup>ST</sup> DEFENDANT**

**GODFRAY SIBOTAOKIBO ..... 2<sup>ND</sup> DEFENDANT**

**RONARD OSANO MOMANYI ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR NYAMIRA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs moved the Court through an undated Complaint which they filed on 21<sup>st</sup> February 2025 and in which they averred that they were the registered proprietors of the parcel of land known as Isoge/Kineni/Block57 (the suit property). That the Defendants had encroached upon and cultivated the suit property without their permission.
2. The Plaintiffs therefore sought judgment against the Defendants for:
  - a. Declaration that the plaintiffs are the registered proprietors or lawful owners of LR No ISOGE/KINENI 57.
  - b. An order of eviction directed against the defendant, his agents, servants, and/or anyone claiming under the defendant number LR.No.ISOGE/KINENI/57 and /or any portion thereof.
  - c. Permanent injunction restraining the defendant either by himself, agents, servants and/or anyone claiming under the defendant from entering upon, re-entering, trespassing unto



cultivating, building structures, interfering with and 'or an any other manner dealing with the suit land.

- d. General damages for trespass.
  - e. Interest on (d) hereof at court rates.
  - f. Costs of this suit to be borne by the defendants.
3. Alongside the Plaint, the Plaintiffs filed Notice of Motion dated 18<sup>th</sup> February 2025, through which they sought orders of injunction.
  4. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants reacted to the suit by filing Notice of Preliminary Objection dated 11<sup>th</sup> March 2025. This ruling is in respect of the said objection.
  5. The objection was pleaded as follows:

Take Notice the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants will raise a Preliminary Point of Law that this suit is bad in law as it is based on land parcel NO. 57 which as at the time of filing the suit did not exist.

6. The objection was canvassed through written submissions. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants filed submissions dated 14<sup>th</sup> April 2025. They argued that the correct name of the property in dispute is Isoge Settlement Scheme/57. That the registered proprietor of the said parcel was Nyagechanga Okongo and that the parcel was closed on 4<sup>th</sup> January 1988 upon subdivision into other parcels. That the suit property ceased to exist on subdivision and that the Plaintiffs have no capacity to mount the suit. They annexed to their submissions a copy of the register in respect of Isoge Settlement Scheme/57 and copies of some title deeds. They further contended that the suit is a complete waste of judicial time and urged the Court to strike it out with costs to them.
7. The 4<sup>th</sup> Defendant neither filed any submissions nor participated in the hearing of the objection.
8. The Plaintiffs filed submissions dated 8<sup>th</sup> May 2025. They argued that there was no point of law raised in the objection and that the allegations therein require verification through evidence. They relied on the cases of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, Alex Lubwa Mwela v Benedict Shalimba Machanja & 3 others [2020] KEHC 2792 (KLR), and Oraro vs Mbaja [2005] 1KLR 141 and argued that the objection had not been properly raised. They therefore urged the Court to dismiss it with costs.
9. I have considered the objection and the submissions. The only issue for determination is whether the objection is a valid one.
10. The law on preliminary objections was succinctly summed up in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 by Law JA as follows:

So far as I'm aware, a preliminary objection consists 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 point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

11. Consequently, for a preliminary objection to be valid, it must raise a pure point of law which is argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. If it is



- upheld, a valid preliminary objection should result in summarily terminating the suit or application against which it is raised.
12. Not every objection amounts to a valid preliminary objection. If what is raised is not a pure point of law, the issue is better addressed through a substantive application or in the ordinary course of defending a given matter. Sir Charles Newbold (P) held.
  13. The question of what constitutes a valid preliminary objection was recently revisited by the Court of Appeal in *Ndumba v Returning Officer Kimilili Constituency & another* [2025] KECA 636 (KLR) where the Court held:
    26. A P.O serves to challenge the legal sufficiency of a case, proceeding on the assumption that all factual claims presented are accurate. It is reserved solely for addressing legal points, strictly avoiding engagement with any disputed factual matters. The court's assessment hinges on whether the objection originates exclusively from the pleadings and is rooted firmly in established legal principles.
    27. Should the determination necessitate an inquiry into extraneous factual matters, or the exercise of judicial discretion, a P.O would be deemed procedurally inappropriate. See the case of *Oraro Vs Mbaja* [2005] 1KLR 141, where the Court held that: "Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence".
    28. A P.O cannot be raised if any fact has to be ascertained from elsewhere, or if the court is called upon to exercise judicial discretion. The court will also take into account that the P.O must stem from the pleadings and raise pure point/s of law. It should not deal with disputed facts, nor should it derive its foundation from factual information.
  14. A perusal of the objection herein and the 1<sup>st</sup> to 3<sup>rd</sup> Defendants' submissions leaves no doubt that the objection revolves around identity and ownership of the property in dispute. All those are matters that cannot be resolved without receiving and considering evidence. It is not surprising that in an effort to prop up the objection, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants went as far as attempting to introduce evidence through their submissions. That is not permissible.
  15. In view of the foregoing, I find that Notice of Preliminary Objection dated 11<sup>th</sup> March 2025 is not a valid preliminary objection. I dismiss it with costs to the Plaintiffs.

**DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

No appearance by the Plaintiff

No appearance by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants

No appearance by the 4<sup>th</sup> Defendant

Court Assistant: B Kerubo

