



**Pareiyo & another (Suing on behalf of the Estate of the Late Senet Ole Pareiyo) & another v Ntanya & 2 others (Sued in their own capacity and as Chairman, Secretary and Treasurer of Ratia Group Ranch 21A & 30B of Entontol Location) & 2 others (Environment & Land Case 137 of 2017) [2024] KEELC 1172 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1172 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 137 OF 2017**

**CG MBOGO, J**

**MARCH 5, 2024**

**BETWEEN**

**BENEDICT TIANITA OLE PAREIYO & TEKETI OLE SENET PAREIYO  
(SUING ON BEHALF OF THE ESTATE OF THE LATE SENET OLE  
PAREIYO) ..... 1<sup>ST</sup> PLAINTIFF**

**NAEKU ENE PAREIYO & JUSTAS SAITABALI PAREIYO (SUING ON BEHALF  
OF THE ESTATE OF THE LATE KONANA OLE PAREIYO) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LETE OLE NTAIYA, SIMINTEI OLE KISHAMPILI & PEMBA OLE RATIA  
(SUED IN THEIR OWN CAPACITY AND AS CHAIRMAN, SECRETARY  
AND TREASURER OF RATIA GROUP RANCH 21A & 30B OF ENTONTOL  
LOCATION) ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, NAROK SUB-  
COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the Notice of Preliminary Objection dated 14<sup>th</sup> November, 2023, filed by the 1<sup>st</sup> defendants, challenging the suit on the following grounds: -

1. That on the face of the record, this honourable court lacks the pecuniary jurisdiction to hear and entertain this suit.



2. That this honourable court lacks the jurisdiction to entertain this suit as it offends Section 30 of the [Land Adjudication Act](#), Cap 284 Laws of Kenya.
  3. That in the circumstance therefore, the suit as filed in court against the 1<sup>st</sup> defendants/applicants is barred in law, incompetent, and an abuse of the court process and this honourable court should dismiss and/or strike it out with costs to the 1<sup>st</sup> defendants/applicants.
2. The Notice of Preliminary Objection was opposed by the replying affidavit of the 1<sup>st</sup> plaintiff sworn on his own behalf on 4<sup>th</sup> December, 2023 and on behalf of the 2<sup>nd</sup> plaintiff. The 1<sup>st</sup> plaintiff deposed that this court is clothed with jurisdiction to hear and determine this matter as it emanates from a resolution of the members of the 1<sup>st</sup> defendant passed on 10<sup>th</sup> August, 2013. Further, that when the parcel of land no. 21A was sub-divided amongst 23 members, the group did not leave any site or portion for public utilities. That around early in the year 2014, they received information that members of the majority clan had hatched a plot to disinherit the plaintiffs of their portions by hiving off individual portions, allegedly for a public utility, being a school.
  3. The 1<sup>st</sup> plaintiff further deposed that upon resolution for sub-division and allotment of the property to individual members, the parcels of land ceased being for the entire group, and became vested to individual members and the 1<sup>st</sup> defendant had no authority to interfere with individual members' portions. Further, he deposed that the 1<sup>st</sup> defendant in its amended statement of defence admits that upon resolution for subdivision, the property ceased to be for the Group Ranch. Also, that the 1<sup>st</sup> defendant has not produced a valuation report to back up its claims that this court lacks the pecuniary jurisdiction to entertain this suit.
  4. The notice of Preliminary Objection was canvassed by way of written submissions. On 6<sup>th</sup> December, 2023, the plaintiffs filed their written submissions dated 4<sup>th</sup> December, 2023 where they raised two issues for determination as listed herein below: -
    - a. Whether this suit offends Section 30 of the [Land Adjudication Act](#), Cap 284, Laws of Kenya.
    - b. Whether this honourable court lacks the pecuniary jurisdiction to hear and determine this suit.
  5. On the first issue, the plaintiffs submitted that this suit seeks to protect plaintiffs' interests in their individual portions as the 1<sup>st</sup> defendant seeks to hive off parts thereof to create a site or portion for public utilities that were not provided during sub-division. Also, that the processes under the [Land Adjudication Act](#) have been overtaken by events owing to the issuance of the title deeds. The plaintiffs relied on the case of [Stringer Muzungu Lumwe & Another versus Shida Tuji Tsuma & 2 Others](#), [2021] eKLR.
  6. On the second issue, the plaintiffs submitted that there is no valuation report by the 1<sup>st</sup> defendant to ascertain the value of the suit parcels to question the pecuniary jurisdiction of the honourable court. Further, that the issue of pecuniary jurisdiction is based on facts which have to be ascertained and fails to meet the threshold of a preliminary objection.
  7. The 1<sup>st</sup> defendant did not file their written submissions. Be that as it may, I have considered the Notice of Preliminary Objection, the replies and the written submissions filed by the plaintiffs and, in my view, the issue for determination is whether the preliminary objection has merit.
  8. A Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd* (1969) EA 696 to mean: -



Per Law, JA

“So far as I am 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”.

Further Sir Charles Nebbold, P stated that: -

“ A Preliminary Objection is in the nature of what used to be a 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

9. This court having made a finding on the description of a preliminary objection, it is not in doubt that a preliminary objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. In the case of *Quick Enterprises Ltd versus Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999, the court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

10. It is also this court’s opinion that in determining a Preliminary Objection, the court will also consider that the Preliminary Objection must stem from the pleadings and raise pure point of law. See the case of *Avtar Singh Bhamra & Another versus Oriental Commercial Bank*, Kisumu HCCC No.53 of 2004, where the court held that: -

“ A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

11. Before I embark on determining the merits of the Preliminary Objection, this court has to first determine whether what has been raised herein satisfies the ingredients of a Preliminary Objection. As the court determines whether what the plaintiffs have filed amounts to a Preliminary Objection or not, the court is persuaded by the findings in the case of *Oraro versus 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”.

12. I have perused the amended complaint dated 19<sup>th</sup> September, 2023, where the plaintiffs are seeking the following orders: -

- a. A permanent injunction be issued restraining the 1<sup>st</sup> defendant whether by itself, officers, directors, servants and or its agents or whomsoever is acting on its behalf from trespassing onto the plaintiffs’ land, interfering with their quiet possession and any way alienating, sub-dividing



and or interfering with the plaintiffs, ownership of their respective portions in parcel no. 21A-Ratia Group Ranch.

- b. A permanent injunction be issued restraining the 2<sup>nd</sup> defendant whether by itself, officers, directors, servants and/or its agents or whomsoever is acting on its behalf from acting on any purported resolution passed by the 1<sup>st</sup> defendant to alienate and/or subdivide the plaintiffs' individual portions of land in parcel no. 21A-Ratia Group Ranch.
  - c. Costs of this suit.
  - d. Any other relied this honourable court may deem fit to grant.
13. In the said plaint, the plaintiffs' claim as against the 1<sup>st</sup> defendant is for an injunction restraining the 1<sup>st</sup> defendant from trespassing onto the plaintiffs' land, interfering with their quiet possession and in any way alienating, sub-dividing and or interfering with their ownership of their respective portions in parcel no. 21A.
  14. Again, the plaintiffs claim as against the 2<sup>nd</sup> defendant is to restrain the 2<sup>nd</sup> defendant from acting on any purported resolution passed by the 1<sup>st</sup> defendant to alienate and/or subdivide the plaintiffs' individual portions of land in parcel no. 21A.
  15. I have also perused the 1<sup>st</sup> defendant's statement of defence and counter claim dated 6<sup>th</sup> September, 2022. The 1<sup>st</sup> defendant in paragraph 8, admits the contents of paragraph 10 of the plaint that upon resolution for sub-division and allotment of the property to the individual members of the group ranch, the property ceased to be the group ranch but denies that it vested in individual members of the group ranch until the same are registered to individual members.
  16. Interestingly, the 1<sup>st</sup> defendant filed a counter claim seeking orders of eviction and permanent injunction against the plaintiffs as well as costs and it beats logic as to why they would change tune and claim that the court now lacks the jurisdiction to hear and determine the suit.
  17. The 1<sup>st</sup> defendant also did not give further explanation on the pecuniary jurisdiction of this court to hear the matter. There was no valuation report to support this claim. In addition, the plaintiffs' claim as against the 1<sup>st</sup> defendant is one for injunction and nowhere have the plaintiffs' intimated that their claim was an issue that require to be addressed under the dispute resolution mechanisms provided under the *Land Adjudication Act*.
  18. From the above, I find that the Notice of Preliminary Objection dated 14<sup>th</sup> November, 2023 lacks merit and the same is hereby dismissed with costs to the plaintiffs. Further mention on 19<sup>th</sup> March, 2024 for directions. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 5<sup>TH</sup> DAY OF MARCH, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**5/03/2024.**

In the presence of:

Mr. E. Meyoki – C. A

