



Majimoto Group Ranch v Matunke & another (Environment & Land Case E012 of 2024) [2024] KEELC 5028 (KLR) (3 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E012 OF 2024**

CG MBOGO, J

JULY 3, 2024

BETWEEN

MAJIMOTO GROUP RANCH PLAINTIFF

AND

DAVID MAYONE MATUNKE 1ST DEFENDANT

STABEX INTERNATIONAL LIMITED 2ND DEFENDANT

RULING

1. The defendants filed a notice of preliminary objection dated 18th June, 2024 seeking that the notice of motion dated 11th June, 2024 be struck out on the following grounds: -
 1. That the applicant lacks *locus standi* to institute, prosecute and sustain the suit as it (the applicant), is a non-existent entity the same having been finally dissolved on 1st December, 1995 and a certificate of final dissolution of incorporated group representatives-Majimoto Group Ranch dated 29th January 2024 issued it therefore lacks capacity to sue in its name under the *Land (Group Representatives) Act*, the [Land Adjudication Act](#) or any other laws.
 2. That the honourable court lacks subject matter jurisdiction as there does not exist any parcels of land known as Cis/ Mara/ Majimoto/ 8 and Cis/ Mara/ Majimoto/ 2076.
 3. That the instant application is *res judicata* as the subject matter was competently and exhaustively dealt with in Nakuru ELC Misc. Application No. 234 of 2016 [David Mayone Matunke vs The District Land Registrar, Narok North](#), the suit having been fully determined on 22nd February, 2017.
 4. That the suit is *res sub judice* ELC Petition No. 268 of 2017 [Majimoto Group Ranch & Others versus David Mayone Matunke & Others](#) the same having been delivered on 8th July, 2023.



5. That the application and the suit are *res sub judice* Nakuru Court of Appeal Civil Application No. E018 of 2024 *D&E Holding & Others versus Majimoto Group Ranch & Others* since the same is pending at the Court of Appeal.
6. That the application and the suit are otherwise frivolous, vexatious and otherwise an abuse of the court process.
2. The notice of preliminary objection was canvassed by way of written submissions. The plaintiff filed their written submissions dated 27th June, 2024. The plaintiff submitted that by having a certificate of incorporation dated 16th December, 2016 owing to the change of group representatives, they have the requisite locus standi to initiate the instant suit and application. Further, it was submitted that this court delivered a ruling on 24th January, 2024 on the alleged dissolution of the plaintiff, and the same cannot be a subject of discussion at this stage.
3. The plaintiff further submitted that the suit property is in existence and situated in Narok which is further amplified by the green card annexed to the affidavit of Twala Manki. They submitted that the elements to be proved so as to succeed in invoking the bar of *res judicata* have been laid out. Further, they submitted that the elements are conjunctive and not disjunctive as the defendants would want this court to believe. It was their submission that the defendants have failed to demonstrate each element contained in Section 7 of the *Civil Procedure Act*, and as it was held in the case of *Independent Electoral & Boundaries Commission versus Maina Kiai & 5 Others* [2017] eKLR.
4. The plaintiff further submitted that the instant suit is not a duplicate of the proceedings in *Narok ELC No. 268 of 2017* which has already been heard and determined, and as such, the suit is not *sub judice*. They relied on the case of *Daniel Kipkemoi Bett & Another versus Joseph Rono* [2022] eKLR.
5. Further, they submitted that an order of this court is valid and has to be obeyed unless otherwise overturned. They submitted that simply because there is an application pending before the appellate court, the 1st defendant cannot continue to trespass on its property.
6. By the time of writing this ruling, the defendants had not filed their written submissions. Be that as it may, I have considered the preliminary objection and the written submissions filed by the plaintiff. I am of the view that the issue for determination is whether there is merit in the notice of preliminary objection.
7. 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 Newbold, 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”.

8. 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.
9. 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 Vs 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 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. As the court determines whether what the defendants have filed amount to a preliminary objection or not, this 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. In considering whether there is merit in the preliminary objection, there is need to ascertain the existence of undisputed facts or issues. The plaintiff filed the notice of motion dated 11th June, 2024. The defendants herein have not filed a response to the said application from which the court would have an opportunity to analyse any disputed or undisputed facts. Largely, and from the contention raised by the defendants as well as the grounds of the preliminary objection, this court will be required to comb through the evidence. This would defeat the object and purpose of a preliminary objection. To ascertain the merits of otherwise of the preliminary objection, this court is invited to look outside the pleadings and draw inference therefrom.
13. Having said the above, I find no merit in the notice of preliminary objection dated 18th June, 2024, the same is hereby dismissed. Costs in the cause. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 3RD DAY OF JULY, 2024.

HON. MBOGO C.G.

JUDGE

