



**Opany v Odhiambo (Environment and Land Appeal 42 of 2021)
[2023] KEELC 16199 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16199 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 42 OF 2021
GMA ONGONDO, J
MARCH 8, 2023
(FORMERLY MIGORI ELC APPEAL NO.12 OF 2020)**

BETWEEN

SAMUEL ODOYO OPANY APPELLANT

AND

RONALD OCHIENG ODHIAMBO RESPONDENT

JUDGMENT

1. On July 18, 2022, the appellant in person filed an application by way of a notice of motion of even date seeking, inter alia, to review, vary and or set aside this court’s judgment delivered on June 2, 2022.
2. The respondent through the firm of Tom Mboya and Company Advocates, opposed the application by way of grounds of opposition dated August 17, 2022 on October 11, 2022.
3. Both parties have filed and exchanged their respective submissions in respect of the application further to this court’s directions of October 17, 2010.
4. Interestingly, on November 9, 2022, the respondent’s counsel, Brian Mboya and Company Advocates lodged a notice of preliminary objection dated October 3, 2022 to the application.
5. So, this court is confronted with the application and the preliminary objection for hearing and determination. In that regard, which one should take priority over the other?
6. Article 159 (2) (b) of the Constitution of Kenya, 2010 provides;

“Justice shall not be delayed.”



7. In the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 at page 700 paragraph D-F, the Court of Appeal noted-

“.....A preliminary objection consists of a point of law which has been pleaded or.....may dispose of the suit....”

8. It is trite law that a point of law inclusive of jurisdiction is to be dealt with as the first order of business before an inquiry into merits of a cause; see *Kakuta Maimai Hamisi v Peris Pesu Tobiko and 2 others* (2013) KLR which applied the decision in *Owners of Motor Vessel Lillian “S” v Caltex Kenya Ltd* (1989) KLR 1.

9. On that basis, the hearing of the preliminary objection should take precedence over the application.

10. Thus, I order and direct that the preliminary objection is fixed for directions on May 22, 2023.

11. Orders accordingly.

DATED AND DELIVERED AT HOMA BAY THIS 8TH DAY OF MARCH 2023.

G .M A ONG’ONDO

JUDGE

PRESENT

1. Appellant in person

2. Mutiva F, Court Assistant.

