



REPUBLIC OF KENYA



KENYA LAW
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**Meeli & another v Kimani & 4 others (Environment & Land Case
108 of 2017) [2022] KEELC 13280 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13280 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 108 OF 2017
MN GICHERU, J
OCTOBER 5, 2022**

BETWEEN

MOSES MEELI 1ST PLAINTIFF

TOMOTHY KIIPA MEELI 2ND PLAINTIFF

AND

PETER MUNGAI KIMANI 1ST DEFENDANT

JOHN DUNCAN MBICHI 2ND DEFENDANT

HENRY MOORE KIPKURUI ARAP LASOI 3RD DEFENDANT

REGISTRAR KAJIADO LAND REGISTRY 4TH DEFENDANT

**ABSA BANK LENYA PLC (FORMERLY BARCLAYS BANK OF KENYA
LIMITED) 5TH DEFENDANT**

RULING

1. This ruling is on the Notice of Preliminary Objection dated 23rd July, 2021. It is filed by the fourth Defendant ABSA Bank Kenya PLC (formerly Barclays Bank of Kenya Limited).
2. The Preliminary Objection has two limbs namely;
 - (a) That under the provisions of Section 7 of the *Civil Procedure Act*, Cap 21, the Plaintiffs' counterclaim is res judicata as the matter has already been tried and decided in Kajiado Senior Resident Magistrate's Court in Land Dispute Application No. 18 of 2002.
 - (b) That copies of proceedings and judgment entered in Land Dispute Application No. 18 of 2002, which form part of the 3rd Defendant's (in the counterclaim) bundle of documents have already been admitted and adopted and form part of the record herein.



For the above reasons, the fourth Defendant prays that the Plaintiffs' said counterclaim be struck out with costs to the fourth Defendant.

3. The Preliminary Objection is opposed by the first Plaintiff who has sworn a replying affidavit dated 18th March, 2022 whose gist is that a similar objection was raised on 26/5/2015 and dismissed on 18th July, 2017, that the suit is not res judicata and the preliminary point is not based on a pure point of law thus the suit should be heard on merit after hearing all the evidence.
4. Only the first and the second Defendants' counsel in the main suit had filed written submissions by the deadline of 10th August, 2022. Other counsel did not comply.

In the submissions, it is urged that the current preliminary objection is an attempt to re-introduce the objection that the Court dismissed earlier and delay the quick conclusion of the matter.

Secondly, the Defendants' counsel urges that the Preliminary Objection does not meet the test laid in the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs. West End Distributors Ltd* (1969) EA 696, because it is not based on a pure point of law.

Counsel urges that it is bad in law, frivolous and incompetent and ought to be struck out.

5. I have carefully considered the Preliminary Objection in its entirety including the grounds, the replying affidavits, the submission and the entire record.

I find that the Preliminary objection has no merit for the following reasons.

Firstly, I have not seen the proceedings and judgment in Kajiado SRM'S Court Land Dispute Application No. 18 of 2002 even after perusing the record.

The fourth Defendant's (in the counterclaim) was to file them as per the order of 15/12/2021. She did not do so. The same applies to the proceedings before the District Land Disputes Tribunal. They have not been annexed.

Secondly, according to paragraph 13 of the first Defendants witness statement dated 20/11/2017, the proceedings before the Magistrate's Court at Kajiado and those of the Land Disputes Tribunal were quashed in Nairobi High Court Judicial Review Application No. 415 of 2015.

If that is the case, it would mean that the preliminary objection is based on something that is contested. Yet, as corrected stated by the counsel for the first Plaintiff (in the counterclaim), a Preliminary point of law must be based on uncontested facts.

Since the facts are not clear at this stage, it is premature to raise a Preliminary Point on the said proceedings.

For the above reasons, I dismiss the Preliminary Objection dated 23/7/2021.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

