



**Esmail v Abdeel Enterprises Limited & 3 others (Commercial Suit E337 of 2024)  
[2025] KEHC 2178 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2178 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL SUIT E337 OF 2024  
PM MULWA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**FATMABAI SHERALI ESMAIL ..... PLAINTIFF**

**AND**

**ABDEEL ENTERPRISES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**CINE ENTERPRISES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CINE INVESTMENT LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. The Plaintiff initiated this suit through the plaint dated 20<sup>th</sup> June, 2024, which was filed alongside a Notice of Motion application under certificate of urgency. The application is grounded in Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Article 159 of the *Constitution* of Kenya.
2. The application seeks a temporary injunction restraining the 4<sup>th</sup> Defendant from proceeding with the process of compulsory acquisition and compensation as outlined in Kenya Gazette Notice No. 2372, published on 24<sup>th</sup> February 2023, with public funds being allocated to the 3<sup>rd</sup> Defendant.
3. In response, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants filed Notices of Preliminary Objection. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' objection, dated 23<sup>rd</sup> September 2024 contends that the Plaintiff lacks locus standi to institute the suit, citing the Plaintiff's mental health condition, having been under medication for major depression disorder since 2008. The 4<sup>th</sup> Defendant's objection, dated 5<sup>th</sup> August 2024 asserts that the



Court lacks jurisdiction to hear the matter as per Sections 4 and 13 of the *Environment and Land Court Act*.

4. Following the directions of this Court, both Preliminary Objections were heard together by way of written submissions.
5. I have carefully reviewed the Preliminary Objections and the written submissions filed by the parties. The key issue for determination is whether the objections raised are merited.
6. I will first consider whether what is raised by the Defendants amount to a Preliminary Objection. What constitutes a Preliminary Objection was well established in the case of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Co. Ltd* (1969) EA 696, where the Court held that a Preliminary Objection consists of a point of law that has been pleaded or arises by clear implication from the pleadings, and if argued, it may dispose of the suit.
7. In *Quick Enterprises Ltd Vs Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999 it was held that:

A preliminary point as raised, 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.”
8. The 4<sup>th</sup> Defendant raises the issue of jurisdiction, emphasizing that jurisdiction is fundamental. As was held in *Owners of the Motor Vessel Lillian ‘S’ v Caltex Kenya Ltd* [1989] KLR 1, without jurisdiction, a Court has no power to make any further steps and when a Court lacks jurisdiction, it must cease all proceedings.
9. The term locus standi was defined in *Alfred Njau and Others v City Council of Nairobi* (1982) KAR 229, as the right to appear in Court. To state that a person has no locus standi means they have no right to be heard in the proceedings.
10. Both issues of jurisdiction and locus standi are pure points of law, and if successfully argued, they can dispose of the suit herein. Consequently, I find that the Preliminary Objections meet the required criterion.
11. Next, I will proceed to determine the merit of the objections. The first objection is on locus standi and touches on mental capacity. Locus standi is the right to appear before and be heard in a court of law. A party without locus standi has no meritorious case, and cannot be heard (see *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No. 464 of 2000).
12. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants argue that the Plaintiff has a mental condition, claiming she has been undergoing treatment for major depression disorder since 2008. The Plaintiff, on the other hand, asserts that she is mentally stable.
13. In *Grace Wanjiru Munyinyi & Another v Gedion Waweru Githunguri & 5 others* [2011] eKLR, the Court of Appeal stated that the presumption is that every person is of sound mind unless proven otherwise. This presumption is critical, as no person would be held responsible for their actions without it.
14. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not provided evidence to substantiate their claim about the Plaintiff’s mental condition. Although they refer to the Plaintiff’s previous admissions in other court matters, no supporting evidence has been presented before me.



15. In light of the lack of evidence to support the assertion of the Plaintiff's mental illness, I am unable to conclude that the Plaintiff lacks the mental capacity to file the present suit.
16. The 4<sup>th</sup> Defendant raised the issue of this court's jurisdiction to handle the instant suit. Jurisdiction is derived either from the Constitution or statute. This Court derives its jurisdiction from Article 165(3) of the Constitution. However, this jurisdiction is limited by Article 165(5), which excludes matters that are reserved for the exclusive jurisdiction of the Supreme Court as well as matters falling within the jurisdiction of the courts contemplated in Article 162(2).
17. Article 162(2)(b) and (3) of the Constitution specifically lays the basis for establishment of a court with the status of the High Court to handle disputes related to the environment, as well as disputes involving the use, occupation and title to land.
18. Pursuant to this constitutional framework, the Environment and Land Court is established under the Environment and Land Court Act. This Act, specifically under Section 13(2), confers upon the Court the jurisdiction to hear and determine disputes related to environmental planning and protection, land use planning, title, tenure, boundaries, rates, rents, valuations, and natural resources, including compulsory acquisition of land.
19. The present suit revolves around a dispute concerning compensation for compulsory land acquisition pursuant to Kenya Gazette Notice No. 2372, published on 24<sup>th</sup> February 2023. The Plaintiff claims that the 3<sup>rd</sup> Defendant is not entitled to compensation as it is an illegal and non-existent company.
20. Given that the dispute at hand directly involves the compulsory acquisition of land, a matter clearly within the jurisdiction of the Environment and Land Court, I am persuaded that the Environment and Land Court is the proper forum to hear and determine this matter.
21. Consequently, I make the following final orders:
  - a. Preliminary Objection by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants dated 23<sup>rd</sup> September 2024 is without merit and is dismissed.
  - b. The Preliminary Objection dated 5<sup>th</sup> August 2024 by the 4<sup>th</sup> Defendant has merit and I uphold the same.
  - c. The Plaintiff's suit herein is dismissed.
  - d. No orders as to costs.

**RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

N/A for Plaintiff

Mr. Nyamu for 1<sup>st</sup> & 2<sup>nd</sup> Defendants

Ms. Masinde for 4<sup>th</sup> Defendant

Court Assistant: Carlos

