



Henia & 4 others v Southshores Logistics Limited & another (Civil Case 2 of 2023) [2025] KEHC 2284 (KLR) (Civ) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

**CIVIL
CIVIL CASE 2 OF 2023**

KW KIARIE, J

FEBRUARY 14, 2025

BETWEEN

**ANTHONY MAINA HENIA 1ST PLAINTIFF
CIGMA BUSINESS CENTRE LIMITED 2ND PLAINTIFF
HORIZON DRILLING COMPANY LIMITED 3RD PLAINTIFF
JAMES KABUGI KIMANI 4TH PLAINTIFF
JACINTA WANJIRU MACHARIA 5TH PLAINTIFF**

AND

**SOUTHSHORES LOGISTICS LIMITED 1ST DEFENDANT
COSTIN & WEBSTER LAW 2ND DEFENDANT**

RULING

1. The 1st defendant herein filed a Notice of Preliminary objection. It is based on the following grounds:
 - a. That this honourable Court lacks the requisite jurisdiction to adjudicate on the matter for the following reasons:
 - i. The suit herein is founded on a contract for the purchase of land property; the evidence submitted by the Plaintiffs are agreements providing for consideration for the purchase of land and, therefore, ought to have been filed in accordance with the strict provisions of *Environment & Land Court Act* No.19 of 2011.
 - ii. The first Plaintiff is currently in occupation of the suit land. It is not possible to hear and determine the instant suit without delving into the titles to land and contract



for the purchase of the said land. As such, the current honourable Court is devoid of original jurisdiction.

- iii. The original jurisdiction of all matters that touch on matters of land, especially in the current instant when the Plaintiff is in occupation, can only be entertained by the Environment & Land court and not the civil court division.
 - iv. The suit herein, therefore, is filed in the wrong forum and must be struck off the court record since the High Court Civil lacks the necessary jurisdiction to entertain the same, and the Honorable judge has to down his tools at the first instance
- b. The suit against the first defendant is an abuse of court process and ought to be dismissed with costs.
2. The preliminary objection was opposed on the following grounds:
 - a. That it does not raise pure points of law,
 - b. That the application raised an issue of facts and
 - c. That this court has jurisdiction to entertain the suit.
 3. A preliminary objection raises purely issues of law. The Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Limited* (1969) EA. 696 (Sir Charles Newbold P) observed as follows:

... 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 facts pleaded by the other side are correct. It cannot be raised if any fact has 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 issues. This improper practice should stop.
 4. Article 162 (2) (b) of the [Constitution of Kenya](#) provides:
 - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (b) the environment and the use and occupation of, and title to, land.
 5. The jurisdiction of the court is provided under section 13 (2) of the [Environment and Land Court Act](#) as follows:

In exercise of its jurisdiction under Article 162(2)(b) of the [Constitution](#), the Court shall have power to hear and determine disputes—

 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and



- (e) any other dispute relating to environment and land.
6. The pleadings reveal that this suit seeks a refund of Kshs. 82,811,015/= owing to a failed contract. This court is, therefore, seized of the jurisdiction to hear and determine the dispute between the parties herein.
7. The preliminary objection is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 14TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE.

