



**Wanjao & Wanjau Advocates v Kuloba & another (Originating Summons E609 of 2023)
[2025] KEHC 2080 (KLR) (Commercial and Tax) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2080 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ORIGINATING SUMMONS E609 OF 2023
A MABEYA, J
FEBRUARY 6, 2025**

BETWEEN

WANJAO & WANJAU ADVOCATES APPLICANT

AND

ALBERT SIMIYU KULOBA 1ST RESPONDENT

**WANGILA EDWARD MOCHO BOTH T/A AS KULOBA & WANGILA
ADVOCATES 2ND RESPONDENT**

RULING

1. This ruling determines the preliminary objection dated 25/1/2024 raised by the respondents. The objection is founded on the grounds that the applicant lacks the locus standi to institute the suit being a business name under the Business Names Act. That the Court lacks the jurisdiction to entertain the matter since there is no known applicant before Court.
2. The preliminary objection was canvassed by way of written submissions which I have considered. The respondents submitted that a sole proprietor could not sue in the name of a business if the name is not his own. That the applicant was not a juristic person who could sue and be sued under its own name and therefore the application was incompetent.
3. Counsel submitted that if the business was a partnership the applicant ought to have produced a certificate of registration. Further, it was submitted that non-disclosure of partnerships goes against the provisions of Order 30 rule 2 of the Civil Procedure Rules 2010.
4. On its part, the applicant submitted that it was a partnership and that was evident in the business names. Counsel submitted that pursuant to Order 30 rule 2, the respondents ought to have written a letter requesting for details of the applicant's partners. The applicants termed the objection as a means



of delaying the main suit and the Court can only stay the proceedings awaiting the production of the partnership details.

5. I have carefully considered the preliminary objection and the submissions on record. The main issue for determination is whether the preliminary objection is sustainable.
6. In *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696, a preliminary objection was defined as one that 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. It is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct.
7. The Supreme Court of Kenya in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR, made the following observation as relates to Preliminary Objections: -

“ ... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”
8. The threshold set out in the foregoing dictums is that a preliminary objection should be made from a point of law in the assumption that the facts presented are true and it has the effect of determining a matter that is before Court. It cannot be raised if the Court has to ascertain facts or evidence.
9. In the present case, the preliminary objection is based on the ground that the applicant lacks the locus standi to institute the suit since it was a business name registered under the Business Names Act. According to the respondents, there is no known applicant before the Court. The cases of *Agatha Kaluki Mutiso vs. The Director of St. Teresa’s Academy* [2013] eKLR and *Isaac Otieno Oduor vs. Mpaka Holding Limited* 2019 Eklr, were cited in support of those submissions.
10. In rebuttal, the applicant stated that it was a partnership and Order 30 Rule 1 makes it possible for a partnership to sue under its name. That the respondents ought to have made a demand requesting for details of the applicant’s partners.
11. Order 30 of the *Civil Procedure Act* provides for suits by or against partnerships. I accept the contention by the applicant that, what the respondents should have done was to request for particulars of the applicant if it were a partnership and the procedure set out thereunder would have ensued.
12. In this case, the facts have been disputed. In order to determine whether the applicant is a partnership or a business name, the Court must assess and evaluate the evidence presented by the parties. This requires an examination of affidavit evidence which cannot be appropriately addressed in a preliminary objection.
13. A preliminary objection is not the proper avenue for resolving factual disputes or for considering evidence that is outside the pleadings. Since the determination of whether the applicant is a partnership or a business name requires a review of evidence, it cannot be settled through a preliminary objection.
14. In any event, from the Summons itself, what has been annexed is an undertaking dated 30/10/2018 by the defendants addressed to an entity known as “Wanjao & Wanjau, Advocates” which is the applicant herein. The less I say about it the better.



15. In this regard, the Court finds that the preliminary objection is not suitable for resolving the issues raised and the same is dismissed with costs.

It is so ordered.

SIGNED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2025.

F. GIKONYO

JUDGE

