



**Enchipai Mara Camp & another v Naidoya & 2 others; Ahadi Luxury  
Camp Ltd (Interested Party) (Commercial Case E101 of 2024)  
[2025] KEHC 3374 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3374 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E101 OF 2024  
A MABEYA, J  
MARCH 6, 2025**

**BETWEEN**

**ENCHIPAI MARA CAMP ..... 1<sup>ST</sup> PLAINTIFF**

**DR. NJOROGE OBADIAH KIMANI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SAMUEL PARSOILAL NAIDOYA ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL MAFABIK KIRUNGI MASINJILA ..... 2<sup>ND</sup> DEFENDANT**

**JAMES KESUE OLE KISU ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**AHADI LUXURY CAMP LTD ..... INTERESTED PARTY**

**RULING**

1. This ruling determines the joinder Motion dated 8.04.2024 by the Intended Interested Party and the Preliminary Objection dated 13.06.2024 raised by the 2<sup>nd</sup> defendant.
2. As a preliminary, I will consider the 2<sup>nd</sup> defendant’s preliminary objection first as it has, if allowed, the ability of disposing of the entire suit.
3. The 2<sup>nd</sup> defendant contended that this Court lacked the jurisdiction to entertain the suit before it as the subject matter concerned the question of ownership and usage of land Plot No. Transmara/Kimintet “D”/1432 and Transmara/Kimintet “D”/1433 which is a preserve of the Environment and Land Court under Article 162(2)(b) of *the Constitution* of Kenya 2010 and section 13 of the *Environment and Land Court Act*.



4. It was further contended that the Court also lacked the territorial jurisdiction to entertain the suit by virtue of section 12 and 15 of the Civil Procedure Act as the cause of action arose in Kilgoris and the parties similarly reside in Kilgoris.
5. The 2<sup>nd</sup> defendant submitted that contrary to the averments in the plaint, no document or evidence, either in the form of a shareholding agreement or even resolution was produced by the plaintiff to support the peripheral issues of shareholding that were alleged in the suit. That there was no discernible dispute on shareholding and equally no basis given in the form of an agreement or written resolution to determine any allegation concerning shareholding.
6. The 2<sup>nd</sup> defendant further submitted that to the contrary, the plaintiffs produced a Lease Agreement and centered their dispute around their usage of the land based on the Lease Agreement to indeed fortify the fact that the predominant question touches on land.
7. On their part, the plaintiffs submitted that that the pre-dominant issue between the parties was that of a shareholder dispute between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant as shareholders of the 1<sup>st</sup> plaintiff. That the suit emanated from the 2<sup>nd</sup> defendant's ultra-vires and illegal actions against the plaintiffs.
8. What constitutes a preliminary objection was settled by the celebrated decision in Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696. In that case, it was observed that: -  

“---a preliminary objection 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. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.
9. There is no dispute that the preliminary objection herein raises a pure point of law.
10. The nature of the preliminary objection herein goes to the jurisdiction of this and in terms of the Owners of the Motor Vessel “Lillian S” (1989) KLR 1, the same ought to be determined immediately. Article 165(5) of the Constitution of Kenya 2010 provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2).
11. The Environment and Land Act, section 13 thereof provides that: -
  - “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) 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.
12. The Court must determine the pre-dominant issue before concluding whether or not a particular dispute falls within the jurisdiction of either Court.
  13. Looking at the plaint, it is evident that the 2<sup>nd</sup> plaintiff and defendants are all shareholders of the 1<sup>st</sup> plaintiff. The 1<sup>st</sup> plaintiff appears to be a tourist hotel camp that they established initially by the lease of Plot number Transmara/Kimintet 'D/1433 and subsequently the adjacent land Transmara/Kimintet 'D'/1432. The latter belonged to the 1<sup>st</sup> defendant.
  14. The 2<sup>nd</sup> defendant was alleged to be an initial investor in the 1<sup>st</sup> plaintiff and it is he who encouraged the 2<sup>nd</sup> plaintiff to include the 3<sup>rd</sup> defendant as a shareholder by virtue of the 3<sup>rd</sup> defendant being an elder of the community where the 1<sup>st</sup> plaintiff was established.
  15. The plaintiffs aver that they subsequently entered into lease agreements over the suit lands. That the leases were allegedly never registered by the 2<sup>nd</sup> defendant. That the 1<sup>st</sup> and 2<sup>nd</sup> defendant subsequently executed a new lease over the suit property in favour of the intended interested party, a company the plaintiffs allege was formed by the 2<sup>nd</sup> defendant and his wife as a result of which the 2<sup>nd</sup> defendant was removed as a director of the 1<sup>st</sup> plaintiff.
  16. The plaintiffs proceeded to seek orders against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' shareholding in the 1<sup>st</sup> plaintiff, orders seeking to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendant from operating the 1<sup>st</sup> plaintiff on the suit lands, orders seeking to declare that the 1<sup>st</sup> defendant breached the initial lease document between himself and the 2<sup>nd</sup> plaintiff by entering into a new lease with the intended interested party which lease ought to be declared null and void, and mandatory orders directed at the 2<sup>nd</sup> defendant to surrender the lease documents initially given to him by the 2<sup>nd</sup> plaintiff.
  17. In the alternative, the plaintiffs sought monetary compensation from the 1<sup>st</sup> defendant for all monies incurred by the 2<sup>nd</sup> plaintiff in establishing the 1<sup>st</sup> plaintiff to include rent and the stipend received by all the defendants.
  18. From the pleadings, there is no dispute as to proprietorship rights of parties in respect to the suit property. The issue that the Court will be considering is whether the defendants misrepresented to the 1<sup>st</sup> plaintiff that the suit properties were for lease by the 2<sup>nd</sup> plaintiff to set up and run the 1<sup>st</sup> plaintiff; and whether the plaintiffs have suffered any loss as a result of the defendants' misrepresentation/breach if any. There is also serious issues regarding the shareholding of the parties in the 1<sup>st</sup> plaintiff.
  19. From the foregoing, it is evident that the claim arises from breach of contract and the shareholding in the 1<sup>st</sup> plaintiff. Those are the dominant issues which are clearly not under section 13 of the Environment and [Land Act](#).
  20. The 2<sup>nd</sup> defendant also raised the objection that the cause of action in this matter arose in Kilgoris and that the defendants reside in Kilgoris. That consequently, sections 12 to 15 of the [Civil Procedure Act](#) strips this Court of the territorial jurisdiction to adjudicate this dispute.
  21. Section 15 of the [Civil Procedure Act](#) envisages a situation where the cause of action arises in the geographical jurisdiction of one court and the defendant resides, carries on business or personally works for gain in the geographical jurisdiction of another court. In such a situation, the plaintiff has an option



of instituting the suit in the court in whose jurisdiction either the cause of action arose or where the defendant resides, carries on business or works for gain.

22. The jurisdiction of the High Court in civil matters is unlimited by virtue of Article 165 (3) of *the Constitution* as follows: -

- “(3) Subject to clause (5), the High Court shall have-
- a) Unlimited original jurisdiction in criminal and civil matters.”

23. Bearing in mind that the High court has unlimited jurisdiction under Article 165 of *the Constitution*, I am of the considered view that such jurisdiction cannot be limited by section 15 of the *Civil Procedure Act*.

24. In *Selina Vukinu Ambe Vs Ketan Shashikant Khatri* [2020] eKLR, the court held that: -

“With reference to the matters at hand, this means that the High Court is constitutionally mandated to hear and determine all civil disputes irrespective of their nature or the value of the subject matter. The High Court jurisdiction being a creature of *the Constitution* which is the supreme law of the land cannot be limited or fettered by any other written law including the *Civil Procedure Act*. In my view, any statute that would purport to limit the High Court’s jurisdiction as conferred by Article 165(3) would to that extent be unconstitutional by virtue of Article 2(4) of *the Constitution*.”

25. I therefore find that this court is possessed of the requisite jurisdiction to determine this case. The issue of geographical jurisdiction is only for purposes of convenience of the parties in accessing justice but not to defeat a litigant’s claim or defeat a suit. In such circumstances, the best option would be an order for either payment of costs or transfer of a suit to the nearest High Court. In the circumstances, the preliminary objection dated 13.06.2024 lacks merit and is hereby dismissed.

26. Turning to the joinder Motion dated 8.04.2024, the interested party contended that it is the registered proprietor over Transmara/Kimintet ‘D’/1433. That by virtue of this court’s orders of the 6.03.2024 that restrained the defendants from interfering with the ranch established on Plot Nos. Transmara/Kimintet ‘D’/1432 and Transmara/Kimintet ‘D’/1433, the plaintiff completely took over its operations thus occasioning it substantial loss of over Kshs. 25,000,000/=.

27. It contended that it has an identifiable stake in these proceedings on account of the continued prejudice that it continues to suffer as a result of the continued abuse of the ex-parte orders issued by this Court on the 6.03.2024.

28. The law provides for applications for joinder of interested parties in pending proceedings. Order 1 Rule 10 of the Civil Procedure Rules, 2010 as amended in 2020 provides: -

“The court may at any stage of the proceedings, either upon or without the application of either party, order that...the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

29. In *Francis Karioki Muruatetu & another v Republic & 5 others* Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR, the Supreme Court stated that: -



- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
  - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
  - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
30. There is no dispute that the Intended Interested Party has a direct interest or stake in the proceedings in this case. It alleges to be the proprietor of Transmara/Kimintet 'D'/1433 which is one of the suit properties that is subject to the plaintiffs' claims against the defendants.
31. Accordingly, they are likely to be affected by the expected decision of this Court. In the Judicial Service Commission -vs- Speaker of the National Assembly & Another [2013] eKLR, it was stated that: -
- “...an interested party ..... is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”
32. In regard to the Court being satisfied as to whether or not the applicant has set out his case and/or submissions she intends make before it, and demonstrating that his case is not replica of what other parties have before the Court, I have looked at the documents attached to the Applicant's Affidavit. They contain facts which are diverse from the ones raised by the other parties, and they are new and pertinent to the defendants' case. The issues are clearly set out.
33. This Court is of the view that the proposed interested parties' application has met the threshold set out in the Muruatetu case (Supra).
34. Therefore, I allow the application dated 8.04.2024 in terms of prayer (2) at this stage. The interested party is hereby enjoined in this suit. Let it file and deliver its pleadings within 14 days.

It is so called.

**SIGNED AT KISUMU THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2025.**

**F. GIKONYO**

**JUDGE**

