



REPUBLIC OF KENYA



KENYA LAW
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**Wambui v Ndungu (Civil Case E002 of 2024)
[2025] KEHC 3343 (KLR) (Civ) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL CASE E002 OF 2024
KW KIARIE, J
MARCH 20, 2025**

BETWEEN

PETER WAMBUGU WAMBUI PLAINTIFF

AND

SAMUEL NJENGA NDUNGU DEFENDANT

RULING

1. The defendant moved the court through a Notice of preliminary objection dated the 17th day of September 2024. He is seeking the following orders:
 - a. That the suit is frivolous, vexatious and an abuse of the Honourable court process.
 - b. That the suit is fatally defective since it raised no known cause of action, and neither is it premised in any recognizable legal provision known under common civil or criminal law.
 - c. That the plaintiff is an adult claiming for purported parental maintenance under unknown legal provisions since the *Children's Act* is not applicable.
 - d. That under the scope of the *Children's Act*, the plaintiff's claim offends the limitations of Actions Act; hence, the same is fatally defective and ought to be struck out with costs.
2. The preliminary objection was opposed on the following grounds:
 - a. It has no legal basis.
 - b. The preliminary objection is not on a point of law.
 - c. That this court has jurisdiction to hear and determine this suit.



3. A preliminary objection raises purely issues of law. The Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd vs 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. The defendant has claimed that the suit is fatally defective, as it raises no known cause of action and is based on no recognizable legal provision under common civil or criminal law. Since no party is required to plead the law under which the claim is based in the pleading, it would be premature to determine this issue. This can only be determined after adducing evidence.
5. I, therefore, find that the preliminary objection lacks merit. The same is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 20TH DAY OF MARCH 2025.

KIARIE WAWERU KIARIE

JUDGE

