



Adam & another v Jing Gong Auto Repair Workshop Limited (Civil Case E069 of 2024) [2025] KEHC 10742 (KLR) (Civ) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE E069 OF 2024
NW SIFUNA, J
JULY 24, 2025**

BETWEEN

HUMZA ADAM 1ST PLAINTIFF

SUFYAN ADAM 2ND PLAINTIFF

AND

JING GONG AUTO REPAIR WORKSHOP LIMITED DEFENDANT

RULING

1. This ruling is on the Defendant’s Preliminary Objection dated 29th June 2024. The same which has been raised against this suit in its entirety, is couched as follows:

“This suit is incompetent and should be struck out on the following grounds:

1. The suit is among the suits provided in Section 3 (3) of the Law of Contract Act (Cap 23 Laws of Kenya).
2. The suit is therefore fatally defective and ought to be struck out, with costs.

2. Section 3 (3) of the Law of Contract Act states as follows:

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

- a. the contract upon which the suit is founded-
 - i. is in writing.
 - ii. Is signed by all the parties thereto; and



- b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.
3. The Plaintiffs have opposed the Objection through their written submissions dated 2nd April 2025; and maintained that the suit is not defective. The Defendants have also filed written submissions in support of their Objection. The same are dated 18th July 2025.
4. From its wording, the Objection can be understood to mean that while this suit is based on contract, that there is no written contract, or that there is a written contract but that it is not signed by all parties, or that the signatures on the contract were not attested by a witness.
5. Being capable of several meanings, this Objection is too generalized, ambiguous and vague; in such a way that on the face of the filed Notice of Objection, the Objection lacks particularity. I hold that a Preliminary Objection must be crystal clear, sufficiently specific, unambiguous, and contain sufficient particulars; and be able to speak for itself without the need for elucidation. This is an impropriety.
6. Apart from of it lacking in sufficient particulars, this Objection does not meet the legal threshold set in the celebrated case of *Mukisa Biscuits Manufacturing Company Limited v. West End Distributors* [1969] EA 696, in which it was stated that a Preliminary Objection should be on a pure point of law. One which is like what used to be called a demurer. Which if raised, may terminate the suit. That it should not be raised on a factual matter, or where the court has to interrogate facts.
7. In that decision, Law J, described a Preliminary Objection in the following words:

“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”.
8. Sir Charles Newbold P, described it in the following words:

“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 the 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 preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.
9. For the Objection in the instant case, it requires the court to interrogate the Plaintiff’s evidence and establish whether there was any written contract. This is a factual issue; and for the court to determine this Objection, it has to inquire into such facts.
10. I need to add that a Preliminary Objection should not delve into evidential matters or into the evidence that a party intends to call at the hearing. Neither should it speculate on such evidence or attack their probative value, or be contesting such evidence. Those are matters to be addressed at trial, through cross-examination.
11. The short and long of it, is that apart from the Objection being too generalized and vogue, its substance are not matters to be challenged by way of a Preliminary Objection. Hence this Objection is not a proper Preliminary Objection.



12. The Objection therefore fails, and is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 24TH DAY OF JULY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

