



**Bomett (Suing as Representative of the Estate of Eric K Bomet - Deceased) v National Bank of Kenya Limited & 2 others (Civil Suit 246 of 2009) [2025] KEHC 10787 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10787 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 246 OF 2009  
HI ONG'UDI, J  
JULY 23, 2025**

**BETWEEN**

**NANCY JERUTO BOMETT (SUING AS REPRESENTATIVE OF THE ESTATE OF ERIC K BOMET - DECEASED) ..... PLAINTIFF**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MASTRO HOLDING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**ELAAC COMMERCIAL & PROPERTY MANAGEMENT LIMITED .... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the preliminary objection dated 21<sup>st</sup> May, 2025 filed by the plaintiff/applicant on the following grounds:
  - i. That pursuant to Gazette Notice No. 5178 of 28<sup>th</sup> July 2014 on the practice directions on proceedings in the Environment and Land Courts, and on proceedings relating to the environment and the use of and occupation of and title to land, as issued by the then honourable Chief Justice Dr. Willy Mutunga (C.J.), this court lacks jurisdiction to hear this case.
  - ii. That this court, on making a finding on the above do transfer this case to the Environment and Land Court at Nakuru for hearing and determination.
2. The preliminary objection was heard by way of oral submissions.
3. The plaintiff/applicant's counsel Mr. Karanja submitted that he was aware of the ruling dated 10<sup>th</sup> November 2016 by Hon. Justice Mulwa and the same did not relate to any preliminary objection raised



- on the issue of jurisdiction. He stated that he was not aware of the ruling dated 4<sup>th</sup> June, 2013 by Hon. Justice Waithaka. He stated further that the issue of jurisdiction had never been raised and it was high time this court addresses it. He urged the court to find that it lacked jurisdiction pursuant to article 162 of the Constitution to hear and determine this matter which is predominantly a land issue to be determined by the Environmental and Land Court (ELC).
4. He placed reliance on the Mutunga Rules issued vide Gazette Notice no. 51 of 28<sup>th</sup> July 2014 and the decisions in Lydia Nyambura Mbugua v Diamond Trust Bank 2018 [2018] eKLR, Alphonse Yankulinje v One Twiga Road Ltd & 2 others [2019] eKLR and Peter Kiama Maina v Industrial Commercial Development Corporation [2021] eKLR.
  5. Mr. Kimonjo Counsel for the 1<sup>st</sup> defendant/respondent submitted that the preliminary objection has no merit and that no preliminary objection had been raised before by any party in this matter. He stated that a preliminary objection ought to be raised on a pure point of law that disposes the matter completely. He added that the plaintiff/applicant ought to have filed an application for transfer if she felt that this court lacked jurisdiction to hear and determine this matter. He placed reliance on the decision in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 and submitted that there were contested facts in this case.
  6. He further submitted that the plaintiff/applicant's counsel acknowledged that there was a ruling addressing the issue of jurisdiction. Thus, they ought to have sought for review and/or appealed the said ruling. He stated that the charges/mortgages was not a land matter. He placed reliance on the decision in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] KECA 79 (KLR), Kisekem Limited v National Bank of Kenya Limited (Land Case E014 of 2023) [2024] KEELC 5233 (KLR) (10 July 2024) (Ruling) where the court held that if a matter was in the wrong forum it ought to be struck out with costs. He urged the court to strike out the plaintiff/ applicant's suit if it finds that the preliminary objection is merited.
  7. Mr. Abdulahi, counsel for the 2<sup>nd</sup> defendant/respondent submitted that the ruling dated 10<sup>th</sup> November 2016 which had been brought to the court's attention and had dealt with the issue of jurisdiction had never been appealed against nor reviewed. He stated that the preliminary objection was per incuriam meaning it was not in line with the law. He placed reliance on the decision in Clement Baka v Josina Musoga [2012] eKLR where the Court of appeal held that an issue of jurisdiction could be raised at any time. Further that the court could raise the same suo moto at any stage.
  8. He further submitted that the preliminary objection had no basis since the matter herein relates to a loan and a charge and not ownership of land. That for the Environmental and Land Court to be involved there ought to be an issue of use of land. The court's attention was drawn to the Co-operative Bank case (*supra*). He urged the court to dismiss the preliminary objection with costs.
  9. Mr. Ogolla, counsel for the 3<sup>rd</sup> defendant/respondent reiterated the submissions by Mr. Kamonjo and Mr. Abdulahi. He stated that any proceedings, rulings, orders or any court directions remained until they are challenged in a manner prescribed by the law. He further stated that the decision remained in force unless the same is overturned by a senior court. He added that the plaintiff/applicant's advocate wanted this court to review Justice Mulwa's decision. He placed reliance on the decision in ELC Malindi No, E54 of 2023 at paragraph 29 where the court referred to the Co-operative Bank case. He urged the court to dismiss the preliminary objection and the plaintiff/applicant's suit.
  10. In a rejoinder, the plaintiff/applicant's counsel urged the court to consider the preliminary objection in their favour and transfer the matter to the Environmental and Land Court for determination.



11. I have carefully considered the plaint filed on 20<sup>th</sup> August 2003, the preliminary objection, the parties' submissions and all other documents filed; I find the issue for determination to be whether the preliminary objection dated 21<sup>st</sup> May 2025 is merited.
12. The circumstances in which a preliminary objection may be raised was laid out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd -v- West End Distributors Ltd (Supra), 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 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”.
13. From the above, it is clear that for a preliminary objection to succeed, it ought to satisfy the following requirements: firstly, it should raise a pure point of law; secondly, it should be argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.
14. The plaintiff/applicant has raised a preliminary objection on the ground that this court lacks jurisdiction to hear and determine this matter. A look at the orders sought by the plaintiff/applicant in her plaint, shows that the suit relates to a loan advanced to Trans Kenya Green Growers (Rongai) Limited and the plaintiff/applicant has sought to be discharged in full guarantee or liability over the said loan. Further, the plaintiff/applicant sought for a declaration that the defendant holds no legal charge over LR. No. 15333/3 (Rongai) and 15333/1 Rongai. The plaintiff/applicant has further sought for a declaration that the sale of her land known as LR. No. 10302/6 Rongai is null and void ab initio, compensation for the sale of the said land and for permanent injunction orders to issue against the defendants.
15. In my humble view, what is captured under paragraph 14 of the plaint is the basis of the plaintiff/applicant's suit. Thus, this court opines that the dominant issues arising for determination fall squarely within the jurisdiction of this court and therefore do not offend the provisions of Article 162 of the Constitution as alleged by the plaintiff/applicant. The issue of ownership of land is not what is before this court for trial. Additionally, in the ruling dated 10<sup>th</sup> November 2016, Mulwa J equally addressed the issue of jurisdiction and there is no evidence of the said decision having been reviewed or appealed against. I therefore have no reason to depart from the said decision.
16. Consequently, the preliminary objection is hereby dismissed. Parties should prepare for the hearing of the suit.
17. Costs shall be in the cause.
18. Orders accordingly.

**DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 23<sup>RD</sup> DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**  
**JUDGE**

