



Ragot v Ndetika Rural Savings and Credit Co-operative (Miscellaneous Application E946 of 2024) [2025] KEHC 11075 (KLR) (Civ) (28 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E946 OF 2024

LP KASSAN, J

JULY 28, 2025

BETWEEN

BENCHMACK OCHIENG RAGOT APPLICANT

AND

NDETIKA RURAL SAVINGS AND CREDIT CO-OPERATIVE .. RESPONDENT

RULING

1. Before this court is the Respondent’s preliminary objection dated 06.11.2024 on the grounds that:
 - a. The Honourable court has no jurisdiction in law to hear and determine the application dated 11th October 2024, the dispute between the Applicant and the Respondent revolves on “Cooperative Dispute” within the provisions of the Cooperative *Societies Act*
 - b. The Honorable Court has not been procedurally moved to exercise its appellate jurisdiction in this matter
 - c. The application is an abuse of the court process.
2. In the case of *Rebecca Chumo v Christina Cheptoo Chumo* [2021] eKLR the Court stated;

“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 that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.



3. Section 81(1) of the *Co-operative Societies Act* which states as follows;

“Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court”

4. A Preliminary Objection is a pure point of law raised on the pleadings on the basis that the facts relied upon are not in dispute. See also *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696.

5. It was the Respondent’s submission that its preliminary Objection dated 6th November 2024 clothed the High Court with only the appellate jurisdiction. Section 81 of the Cooperatives Act provides that an appeal from the Tribunal can be filed at the High Court within 30 days. That the appeal is filed through a Memorandum of Appeal and not through filing of a miscellaneous application.

6. The Applicant submitted that it had met the threshold of such applications as set in the aforementioned case and that the Respondent impugns this Honourable Court’s jurisdiction based on the above Section of the Law and as it is trite Law, where a statute expressly gives a litigant specific time to comply and they fail, such parties must always first seek leave of Court as permitted in Law to extend time before prosecuting the matter.

7. Further in the case of *Kenya Commercial Bank Limited Vs Manaseh Esipeya* [1999] eKLR, the Court of Appeal stated that;

“Where a preliminary issue alleging misjoinder, limitation, lack of jurisdiction or res judicata fails and a suit is permitted to proceed, no preliminary decree arises but only an order; the unsuccessful party has a right of appeal with leave and accordingly the appeal was incompetent ...”

8. Additionally, in *Mbaya v Kamau & another* (Civil Appeal E012 of 2023) [2023] KEHC 24945 (KLR) (7 November 2023) (Ruling) the court stated the following while dealing with the question of leave;

“In essence, this court has no jurisdiction to hear the intended appeal unless leave of the Court from which the order was made is sought and obtained.”

9. It is the Applicant’s submission that the Appellant had the right to Appeal to this Court against the Orders of the Honourable Co-operative Tribunal dated 15th March 2024 within thirty (30) days. The Applicant in failing to appeal within time had the option of curing the delay by seeking leave of the Court to file its application as well as the Appeal out of time, which it has.

10. In the premises, the court finds and holds that the Preliminary Objection dated 6th November 2024 is unmerited as the Applicant has followed the proper procedure. The same is dismissed with costs.

11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28th DAY OF JULY 2025

LINUS P. KASSAN

JUDGE

In the presence of: -

No appearance for Appellant

Getanga for Respondent



Carol - Court Assistant

