



**Republic v Chief Officer, Ministry of Water, Homa Bay County Government & another; Neeta Permanent Builders Co. Ltd (Exparte Applicant) (Judicial Review E004 of 2023) [2024] KEHC 860 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E004 OF 2023  
KW KIARIE, J  
FEBRUARY 6, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHIEF OFFICER, MINISTRY OF WATER, HOMA BAY COUNTY  
GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**HOMA BAY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NEETA PERMANENT BUILDERS CO. LTD ..... EXPARTE APPLICANT**

**RULING**

1. The respondents herein raised a preliminary objection dated the 30<sup>th</sup> day of October 2023 premised on the following grounds:
  - a. That the application dated April 6, 2023 offends the provisions of Order 1 Rule 9 of Order 5 Rule 9A of the [Civil Procedure Rules](#) and ought to be dismissed with costs.
  - b. The application dated April 6, 2023 contravenes the provisions of section 147 of the [Public Finance Management Act](#).
2. The preliminary objection was opposed because it lacked merit.



3. A preliminary objection must be on a point of law and nothing more. This was clearly stated in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696. On page 700, paragraphs D-F, Law JA, as he then was, 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, or a submission that the parties are bound by the contract, giving rise to the suit to refer the dispute to arbitration.

I will, therefore, endeavour to find out if the issues raised herein are sustainable.

4. Order 1 Rule 9 of the [Civil Procedure Rules](#) provides:

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

5. Order 5 Rule 9A of the [Civil Procedure Code](#) is nonexistent.
6. The applicant based his Preliminary Objection on Order 1 Rule 9 of the [Civil Procedure Rules](#), which does not support his claim. He equally relied on nonexistent legal provisions. The P.O., therefore, lacks merit and is dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 6<sup>TH</sup> DAY OF FEBRUARY 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

