



**Gitere v Salene Credit Limited Joreka Agency Auctioneers (Miscellaneous Civil Case 19 of 2023) [2024] KEHC 10055 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CIVIL CASE 19 OF 2023  
MA ODERO, J  
AUGUST 8, 2024**

**BETWEEN**

**STEPHEN MBURU GITERE ..... APPLICANT**

**AND**

**SALENE CREDIT LIMITED JOREKA AGENCY AUCTIONEERS ..... RESPONDENT**

**RULING**

1. Before this court for determination is the Notice of Preliminary Objection dated 14<sup>th</sup> July 2023.

**Background**

2. The plaintiff Stephen Mburu Gitere filed the Notice of Motion dated 25<sup>th</sup> May, 2023 seeking the following orders:-

- “(a) Spent
- (b) That the court be pleased to maintain the status quo as ordered in SPMCC No. E093 of 2023 pending the hearing and determination of this Application.
- (c) That the court be pleased to withdraw and transfer the aforementioned case Ruiru SPMCC No. E093 of 2023 *Stephen Mburu Gitere v Salene Credit And Joreka Agency Auctioneers* to the Chief Magistrate’s Court at Nyeri for hearing and disposal.
- (d) That costs of this Application be in the cause.”



3. In response the Respondents Salene Credit Limited and Joreka Agency Auctioneers filed the Notice of Preliminary Objection dated 14<sup>th</sup> July 2023 which was premised upon the following grounds:-
- “(a) That the entire suit offends the provisions of law.
  - (b) That there is no suit in existence herein to warrant grant to any of the orders sought.
  - (c) That there is no cause of action for any orders to be issued herein.
  - (d) That the entire proceedings are convoluted, scandalous and amounts to an abuse of the court process.
  - (e) That it ought to be struck out.”
4. The court directed that the Preliminary Objection be disposed of first. The matter was canvassed by way of written submissions. The Respondents filed the written submissions dated 10<sup>th</sup> May 2024 whilst the Applicant did not file any submissions.

### **Analysis and Determination**

5. I have considered the Notice of Preliminary Objection filed in this matter as well as the written submissions filed by both parties. The only issue for determination is whether the Preliminary Objection has merit.
6. The definition of a Preliminary Objection was given in the case of *Mukbisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, where Sir Charles Newbold defined a Preliminary Objection as follows:-
- “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... 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 had to be ascertained or if what is sought is the exercise of judicial discretion.”
7. In the case of *Oraro v Mbaja* (2005) 1 KLR 141, it was held that:-
- “Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence.”
8. The Respondents allege that the entire suit offends the provisions of law. They further allege that no cause of action exists. These are issues which would require interrogation by the court in order to determine the same.
9. Secondly the Respondents submit that no suit exists to warrant the Grant of the orders sought. A perusal of the file reveals that this is in fact not the correct position.
10. Amongst the documents field by the plaintiff is a plaint dated 6<sup>th</sup> March 2023. This is this plaint upon which the orders sought in the application dated 25<sup>th</sup> May 2023 are grounded.



11. Finally I find no merit in this Preliminary Objection. The same is dismissed in its entirety. Costs are awarded to the plaintiff.

**DATED IN NYERI THIS 8<sup>TH</sup> DAY OF AUGUST 2024.**

**MAUREEN A. ODERO**

**JUDGE**

