



**Emo Technical Services v County Executive Member Finance,
County Government of Homa Bay & 2 others (Judicial Review
E003 of 2024) [2024] KEHC 13981 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E003 OF 2024
KW KIARIE, J
NOVEMBER 12, 2024**

BETWEEN

EMO TECHNICAL SERVICES APPLICANT

AND

**COUNTY EXECUTIVE MEMBER FINANCE, COUNTY GOVERNMENT OF
HOMA BAY 1ST RESPONDENT**

**CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF HOMA
BAY 2ND RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF HOMA
BAY 3RD RESPONDENT**

RULING

1. the respondents moved the court through a Notice of preliminary objection dated the 12th day of April 2024. They are seeking the following orders:
 - a. That the Application dated 1st March 2024 offends the provisions of section 21 of the [Government Proceedings Act](#) and Order 29 of the Civil Procedure Rules.
 - b. That the Application dated 1st March 2024 offends the provisions of section 2 as read together with section 148 of the [Public Finance Management Act](#) for misjoinder of parties.
 - c. That the entire suit is incompetent and fatal in law and therefore undeserved of leave. [Spent]
2. The preliminary objection was opposed on the following grounds:
 - a. That the applicant attached a copy of the certificate dated 9th September 2022.
 - b. The suit is appropriately before the court.



3. A preliminary objection raises purely issues of law. The Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited* (1969) EA. 696 (Sir Charles Newbold P) observed 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 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 points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.

4. The preliminary objection is premised on the issue of misjoinder. On the issue of Misjoinder Order 1, Rule 9 of the Civil Procedure Rules provides as follows:

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.

This application cannot be defeated because of misjoinder.

5. Contrary to the respondent's contention that a certificate as prescribed under section 21 of the *Government Proceedings Act*, was missing, the applicant attached a copy of the certificate dated September 9, 2022.

6. The preliminary objection lacks basis and is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 12TH DAY OF NOVEMBER 2024.

KIARIE WAWERU KIARIE

JUDGE

