



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Future Frontiers Limited v Kaia & another (Environment and Land Case E046 of 2023) [2025] KEELC 6453 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6453 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E046 OF 2023
AY KOROSS, J
SEPTEMBER 30, 2025**

BETWEEN

FUTURE FRONTIERS LIMITED PLAINTIFF

AND

COLLINS SILA KAIA 1ST DEFENDANT

AFRICAN INLAND CHURCH MACHAKOS 2ND DEFENDANT

RULING

1. This ruling seeks to determine applications of preliminary objections (POs) filed by the 1st and 2nd defendants, respectively, dated 31/07/2024 and 2/08/2024, and they raise several grounds on points of law in limine. For good order, the grounds of each PO shall be highlighted separately.

Grounds raised in the 1st defendant's PO

- a. Under the provisions of Section 13 of the *Environment and Land Court Act*, this court does not have the jurisdiction to handle the matter and grant the orders sought.

Grounds raised in the 2nd defendant's PO

- a. The court lacks jurisdiction to hear and determine the suit.
 - b. The 2nd defendant is not a body corporate under Section 3 of the *Societies Act* as well as Section 3 (3) of the *Trustees (Perpetual Succession) Act* with the power to sue and be sued.
 - c. The plaintiff's suit is incompetent, bad in law, and an abuse of court process.
2. Accordingly, the defendants urge this court to strike out and/or dismiss the suit against them with costs.



3. As directed by the court, the PO is canvassed by written submissions that were received by the court from the law firm of Ms. M.M. P & Co. Advocates for the 1st defendant, dated 11/03/2025 and from Ms. B.M. Mung'ata & Co. Advocates for the 2nd defendant, dated 28/02/2025. This court is obliged to consider the invigorating submissions. Accordingly, their respective arguments shall be taken into consideration in the analysis and determination of the issues at hand. It is observed that the plaintiff's counsel did not file any submissions.
4. Having considered the POs, pleadings on record as well as the plaint dated 25/10/2023 and the 2nd defendant's defence dated 13/03/2024, the issue that arises for determination is whether the POs meet the legal threshold and are merited.
5. Both counsels addressed this issue, and as submitted by the 2nd defendant's counsel and affirmed by the Supreme Court of Kenya decision of *Joho & another v Shahbal & 2 others* [2014] KESC 34 (KLR) that is relied upon by the 1st defendant's counsel, the precedent-setting case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors* (1969) EA 696 has long settled the principles of POs and what constitutes it in the following manner:

“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 has to be ascertained or if what is sought is the exercise of judicial discretion.”
6. As avowed by paragraph 21 of the Supreme Court of Kenya decision of *Independent Electoral & Boundaries Commission v Cheperenger & 2 others* [2015] KESC 2 (KLR), a PO serves two purposes of merit: firstly, as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, in its public cause, it spares scarce judicial time, so that time is committed only to deserving cases of dispute settlement. Accordingly, it is inappropriate for a party to resort to POs as a means of winning a case, rather than having the dispute resolved judicially on its merits.
7. The tests to be applied are 3, namely, the PO raises a pure point of law, there is a demonstration that all the facts pleaded by the other side are correct, and lastly, the facts need not be ascertained. Regarding the 1st ground of jurisdiction, 2 limbs are raised by counsels in their submissions, the 1st one on this court's jurisdiction to entertain disputes on contract, and the 2nd one on the pecuniary jurisdiction of this court. It is noted that the 2nd defendant abandoned his 3rd ground of the PO, which stated that the plaintiff's suit is incompetent, bad in law, and an abuse of court process. For this reason, this court will not dwell on it.
8. To start us off, we will start with the 1st limb of this 1st ground on jurisdiction. A perusal of the pleadings shows that the 2nd defendant's defence disputes the plaintiff's claim and, particularly so in paragraphs 12 and 15 thereof, where it asserts that privity of contract never existed between the plaintiff and the 1st defendant and maintains that it does not owe the plaintiff any money. Prima facie, this is a factual issue to be established by the adduction of evidence from both parties. Consequently, this court finds that this limb of the PO does not raise a pure point of law and is therefore rejected.



9. Concerning the 2nd limb of this 1st ground, this court is satisfied that it meets all 3 tests; nevertheless, it is not merited as this court has unlimited jurisdiction to entertain disputes on use, occupation and title to land and environment regardless of the value. The ELC is a creature of Article 162 (2) (b) of *the Constitution* and in giving effect to this provision and by powers bestowed upon it under Article 162 (4) of *the Constitution*, parliament enacted the *Environment and Land Court Act* (ELC Act) and the relevant provision which sets out the jurisdiction of this court is found in Section 13 thereof which states that: -

- “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
- (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (f) restitution;
 - (g) declaration; or



(h) costs.”

10. To ensure reasonable and equitable access to justice in counties and in exercise of Article 169 (2) of *the Constitution*, Section 26 (3) and (4) of the ELC Act provides that gazetted magistrates are conferred with jurisdiction to handle matters on land and environment but subject to pecuniary and territorial limitations which are provided for in Section 9(a) of the Magistrates’ Act, Section 26 (4) of the ELC Act and Sections 12 and 15 of the *Civil Procedure Act*. This latter provision states: -

“(4) Subject to Article 169(2) of *the Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —

(a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

(b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates’ Courts Act.

11. It seems the 2nd defendant’s counsel is contending that in the exercise of its original jurisdiction, this court has comparable jurisdiction to the magistrates’ court. Nay, far from it, this court has overall jurisdiction over disputes involving land and the environment, and does not have pecuniary restraints that would ensue in the magistracy. Suffice it to say that this court has an unlimited jurisdiction to hear all disputes on land and environment, including the suit herein. Thus, it finds the challenge of this court’s jurisdiction is misplaced.

12. However, since the value of the subject matter has been disclosed in the plaint as kshs. 5,000,000/-, which sum has not been disputed, and bearing in mind the plaint reveals the suit property, which is LR. No. 19192/2 is located in Machakos; it is a matter that the lower court can adequately adjudicate. In consequence, this court makes the following findings: (a) it has unlimited jurisdiction to handle all disputes on use, occupation and title to land and environment, (b) the pecuniary limits of the lower court are upto kshs. 20,000,000/- [See Section 7(1) of the Magistrate’s Act], (c) since the suit property is situate in Machakos, the suit ought to be filed before the Chief Magistrate’s Court, Machakos and at last (d) under Section 18 (1) of the *Civil Procedure Act*, it has jurisdiction to transfer this file to the lower court.

13. Now, as to the 2nd ground in respect of the 2nd defendant’s locus standi, this court finds it raises matters of fact that have to be ascertained, as the plaint describes it as a body corporate, whilst the 2nd defendant argues in its submissions that it is a church and registered under the *Societies Act*. This court thus finds this ground of the PO fails.

14. At the end of it all and for the above reasons and findings, this court hereby dismisses the POs with costs being in the cause. In consequence, the following final disposal orders are hereby issued: -

a. The preliminary objections dated 31/07/2024 and 2/08/2024 are hereby dismissed with costs being in the cause.

b. This file is hereby transferred to the Chief Magistrate’s Court, Machakos, for hearing and determination.

c. A mention date shall be given for the placement of the file before the Hon. Chief Magistrate for further directions.

Orders accordingly.



DELIVERED AND DATED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

30.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Musya for 1st respondent.

Miss Nzili for 2nd respondent.

N/A for plaintiff.

Ms Kanja- Court Assistant.

