



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) & 4 others v Management of Tea Hotel & 3 others; Onsongo t/a Hegeons Auctioneers (Interested Party) (Environment and Land Constitutional Petition E003 of 2022) [2025] KEELC 6208 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6208 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E003 OF 2022**

**LA OMOLLO, J**

**SEPTEMBER 25, 2025**

**BETWEEN**

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS,  
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) ..... 1<sup>ST</sup> PETITIONER**  
**SHASHIKANT KANJIBHAI PINDORIYA ..... 2<sup>ND</sup> PETITIONER**  
**KANJI DEVJI CHHABHADIA ..... 3<sup>RD</sup> PETITIONER**  
**CHANDRAKANTI DEVJI CHHABHADIA ..... 4<sup>TH</sup> PETITIONER**  
**RAVJI DEVJI CHHABHADIA ..... 5<sup>TH</sup> PETITIONER**

**AND**

**THE MANAGEMENT OF TEA HOTEL ..... 1<sup>ST</sup> RESPONDENT**  
**TEA HOTEL LIMITED ..... 2<sup>ND</sup> RESPONDENT**  
**LAND REGISTRAR, KERICHO LAND REGISTRY ..... 3<sup>RD</sup> RESPONDENT**  
**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**HEZRON GETUMA ONSONGO T/A HEGEONS  
AUCTIONEERS ..... INTERESTED PARTY**



## RULING

### Introduction.

1. This ruling is in respect of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents Notice of Preliminary Objection dated 17<sup>th</sup> February, 2025.
2. It is on the following grounds;
  - a. The matter is sub judice; the issues sought to be canvassed are pending in Kericho Employment and Labour Relations Court Cause No. 10 of 2016: Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (Kudheiha) -versus- The Management Tea Hotel.
  - b. The matters hereof concern employment dispute between the 1<sup>st</sup> Applicant and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents.
  - c. The 1<sup>st</sup> Applicant and Ruth Ngelechei (Secretary General), the affiant do not have locus standi to bring this motion and the Petition.
  - d. As such, the suit is ex facie incompetent, fatally defective and inadmissible.
  - e. The Honourable Court lacks jurisdiction to hear and determine this matter.
  - f. On the whole both the suit and the application, both dated 23.6.2023 are a gross abuse of the Court process.

### Factual Background.

3. The Petitioners commenced the present proceedings vide the Petition dated 8<sup>th</sup> November, 2022 where they seek the following orders;
  - a. A declaration that 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) do pay general damages to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners for the illegal trespass visited on him and his land. (sic)
  - b. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves by themselves, its servants or agents or otherwise howsoever from continued alienation, disturbing the original boundaries and trespass on the Petitioners land parcel being LR No. Kericho Municipality Block 4/295.
  - c. A declaration be and is hereby issued that the action of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents purporting to cancel the title deed to LR No. Kericho Municipality Block (sic) violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> and 5<sup>th</sup> Petitioners' right to property guaranteed under Article 40(1) of [\*the Constitution\*](#) and Section 25 and 26 of the [\*Land Registration Act\*](#).
  - d. A declaration be and is hereby issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purported to continue to receive the proceeds of the land parcel LR No. Kericho Municipality Block 4/295 after the sale and transfer of the title to the said property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' right to property in the form of mesne profit guaranteed under Article 40(1) of [\*the Constitution\*](#).
  - e. A declaration be and is hereby issued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) purported application resulting into judgement dated 18<sup>th</sup> January, 2022 leading to setting aside sale and



cancel the transfer of the said property and by ordering that the 3<sup>rd</sup> Respondent rectify the entries in the register on land parcel LR No. Kericho Municipality Block 4/295 violated the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners right to property as provided under Article 40 of the Kenya Constitution 2010.

- f. A declaration be and is hereby issued that the action of the Employment and Labour Relations Court working in concert with all the other Respondents not to give written reasons to the Petitioners in its ruling dated 18<sup>th</sup> January, 2022 as to why it assumed the jurisdiction of the Notice of Motion application dated 26<sup>th</sup> April, 2021 on the land parcel LR No. Kericho Municipality Block 4/295 violated the Petitioners' right to fair administrative actions guaranteed under Article 47(1) and (2) of *the Constitution* and Section 4(1) (2) (3) of Fair Administrative Actions Act, 2015.
- g. A declaration be and is hereby issued that the action of 1<sup>st</sup> and 2<sup>nd</sup> Respondents to invoke the public auction's procedural technicalities to cancel and set aside the sale of land parcel LR No. Kericho/Municipality Block 4/295 and ordered the 3<sup>rd</sup> Respondent to rectify the entries of the register in regard to the said parcel violated the Petitioners' right to access to justice without undue regard to procedural technicalities guaranteed under Article 48 and 159(2)(b) of *the Constitution*.
- h. A declaration be and is hereby issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) employees, servants and agents readiness of destruction, (sic) fencing, partitioning and/or selling of the suit property land parcels L.R No. Kericho Municipality Block 4/295 while Civil Application No. E002 of 2022 and Civil Appeals Nos. E023 and E028 of 2022 are pending in the Court of Appeal Nakuru, threatens the right of the Petitioners to a fair hearing in the Court of Appeal guaranteed under Article 50 of *the Constitution* and Section 87 of the *Land Registration Act*, 2012.
- i. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Respondent's (sic) actions in the Petitioners parcel of land L.R No. Kericho Municipality Block 4/295 are in contravention of Articles 2, 3, 10, 28, 29, 31, 40, 42, 48, 60 (1)(b) and 69 of *the Constitution* of Kenya and are therefore illegal hence null and void.
- j. An order for general damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at Courts (sic) rate from the date of the issuance of title of the suit property was transferred being 19<sup>th</sup> December, 2019 to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Petitioners.
- k. An order for exemplary damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for violating various provisions of *the Constitution* with impunity to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners.
- l. An order for payment of mesne profit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being the proceeds to from (sic) LR No. Kericho Municipality Block 4/295 to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Petitioners from the date of issuance of title on 19<sup>th</sup> December, 2019 to the date of judgement of the Court.
- m. An order do issue for remittance of the balances being the proceeds over sale of LR No. Kericho Municipality Block 4/295 to be deposited in Court less all payments and incidental costs and expenses remitting the net thereof.
- n. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents hereby (sic) be directed to bear the costs of this Petition jointly and severally.





- b. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents by themselves, agents, servants, employees, or otherwise be committed to civil jail for contempt of Court for disobeying the express orders of this Honourable Court granted by Lady Justice M.C Oundo on the 7<sup>th</sup> day of December 2022.
  - c. The said Respondents be ordered or kept in prison for a term not exceeding 6 (six) months or for a term this Honourable Court may deem fit and just.
  - d. The order of summons do issue against the Officer in Charge of Police Station (OCS) Kericho to appear before this Honourable Court and give reasons why he is not enforcing status quo as well as maintaining peace on the suit parcel.
  - e. The order number four (4) seeking Officer in Charge of Police Station (OCS), Kericho, compliance in respect to this Honourable Court's directions dated 19<sup>th</sup> November, 2024 be issued ex-parte. (sic)
  - f. The failure by Officer in Charge of Police Station (OCS), Kericho, to enforce the status quo be treated as contempt of Court.
  - g. The Respondents do pay costs of this application.
9. In response to the said application and the Petition herein, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents filed the preliminary objection under consideration.
10. On 18<sup>th</sup> February, 2025 the Court issued directions that the preliminary objection be heard by way of written submissions.
11. On 17<sup>th</sup> March, 2025, the matter was mentioned to confirm filing of submissions and it was reserved for ruling on 5<sup>th</sup> May, 2025.

#### **Issues for Determination.**

12. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents filed their submissions on 12<sup>th</sup> March, 2025 while the Petitioners filed their submissions on 30<sup>th</sup> April, 2025.
13. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit on the following issues;
- a. Whether the Notice of Preliminary Objection raises pure points of law.
  - b. If yes, whether the Petition is sub judice.
  - c. Whether the matters hereof concern employment dispute; (sic)
  - d. The 1<sup>st</sup> Applicant and Ruth Ngelechei (Secretary General), have locus standi to bring the motion and the Petition. (sic)
  - e. Whether the Court has jurisdiction to hear the matter; and
  - f. Who should bear the costs hereof.
14. On the first issue, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that the preliminary objection raises two issues i.e sub judice and locus standi thereby challenging the jurisdiction of this Court.
15. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents rely on the judicial decisions of [Kenya National Commission on Human Rights vs Attorney General; IEBC & 16 Others \(Interested Parties\) \(Advisory Opinion Reference 1 of 2017\) \[2020\] KESC 54 \(KLR\) \(Constitutional and Human Rights\) \(7 February 2020\)](#)



- (Ruling)*, Law Society of Kenya vs Commissioner of Lands & 2 Others [2001] eKLR, Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696 and submit that the Preliminary Objection does not delve into contested issues as it raises pure points of law.
16. On the second issue, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents rely on Section 6 of the *Civil Procedure Act* and submit that the present petition and application should be struck out for being sub judice as there is a pending matter i.e Kericho Employment and Labour Relations Court Cause No. 10 of 2016.
  17. They submit that the said matter is between the same parties and it is over the same subject matter.
  18. It is their submissions that the Petitioners admit at ground (ii) on the face of the application that the Respondents have been sued in their capacity as directors of Tea Hotel Limited.
  19. It is also their submissions that in the application dated 22<sup>nd</sup> November, 2024 Ruth Ngelechei deposes at paragraph one that she is the secretary general of Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (Kudheiha) the 1<sup>st</sup> Petitioner.
  20. It is further their submissions that it is not contested that the 1<sup>st</sup> Petitioner was the Claimant in Kericho Employment and Labour Relations Court Cause No. 10 of 2016 while Tea Hotel Limited was the Respondent therein.
  21. They submit that the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners herein actively participated in the said matter as Respondents on the sale that was challenged.
  22. They also submit that Tea Hotel Limited is the registered owner of the said property which was fraudulently sold. It is their submissions that Tea Hotel Challenged the alleged fraudulent sale.
  23. It is also their submissions that the Employment and Labour Relations Court delivered a ruling on 18<sup>th</sup> January, 2022 in ELRC Cause No. 10 of 2016 and set aside the purported sale and eventual transfer of the property.
  24. The said Court issued a mandatory injunction compelling the Respondents therein to file accounts including but not limited to the exact amount of money paid by the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners and the amount paid to each employee as a result of the sale of land parcel No. Kericho/Municipality Block 4/295.
  25. They submit that the said sale was nullified as the Petitioners did not follow the law. The Petitioners have not tendered before the Employment and Labour Relations Court the statements showing the payments made to the employees as a result of the impugned sale.
  26. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that the Petitioners are duplicating proceedings in order to avoid accountability in ELRC Cause No. 10 of 2016.
  27. They rely on the judicial decision of Maggie Mwauki Mtalaki vs Housing Finance Company of Kenya [2015] eKLR and submit that sub judice is similar to the doctrine of res judicata and that it is a doctrine of general application that is hinged on public policy that permeates all proceedings to prevent abuse of the Court process.
  28. On the third issue the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that there is no ownership dispute between the 1<sup>st</sup> Petitioner and the Respondents that is worthy of adjudication by this Court.
  29. It is their submissions that the only nexus between the 1<sup>st</sup> Petitioner and the Respondents herein is Kericho ELRC Cause No. 10 of 2016 where the 1<sup>st</sup> Petitioner sued Tea Hotel Limited on behalf of former employees of the said hotel.



30. It is also their submissions that the issues of the nullified sale of land parcel No. Kericho Municipality Block 4/295 and the settlement of dues to the employees arising therefrom are intertwined and cannot be determined in separate forums.
31. It is further their submissions that the appropriate forum to litigate the said issues is Kericho ELRC Cause No. 10 of 2016.
32. On the fourth issue, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that in order for a party to enjoy rights under Articles 22 and 258 of *the Constitution* of Kenya, the Petitioners must show that they have a right which has been infringed as they are acting in a representative capacity.
33. It is their submissions that the 1<sup>st</sup> Petitioner does not have any proprietary interest in land parcel No. Kericho/Municipality Block 4/295 and therefore it has no right worthy of protection by the Court.
34. It is also their submissions that the 1<sup>st</sup> Petitioner has not stated that it is acting in a representative capacity and it has also not exhibited any authority from the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners.
35. They submit that there is a demonstrable conflict of interest on the part of Gilbert Kemboi Advocate who purports to act for all the Petitioners herein whereas he only acts for the 1<sup>st</sup> Petitioner in Kericho ELRC Cause No. 10 of 2016 where the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners were Respondents therein.
36. They also submit that the 1<sup>st</sup> Petitioner and Ruth Ngelechei (Secretary General) have no locus standi to bring the Petition and the pending Notice of Motion application.
37. They further submit that the 1<sup>st</sup> Petitioner has filed the present proceedings in gross abuse of the Court process.
38. On the fifth issue, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents rely on Section 13 of the *Environment and Land Court Act* which provides for the jurisdiction of this Court.
39. They submit that the present suit does not fall within the provisions of Section 13 as the sale of land parcel No. Kericho Municipality Block 4/295 was nullified. That being the case, this Court lacks jurisdiction to hear and determine the matter and it ought to down its tools.
40. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents rely on the judicial decision of Owners of Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR in support of their submissions.
41. They submit that the Petitioners will not suffer any prejudice as they have Kericho ELRC Cause No. 10 of 2016 to address any grievances.
42. They also submit that there will be great damage if the Petitioners are allowed to invoke the jurisdiction of this Court.
43. They conclude their submissions by relying on the judicial decisions of *Kiambu Dandora Farmers Co. Ltd v Waindi & 12 others [2024] KEELC 1348 (KLR)*, *Samson Mariko Makubo v Joseph Mwita Ragiti & 4 others [2020] KEELC 3764 (KLR)* and urge the Court to dismiss both the Petition and the pending Notice of Motion application.
44. The Petitioners submit on the following issues;
  - a. Whether the notice of preliminary objection dated 17<sup>th</sup> February, 2025 meets the threshold of a preliminary objection.
  - b. Whether the notice of preliminary objection herein is merited.
  - c. Who should bear the cost of the application.



45. On the first issue they rely on the judicial decisions of *Mukisa Biscuit Manufacturing Limited v West End Distributors* [1969] EA 696, *Oraro vs Mbaja* [2005] eKLR and submit that the preliminary objection is on six grounds.
46. The Petitioners also submit that grounds 1, 3 and 5 which are on sub-judice, locus standi and lack of jurisdiction are on points of law.
47. On the ground of sub judice the Petitioners rely on Section 6 of the *Civil Procedure Act*, the judicial decision of *Kenya National Commission on Human Rights vs Attorney General, Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR and submit that they filed the present petition and the application dated 22<sup>nd</sup> November, 2024 to prevent trespass on land parcel No. Kericho Municipality Block 4/295.
48. They submit that the said parcel of land is registered in the name of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners and they were issued with a title deed on 19<sup>th</sup> December, 2019 upon conclusion of Kericho ELRC Cause No. 10 of 2016.
49. It is the Petitioners submissions that the 1<sup>st</sup> to 11<sup>th</sup> Respondents have violated their constitutional right to own land by encroaching, portioning and leasing the suit parcel. This is despite the registration of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners as owners of the suit land.
50. It is also the Petitioners submissions that the 1<sup>st</sup> to 11<sup>th</sup> Respondents have threatened to kill them claiming that they are of Asian origin and they cannot own land in Kericho.
51. It is further the Petitioners submissions that Kericho ELRC Cause No. 10 of 2016 was heard, determined and the file closed.
52. The Petitioners submit that the parties in the present matter and the Employment and Labour Relations case are different save for an application that was filed after Kericho ELRC Cause No. 10 of 2016 was concluded.
53. The Petitioners also submit that the orders that were issued upon hearing of the said application were set aside by the Court of Appeal on 17<sup>th</sup> March, 2023. The said Court of Appeal orders reverted the land back to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners.
54. The Petitioners further submit that the Respondents herein are not parties to the proceedings before the Employment and Labour Relations Court but they are part of the management of Tea Hotel Limited. Tea Hotel Limited is a body corporate with a separate legal entity.
55. It is the Petitioners submissions that upon the Court delivering its decision in Kericho ELRC Cause No. 10 of 2016, the Management of Tea Hotel appealed the said decision which appeal was dismissed.
56. It is also the Petitioners submissions that after the appeal by the Management of Tea Hotel was dismissed, it (Management of Tea Hotel) filed another application before the Employment and Labour Relations Court which led to issuance of unfavorable orders.
57. The said orders issued by the Employment and Labour Relations Court are subject to two appeals before the Court of Appeal i.e Appeal No. E028 of 2022 and E023 of 2022.
58. It is further the Petitioners submissions that the Court handling Kericho ELRC Cause No. 10 of 2016 is functus officio and there is nothing pending before it. The present matter cannot therefore be sub judice.



59. The petitioners rely on the judicial decision of Margaret Wachu Karuri v John Waweru Ribiro [2021] eKLR and submit that in order to prove sub judice the Court has to consider facts that have not been pleaded in this matter. This will prompt the Court to call for and scrutinize evidence which makes the issue of sub judice not to be a pure point of law.
60. On the ground of jurisdiction, the Petitioners submit that they are the registered owners of land parcel No. Kericho/Municipality Block 4/295 having been issued with a title deed on 19<sup>th</sup> December, 2019.
61. The Petitioners also submit that their title has never been challenged in any Court of law and that the only dispute over the suit parcel is on the 1<sup>st</sup> to 11<sup>th</sup> Respondents trespass on the suit parcel.
62. The Petitioners rely on Article 162(2)(b) of *the Constitution* of Kenya, Section 13 of the *Environment and Land Court Act* and submit that this Court has the jurisdiction to hear and determine disputes pertaining to use, occupation and title to land.
63. The Petitioners submit that they purchased land parcel No. Kericho Municipality Block 4/295 through a public auction that was conducted on 24<sup>th</sup> January, 2019 after the notification of sale dated 3<sup>rd</sup> August, 2028 (sic) was issued in execution of the decree of the Court issued in Kericho ELRC Cause No. 10 of 2016.
64. The Petitioners also submit that they were issued with a Certificate of Sale on 6<sup>th</sup> November, 2019 and so they are frowning upon any leasing and/or subletting of their parcel of land.
65. They reiterate that the Court of Appeal vide its ruling delivered on 17<sup>th</sup> March, 2023 stayed the decision of the Employment and Labour Relations Court that was issued on 18<sup>th</sup> January, 2022 that cancelled entries on the green card. The appeal is still pending hearing and determination.
66. The Petitioners submit that the present petition is seeking declaratory orders over the violations of the Petitioners constitutional rights over land parcel No. Kericho Municipality Block 4/295 and compensation for trespass.
67. The Petitioners also submit that the Respondents have failed to appreciate the distinction between the jurisdiction of the Employment and Labour Relations Court and the Environment and Land Court hence raising unmerited issues in their preliminary objection.
68. The Petitioners further submit that the present suit is anchored on land matters which cannot be addressed or determined by the Employment and Labour Relations Court.
69. The Petitioners rely on Section 12 of the Employment and *Labour Relations Act* and submit that the Respondents are attacking the jurisdiction of this Court by alleging that land parcel No. Kericho Municipality Block 4/295 was fraudulently sold.
70. It is the Petitioners submissions that no response was filed to the present Petition and therefore the issue of fraud cannot be raised on a preliminary objection.
71. It is also the Petitioners submissions that fraud is not a pure point of law as it requires the calling of evidence for it to be proved.
72. On the ground of locus standi as raised in the Preliminary Objection, the Petitioners rely on Articles 22, 258 and 260 of *the Constitution* of Kenya and submit that the 1<sup>st</sup> Petitioner is an association of employees with the legal capacity to sue on behalf of its members.



73. The Petitioners submit that land parcel No. Kericho Municipality Block 4/295 was sold to the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners on behalf of the 1<sup>st</sup> Petitioner's former members after Kericho ELRC Cause No. 10 of 2016 was determined.
74. The Petitioners also submit that they rightfully instituted the present proceedings together with the purchasers of land parcel No. Kericho Municipality Block 4/295 as the proceeds of the said sale were shared among the former workers of the management of Tea Hotel.
75. The Petitioners further submit that any reversal of the sale or trespass will directly affect the trade union as possession was not granted upon sale and there is a possibility that its members will be forced to refund the money paid for the land thereby opening a can of worms.
76. It is the Petitioners submissions that the present petition was not filed by Ruth Ngelechei and neither has she been the general secretary of the 1<sup>st</sup> Petitioner. She is instead the branch secretary with the capacity to swear affidavits on behalf of the 1<sup>st</sup> Petitioner.
77. It is also the Petitioners submissions that the Respondents have taken issue with their Counsel on record and they have alleged conflict of interest. They submit that the said issue is irrelevant and it does not relate to the issue of locus standi as Counsel is not a litigant in the present suit.
78. It is further the Petitioners submissions that parties have autonomy to choose Counsel to represent them and their advocate Mr. Gilbert Kemboi should not be victimized for offering legal services indiscriminately.
79. On whether the preliminary objection has merit, the Petitioners submit that it does not raise any pure points of law and it is marred with disputed facts which cannot be ascertained by this Court at the preliminary stage.
80. The Petitioners submit that on 25<sup>th</sup> January, 2024 this Court issued orders of status quo pending hearing and determination of the two appeals pending before the Court of appeal. The appeals are No's E023 and E028 of 2022.
81. The Petitioners also submit that despite the said order of the Court, the Respondents leased out the suit parcel and they therefore filed the application dated 22<sup>nd</sup> November, 2022 (sic) seeking that they be punished.
82. The Petitioners conclude their submissions by relying on Section 27 of the Civil Procedure Act and urging the Court to dismiss the Respondents preliminary objection with costs.

### **Analysis and Determination.**

83. I have considered the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents preliminary objection and the rival submissions. It is my view that the only issue that arises for determination is whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents Preliminary Objection has merit.
84. The judicial decision of Ushago Diani Investment Limited v Abdulwahab (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) cited with approval Oraro v Mbaja [2005] eKLR 141 where the Court held as follows on the nature of preliminary objections;

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its



authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

85. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
86. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents preliminary objection is on the following grounds;
1. That this matter is sub judice.
  2. That this Court lacks jurisdiction.
  3. That the present matter is an employment dispute.
  4. That the 1<sup>st</sup> Petitioner and Ruth Ngelechei do not have locus standi to bring the present motion and Petition.
87. I shall now address each of the grounds of objection.

**Whether the present suit is *sub judice*.**

88. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that the Petition and the application dated 22<sup>nd</sup> November, 2024 are sub judice as there is a pending matter i.e Kericho ELRC Cause No. 10 of 2016 between the same parties and over the same subject matter.
89. In response, the Petitioners submit that Kericho ELRC Cause No. 10 of 2016 was heard and determined and therefore the present Petition and the application dated 22<sup>nd</sup> November, 2024 are not sub judice.
90. They also submit that the issue of sub judice is not a pure point of law as the Court has to take into consideration factual issues.
91. Section 6 of the *Civil Procedure Act* provides as follows;
- “No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”
92. In the judicial decision of Margaret Wachu Karuri v John Waweru Ribiro [2021] KEELC 2793 (KLR) the Court held as follows;
- “For the Court to determine whether the issues herein were directly and substantially in issue with the other suit, it is this Court’s considered view that it will have to ascertain facts and probe evidence be ascertaining (sic) whether the issues raised in the instant suit are the same as the once in the Appeal aforesaid and further interrogate the prayers sought whether they are the same and or relate to the same issues. On whether or not the same is Sub judice, facts have to be ascertained and a Preliminary Objection cannot be raised on disputed facts.



Therefore, this Court holds and finds that what has been raised by Defendant/Objector does not amount to a Preliminary Objection, and thus the Preliminary Objection is not merited.” (Emphasis mine)

93. In determining whether or not the present matter is sub judice, this Court has to consider the pleadings filed in Kericho ELRC Cause No. 10 of 2016 which pleadings have not been placed before it.
94. It is evident that a plea of sub judice requires the evaluation of facts and this makes it fail the preliminary objection test; which requires a preliminary objection to be a pure point of law.

**Whether this Court has jurisdiction to hear and determine the present Petition.**

95. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that there is no ownership dispute between the 1<sup>st</sup> Applicant and the Respondents herein.
96. They also submit that the only nexus between the 1<sup>st</sup> Petitioner and the Respondents is ELRC Cause No. 10 of 2016 where the 1<sup>st</sup> Petitioner sued Tea Hotel Limited on behalf of its (Tea Hotel Limited) former employees.
97. They further submit that the only issue that is pending in the said matter is the tendering of accounts after the nullified sale of land parcel No. Kericho Municipality Block 4/295.
98. They submit that the best forum to litigate any pending issues is in ELRC Cause No. 10 of 2016. It is therefore their submissions that this Court does not have jurisdiction to hear and determine this matter.
99. The Petitioners submit that the present Petition seeks declaratory orders over violations of their rights with regard to land parcel No. Kericho/Municipality Block 4/295 which orders this Court has jurisdiction to grant.
100. This Court is established under Article 162 (2) (b) of *the Constitution* of Kenya which states;
  - “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
    - (a) employment and labour relations; and
    - (b) the environment and the use and occupation of, and title to, land.”
101. Section 13 of the *Environment and Land Court Act* provides as follows;

- “(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) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) 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;
  - (g) restitution;
  - (h) declaration; or
  - (i) costs”

102. The prayers sought in the present Petition have been set out in the preceding paragraphs but I will, nonetheless, replicate them as hereunder;

- a. A declaration that 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) do pay general damages to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners for the illegal trespass visited on him and his land. (sic)
- b. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves by themselves, its servants or agents or otherwise howsoever from continued alienation, disturbing the original boundaries and trespass on the Petitioners land parcel being LR No. Kericho Municipality Block 4/295.
- c. A declaration be and is hereby issued that the action of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents purporting to cancel the title deed to LR No. Kericho Municipality Block (sic) violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> and 5<sup>th</sup> Petitioners’ right to property guaranteed under Article 40(1) of *the Constitution* and Section 25 and 26 of the *Land Registration Act*.



- d. A declaration be and is hereby issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purported to continue to receive the proceeds of the land parcel LR No. Kericho Municipality Block 4/295 after the sale and transfer of the title to the said property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' right to property in the form of mesne profit guaranteed under Article 40(1) of *the Constitution*.
- e. A declaration be and is hereby issued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) purported application resulting into judgement dated 18<sup>th</sup> January, 2022 leading to setting aside sale and cancel the transfer of the said property and by ordering that the 3<sup>rd</sup> Respondent rectify the entries in the register on land parcel LR No. Kericho Municipality Block 4/295 violated the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners right to property as provided under Article 40 of the Kenya Constitution 2010.
- f. A declaration be and is hereby issued that the action of the Employment and Labour Relations Court working in concert with all the other Respondents not to give written reasons to the Petitioners in its ruling dated 18<sup>th</sup> January, 2022 as to why it assumed the jurisdiction of the Notice of Motion application dated 26<sup>th</sup> April, 2021 on the land parcel LR No. Kericho Municipality Block 4/295 violated the Petitioners' right to fair administrative actions guaranteed under Article 47(1) and (2) of *the Constitution* and Section 4(1) (2) (3) of Fair Administrative Actions Act, 2015.
- g. A declaration be and is hereby issued that the action of 1<sup>st</sup> and 2<sup>nd</sup> Respondents to invoke the public auction's procedural technicalities to cancel and set aside the sale of land parcel LR No. Kericho/Municipality Block 4/295 and ordered the 3<sup>rd</sup> Respondent to rectify the entries of the register in regard to the said parcel violated the Petitioners' right to access to justice without undue regard to procedural technicalities guaranteed under Article 48 and 159(2)(b) of *the Constitution*.
- h. A declaration be and is hereby issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) employees, servants and agents readiness of destruction, (sic) fencing, partitioning and/or selling of the suit property land parcels L.R No. Kericho Municipality Block 4/295 while Civil Application No. E002 of 2022 and Civil Appeals Nos. E023 and E028 of 2022 are pending in the Court of Appeal Nakuru, threatens the right of the Petitioners to a fair hearing in the Court of Appeal guaranteed under Article 50 of *the Constitution* and Section 87 of the *Land Registration Act*, 2012.
- i. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Respondent's (sic) actions in the Petitioners parcel of land L.R No. Kericho Municipality Block 4/295 are in contravention of Articles 2, 3, 10, 28, 29, 31, 40, 42, 48, 60 (1)(b) and 69 of *the Constitution* of Kenya and are therefore illegal hence null and void.
- j. An order for general damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at Courts (sic) rate from the date of the issuance of title of the suit property was transferred being 19<sup>th</sup> December, 2019 to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Petitioners.
- k. An order for exemplary damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for violating various provisions of *the Constitution* with impunity to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners.



- l. An order for payment of mesne profit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being the proceeds to from (sic) LR No. Kericho Municipality Block 4/295 to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners from the date of issuance of title on 19<sup>th</sup> December, 2019 to the date of judgement of the Court.
  - m. An order do issue for remittance of the balances being the proceeds over sale of LR No. Kericho Municipality Block 4/295 to be deposited in Court less all payments and incidental costs and expenses remitting the net thereof.
  - n. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents hereby (sic) be directed to bear the costs of this Petition jointly and severally.
  - o. Interest on a, b, c, d, e, f, g and h above from the date of judgement until the date of payment in full.
  - p. That this Honourable Court be pleased to grant such further order (sic) as may be just and appropriate.
103. From the prayers sought in the Petition it is evident that the Petitioners are seeking various declarations for violations of their constitutional rights as well as prayers for compensation with respect to the suit parcel. This Court has jurisdiction to grant the said orders in the even that they are found to be merited.
104. The merits or otherwise of the said prayers will be determined at the hearing and determination of the Petition.
105. This ground of the preliminary objection therefore fails.

**Whether the present matter is an employment dispute.**

106. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that the 1<sup>st</sup> Petitioner filed a suit against Tea Hotel Limited vide Kericho ELRC Cause No. 10 of 2016.
107. They also submit that land parcel No. Kericho Municipality Block 4/295 was sold in the said proceedings to settle dues owing to the former employees of Tea Hotel Limited.
108. It is their submissions that the appropriate forum to litigate any other issues is in Kericho ELRC Cause No. 10 of 2016.
109. In response, the Petitioners submit that the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners purchased land parcel No. Kericho Municipality Block 4/295 at a public auction which was sold in execution of the decree issued in ELRC Cause No. 10 of 2016.
110. They submit that the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners were issued with a title deed for the said land on 19<sup>th</sup> December, 2019.
111. It is their submissions that in the present petition, they are seeking declaratory orders over the violation of their right to property as the Respondents have trespassed onto the suit parcel.
112. It is their contention that Kericho ELRC Cause No. 10 of 2016 was concluded and the said Court is functus officio.
113. It is also their contention that the present suit raises issues that touch on land and it is therefore not an employment dispute.
114. From the rival submissions by the parties herein it is evident that this matter has a history in the Employment and Labour Relations Court.



115. The said Court on 18<sup>th</sup> January, 2022 issued orders of mandatory injunction compelling the Land Registrar, Kericho to cancel entries made with respect to the suit parcel after it had set aside the sale of the suit parcel to the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners.
116. It is not disputed that there are appeals pending before the Court of Appeal from the said decision.
117. Whereas this matter has a history in the Employment and Labour Relations Court, it is evident that the issues raised in the present Petition relate to land and this Court has jurisdiction to hear and determine them.

**Whether the 1<sup>st</sup> Petitioner and Ruth Ngelechei have locus standi to file the Petition and the application dated 22<sup>nd</sup> November, 2024.**

118. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents submit that the 1<sup>st</sup> Petitioner has no proprietary interest in land parcel No. Kericho/Municipality Block 4/295 and therefore the 1<sup>st</sup> Petitioner and its Secretary one Ruth Ngelechei do not have locus standi to commence the present proceedings.
119. The 1<sup>st</sup> Petitioner submits that it instituted the present suit together with the other Petitioners because it received the proceeds of the sale of land parcel No. Kericho Municipality Block 4/295 which proceeds were shared amongst the former workers of Tea Hotel.
120. It submits that Ruth Ngelechei did not file the present suit and that she is their branch secretary who has capacity and authority to swear the affidavit on behalf of the 1<sup>st</sup> Petitioner.
121. In the judicial decision of *Otolo Margaret Kanini & 16 others v Attorney General & 4 others* [2022] eKLR the Court held as follows;
- “74. By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory forum. Such right is an entitlement created by the law.”
122. Considering the totality of the circumstances of this case, it is my view that the issue of whether or not the 1<sup>st</sup> Petitioner and one Ruth Ngelechei have locus standi to commence the present proceedings should be canvassed at the hearing of the Petition.

**Disposition.**

123. Taking the foregoing into consideration, I find that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents preliminary Objection dated 17<sup>th</sup> February, 2025 lacks merit and it is hereby dismissed with costs.
124. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Midenga for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents.

Mr. Kemboi for the Applicants.

Mr. Siwolo for Odongo for 4<sup>th</sup> – 8<sup>th</sup> Respondents



No appearance for the 9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents.

Court Assistant; Mr. Joseph Makori.

