



REPUBLIC OF KENYA



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Kibet & 4 others v Cheboi & 8 others (Environment and Land Case E006 of 2025) [2025] KEELC 6828 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6828 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND CASE E006 OF 2025
L WAITHAKA, J
SEPTEMBER 25, 2025**

BETWEEN

PIUS KIPROP KIBET & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS PLAINTIFF

AND

WILLEY CHEBOI & 8 OTHERS & 8 OTHERS & 8 OTHERS & 8 OTHERS & 8 OTHERS DEFENDANT

RULING

1. Vide a notice of preliminary objection dated 25th May 2025, the 1st to 4th defendants seek to strike out the suit herein together with the accompanying notice of motion, dated 16th April 2025, on the grounds that: -
 - i. The suit is time barred, the same having been filed more than 12 years after the course of action accrued in favour of the plaintiffs;
 - ii. The court lacks jurisdiction to grant equitable reliefs over matters that arose more than 6 years before the suit/application for interlocutory reliefs was filed;
 - iii. The pleaded case relates to a boundary dispute between the plaintiffs and the 1st to 4th defendants which dispute ought to be heard and determined by the Land Registrar as provided for under Section 18 of the [Land Registration Act](#) and Regulation 40 of the Land Registration [General] Regulations 2017;
 - iv. The plaint and the notice of motion as instituted is incompetent as the 5th plaintiff is a body corporate under Section [3][3] of the Trustees [Perpetual Succession Act, Cap 164 which ought to be represented by its registered trustees as opposed to strangers like the 1st plaintiff;



- v. The plaintiff has no competent petition and motion as the purported authority has not been executed by the registered trustees and authenticated by affixing the corporate seal as required under section 3[3] of Cap 164;
 - vi. This court lacks jurisdiction to deal with matters relating to the *Fair Administrative Action Act* and the rules made thereunder;
 - vii. This court lacks jurisdiction to deal with grievances over access to information under Sections 7-13 of the *Access to Information Act*.
2. In reply and opposition to the preliminary objection, the 1st plaintiff filed the replying affidavit he swore on 23rd June 2025, in which he deposes as follows: -
1. “.....
 2. That I have been authorized by my co-plaintiffs to swear this affidavit on my behalf and on their behalf.
 3. That the preliminary objection is vexatious, fictitious, scandalous, mischievous, nonstarter, bad in law, an abuse of the court process and a waste of the courts precious time.
 4. That pursuant to section 41 of the *Limitation of Actions Act*, the Act is not applicable to public land.
 5. That the suit properties were public land.....
 6. That we are challenging the manner F/R 362/2, a public land was transferred to the 1st to 4th Defendants/Respondents who are private proprietors.
 7. That the suit is not a boundary dispute, we are challenging the certificates of leases held by the 1st to 5th Defendants/Respondents which has absolutely nothing to do with boundary dispute.
 8. That nothing stops the registered trustees of the 5th Plaintiff/Applicant to authorize any person, in writing conversant with the matters in question to act, plead and swear affidavits on their behalf pursuant to Order 1 Rule 13 of the Civil Procedure Rules.
 9. That *the constitution* of the Catholic Diocese of Nakuru provides that at least two registered trustees have authority to transact on behalf of the registered trustees.....
 10. That it is untrue that the authority was not executed and sealed since the same is properly executed and sealed.....
 11. That pursuant to Rule 3 of the Fair Administrative Action Rules 2024, the Rules apply to applications for judicial review. Our instant suit is not a judicial review, and hence the rules are not applicable in the instant case.
 12. That we complied with Section 8 of the *Access to Information Act* by lodging our written complaint. That Section 14 of the Act is not mandatory as it uses the words “...an applicant may apply...” as opposed to the word shall.....
 13. That the preliminary objection lacks merit and should be dismissed with costs to the Plaintiffs/ Applicants”
 14.”



3. Pursuant to directions issued on 3rd June, 2025 the preliminary objection was disposed of by written submissions.

Submissions

4. In their submissions filed on 7th July 2025, the 1st to the 4th defendants have asserted that the instant suit is bad in law for the grounds listed in the preliminary objection. In support of their contention, the 1st to 4th defendants have cited various sections of the law and decided cases.
5. In their submissions filed on 4th July 2025, the plaintiffs have framed two issues for the court's determination. These are: -
 - i. Whether a preliminary objection can be filed as a stand-alone and
 - ii. Whether the preliminary objection meets the required threshold.
6. On whether a preliminary objection can be filed as a stand-alone, based on the decision in the case of *Garrity v Kirigia & Another* [Environment and Land Appeal E014 of 2023 2023] KEELC 21268 [KLR], where the court emphasized the need of existence of pleadings, [that is to say a plaint; statement of defence and/or statement of defence and a counterclaim] on which a preliminary objection can hinge, the plaintiffs submit that there being no pleadings filed by the 1st to 4th defendants from which comparison of facts as pleaded by parties can be drawn, it is not possible and practical to have a valid, lawful preliminary objection worth court's consideration.
7. In their case, the plaintiffs have pleaded that the defendants in collusion, fraudulently, illegally and unlawfully encroached, subdivided and transferred a section of a public road with a road reserve to the 1-5th defendants. It is further pointed out that the plaintiffs also fault the defendants and particularly the 6 to 8th defendants for violating Articles 10, 19, 20, 35, 39, 40, 47 and 62 of *the Constitution* of Kenya.
8. Concerning grounds 1 and 2 of the preliminary objection, the plaintiffs submit that the *Limitation of Actions Act* is not applicable to public land. In that regard, the plaintiffs have referred to Section 41 of the *Limitation of Actions Act*.
9. It is pointed out that the plaintiffs are challenging the certificates of lease held by the 1st to 5th defendants on the grounds that they were created from public land, road reserve and that the plaintiffs, through the affidavit sworn in support of their interlocutory application, attached survey plan F/R 362/2 which shows that the suit properties were created from land reserved for public use.
10. Reliance is placed in the cases of *Waganjo v County Land Registrar Uasin Gishu County & 3 Others* [Environment and Land Originating Summons 86 of 2018] [2022] KEELC 15195 [KLR] [7 December 2022] [Judgment]; *Duncan Mukabi Kang'ethe & Another v Joseph Ndungu Mwaura* [2021] e KLR.
11. Contending that the defendants through their preliminary objection admit that the suit is for recovery of public land in which they have encroached on, the plaintiffs submit that the defendants' action being in the nature of trespass to land are continuous injuries entitling them to maintain their case. The plaintiffs further submit that evidence is required to assist the court determine whether or not the suit properties were created from land reserved for public use.
12. Maintaining that evidence is required to determine the issues raised in the preliminary objection, based on the decision in the case of *Oraro v Mbaja* [2005] 1 KLR 141 and *Muntet & another* [Environment



and Land Case No E004 of 2024] [2024] KEELC 4934 [KLR] [24 June 2024] [Ruling], the plaintiffs submit that the instant preliminary objection is unmaintainable as it does not raise a pure point of law.

13. On ground 3, the plaintiffs submit that the suit has nothing do with a boundary dispute between the plaintiffs and the defendants as claimed by the defendants. The plaintiffs assert that the suit is about alleged fraudulent, illegal, unprocedural and unlawful acquisition of the suit properties by the 1st to the 5th defendants. The plaintiffs also submit that the suit also challenges the manner in which the 6th to the 8th defendants by their actions/omissions colluded with and aided the 1st to the 5th defendants to acquire the suit properties.
14. On grounds 4 and 5 of the preliminary objection, the plaintiffs submit that under Order 1 Rule 13 of the Civil Procedures Rules, the 5th plaintiff could authorize the 1st plaintiff to plead on its behalf; that the 5th plaintiff through its trustees had authorized the 1st plaintiff to plead on its behalf and that the burden of proof is on the 1st to 4th defendants to prove that the 5th plaintiff had not authorized the 1st plaintiff to plead on its behalf.
15. On ground 6 of the preliminary objection, the plaintiffs submit that the contention that the court is bereft of jurisdiction is misguided and calculated at either deliberately or otherwise misleading the court. In that regard, the plaintiffs submit that the provisions of law cited by the defendants relate to judicial review application yet their suit is not a judicial review application.
16. On ground 7, the plaintiffs submit that the ground is not enough to dismiss the entire suit. According to the plaintiffs' compliance with Section 14 of the *Access to Information Act* is not mandatory and that their failure to apply for review is not a sufficient ground to strike out the suit. The plaintiffs further submit that evidence is required to show that they did not comply with that section of the law.
17. In view of the foregoing, the plaintiffs urge the court to dismiss the preliminary objection with costs to them.

Analysis and determination

18. I have read and considered the grounds on which the 1st to 4th defendants have hinged their preliminary objection, the submissions and the applicable law/legal principles.
19. From the issues taken upon in support of the preliminary objection, the response thereto and the submissions filed by the parties, I find the sole issue for the court's determination be is whether the 1st to 4th defendants have made up a case for being granted the orders sought.
20. Concerning that issue, before the 1st to 4th defendants can be granted the orders sought, they must demonstrate that their preliminary objection is premised on pure questions of law and not on issues in respect of which evidence would be required to determine the issues. The defendants may also hinge their preliminary objection on facts, if the facts are either admitted by the parties or arise by clear implication from the pleadings filed by the parties. In that regard see the decision in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 where it was stated/held: -

“So far as I'm aware, 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.”



21. In *David Karobia Kiiru v Charles Nderitu Gitoi & another* [2018] e KLR the court held: -
- “For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.”
22. In the circumstances of this case, where the issues raised in the preliminary objection have not been admitted by the parties and do not arise by clear implication from the pleadings filed by the parties [defendants did not file a statement of defence to hinge their defence/contentions], the defendants need to demonstrate that the issues raised constitute pure questions of law and not mixed issues of fact and law.
23. Upon review of the grounds taken up by the defendants in support of the defendants’ preliminary objection, particularly grounds 1, 2, and 3, I note that they raise questions of mixed issues of law and fact, requiring evidence to prove, hence not pure points of law. For instance, evidence is required concerning when time for purposes of filing the suit began to run in favour of the plaintiff. There is also a question as to whether the subject matter of the suit is public land.
24. Evidence is also required to determine whether the subject matter relates to public land and/or whether the dispute relates to a boundary dispute.
25. Since the allegation by the defendants that the dispute before court relates to a boundary dispute is denied by the plaintiff, in the absence of any evidence capable of assisting the court to make a determination on that issue, the court cannot make any determination on that issue preliminarily.
26. Concerning the issues taken up in ground 4 and 5, the issues relate to the legal propriety or otherwise of the inclusion of the 5th plaintiff in the suit, while those issues, if proven may lead to striking out of the claim relating to the 5th plaintiff or warrant an order striking out the name of the 5th plaintiff from the suit, the grounds cannot form a basis for striking out the entire suit as the 5th plaintiff is not the sole plaintiff in the case. The defendants have not demonstrated that the suit has been filed by the plaintiffs on behalf of the 5th plaintiff to warrant striking out the entire suit. Evidence is required to prove the issues of fact raised in those points concerning the suit by the plaintiff. That being the case, the grounds cannot form a basis of granting the prayers sought by the defendants.
27. With regard to ground 6 and 7, the suit is not brought under the statutes the defendants seek to rely on in defeating the plaintiffs’ case. There is nothing in the statutes cited by the defendants, Fair administrative Actions Act, 2015 and [Access to Information Act](#), 2016 which bars this court from exercising its civil jurisdiction. The dispute before this court is civil in nature and does not turn on those statutes.
28. The upshot of the foregoing is that the preliminary objection has no merit. Consequently, I dismiss it with costs to the defendants.
29. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KABARNET THIS 25TH DAY OF SEPTEMBER, 2025.

L. N. WAITHAKA.

JUDGE



Ruling read virtually in the presence of;-

Mr. Mureithi h/b for Mr. Ndungu Gichuhi for the Petitioners

Mr. Mua Wambua h/b for Mr. Mogambi for the 1st to 4th Defendants

Court Assistant Ian

