



Adam (Suing as a Personal Representative of the Estate of the Deceased Ahmed Adam) v Greenbelt Warehouse Limited & 3 others (Environment and Land Case E0126 of 2024) [2025] KEELC 5900 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5900 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E0126 OF 2024
EK MAKORI, J
JULY 31, 2025**

BETWEEN

HANTER AHMED ADAM (SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE DECEASED AHMED ADAM) PLAINTIFF

AND

GREENBELT WAREHOUSE LIMITED 1ST DEFENDANT

IBRAHIM DIRIYE 2ND DEFENDANT

ABDI DIRIYE 3RD DEFENDANT

JACKSON GIKANDI ALIAS NGIBUINI GIKANDI T/A GIKANDI AND COMPANY ADVOCATES 4TH DEFENDANT

RULING

1. The 1st, 2nd, and 3rd Defendants filed a Preliminary Objection (PO) dated January 28, 2025. They raised significant issues that the current suit is either *res judicata* or *sub judice* – Mombasa CMCC/ELC No. E075 of 2023 – *Hanter Ahmed Adam (Suing as a Personal Representative of the Estate of the Deceased Ahmed Adam) v Greenbelt Warehouse Ltd, Ibrahim Diriyee, and Abdi Diriyee*. They argued that the entire suit should be dismissed with costs.
2. When the court issued its ruling on July 10, 2025, regarding two pending motions, learned counsel for the Plaintiff, Ms. Cherono, brought to my attention that I had not yet decided on the said PO, despite initially directing that I was to handle all pending applications and POs at once, leading to this ruling.
3. Aside from filing the current PO, the 1st, 2nd, and 3rd Defendants or their counsel did not submit any arguments in writing supporting the PO as instructed by the court. The other parties also did not file any rejoinders, either in opposition to the PO or in support of it.



4. I acknowledge the submissions filed by the learned counsel for the Plaintiff, Ms. Cheron, in opposition to the PO.
5. The issues I frame for the determination of this court are whether the PO is sustainable and who should bear the costs of its litigation.
6. To successfully sustain a PO, as held in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd*. [1969] E.A. 696, where Charles Newbold P. stated that a proper preliminary objection constitutes a pure point of law, the learned judge then held that:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. 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 in 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 the issue. The improper practice should stop.”

7. The Plaintiff, in their submissions, points out that the alleged suit was voluntarily withdrawn due to jurisdictional challenges raised by none other than the Applicants themselves. The Plaintiffs' decision to withdraw was made in good faith and the interest of procedural fairness, with full disclosure of the circumstances. Now, with the matter properly before this Court, the Applicants' attempt to invoke these doctrines is not only unsubstantiated but also a deliberate effort to stifle the Plaintiffs' right to seek justice in the proper forum.
8. The Plaintiff further argues that the PO tries to hide this clear issue with disputed facts, aiming to delay justice. The reason for the withdrawal was not the merits of the case. Instead, it was a jurisdictional challenge raised by the current Applicants, who argued through a PO that the Chief Magistrate's Court at Mombasa lacked both territorial and pecuniary jurisdiction over the matter. Specifically, the Defendants objected to the Mombasa suit because the property in question is located in Kwale County and, therefore, falls outside the territorial jurisdiction of the Mombasa Court. In light of that objection and the interest in procedural integrity, the Plaintiff chose to withdraw the matter as mentioned earlier and file the current suit before this Court, which is vested with adequate territorial and pecuniary jurisdiction.
9. It is further contended that the online CTS indicates the suit was withdrawn, was never heard, is not pending, and therefore neither res judicata nor sub judice can apply.
10. As stated, apart from filing the PO, the 1st, 2nd, and 3rd Defendants have not contested the submissions by the Plaintiff. The primary suit was voluntarily withdrawn, is not pending, and has never been heard or determined on its merits by a competent court.
11. Consequently, the current PO lacks merit and is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 31ST DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:



Ms. Cheron, for the Plaintiff

Mr. Otieno, for the 4th Defendant

Abdi: Court Assistant

