



REPUBLIC OF KENYA



KENYA LAW
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Madison Insurance Company Limited v Dacons Investment Limited (Civil Case E004 of 2023) [2025] KEHC 15666 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E004 OF 2023
M THANDE, J
OCTOBER 31, 2025**

BETWEEN

MADISON INSURANCE COMPANY LIMITED PLAINTIFF

AND

DACONS INVESTMENT LIMITED DEFENDANT

RULING

1. The Plaintiff filed the present declaratory suit by way of plaint dated 6.4.23 seeking:
 - a. A declaration that it is not bound to pay and/or satisfy any judgment arising from Kaloleni CMCC No. E143 of 2022 Muli Mutua v Dacons Investment Limited and/or judgment in any suit arising from the accident involving the Defendant's motor vehicle and the Plaintiff on 27th March, 2023 and/or indemnify the Defendant against any claim in respect of bodily injury to any person, property damage or satisfy any claim whatsoever arising out of the accident which allegedly occurred involving the Defendant's motor vehicle.
 - b. Costs of the suit.
 - c. Interest on (b) above at Court rates.
 - d. Any other or further relief that the Honourable Court may deem just, expedient and fit to grant.
2. In opposition to the plaint, the Defendant filed a preliminary objection dated 12.11.24. The objections are that:
 1. That this Court has no jurisdiction to entertain, hear or determine the suit filed herein.
 2. That from the facts pleaded in the Plaint it is apparent that the dispute is in fact in substance a dispute between the Plaintiff and Defendant for registration under the *Insurance Act*.



3. That the gist of the suit has been intimated by the refusal by the Plaintiff to perform its obligations as an insurer.
4. That the Plaintiff offends the doctrine of exhaustion by abandoning the already existing proceedings at The Insurance Regulatory Authority between the parties and filing this suit before the determination of the dispute.
5. That the issues raised in the Plaint were subject to proceedings at the tribunal and ought to be dealt with through the dispute resolution mechanisms prescribed under Section 3AA of the [Insurance Act](#) and fully exhausted before the parties moves to court if not satisfied.
6. That under Section 3AA of the [Insurance Act](#). Any dispute of the nature raised in the Plaint herein must be taken to the Insurance Regulatory Authority (IRA) and dealt with exhaustively since the tribunal has competent jurisdiction over the same.
7. That in fact the dispute is still pending determination before the IRA tribunal and is running alongside the suit in court rendering the matter before the board a sub judice.
8. That this suit is therefore premature, misplaced, mischievous, vexatious and an abuse of Court process.
9. That this Honorable Court therefore is deprived of its Jurisdiction to entertain, hear or determine the issues raised in this Plaint and is confronted by the reality of downing their tools until the matter in the tribunal is fully heard and determined.

3. It is this preliminary objection that is the subject of this ruling. Parties filed their respective submissions which I have duly considered.

4. The law on preliminary objections is well settled. A preliminary objection must be raised on a pure point of law. In the locus classicus on preliminary objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, Sir Charles Newbold rendered himself thus:

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.

And Law, JA stated:

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.

5. The law is that for a preliminary objection to be upheld, it must raise a pure point or points of law, which would completely dispose of the matter. As a minimum, the factual basis ought not to be disputed.

6. The Defendant's contention is that this Court lacks jurisdiction to entertain the suit for offending the provisions of Section 3AA of the Insurance Regulatory Act. The claim that the Plaintiff has not complied with the provisions of Section 3AA of the Act is a point of law which if found to be merited can dispose of the suit.



7. Section 3AA of the *Insurance Act* makes provision for assistance in investigation as follows:
1. The Authority may, where it receives a request from a regulatory body, whether established within or outside Kenya, for assistance in investigating a person specified by the regulatory body who has contravened or is contravening any legal or regulatory requirements which—
 - (a) are enforced or administered by that regulatory body; or
 - (b) relate to insurance transactions regulated by that regulatory body, and where it is of the opinion that the request meets the requirements of subsection (3), provide the assistance requested for by exercising any of its powers under this Act or by providing such other assistance as the Authority may consider necessary.
 2. For the purposes of subsection (1), the provisions of this Act shall, with such modifications as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement referred to in subsection (1) were an offence under this Act.
 3. A regulatory body which requests for assistance under subsection (1) shall demonstrate that—
 - (a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or
 - (b) the assistance shall assist the regulatory body in the discharge and performance of its functions.
 4. The Authority shall, in deciding whether the requirements under subsection (3) have been satisfied in a particular case, take into account whether the regulatory body shall—
 - (a) pay the Authority any of the costs and expenses incurred in providing the assistance; and
 - (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.
 5. Nothing in this section shall be construed as limiting the powers of the Authority to co-operate or co-ordinate with any other regulatory body in the exercise of its powers under this Act, in so far as any such co-operation or co-ordination is not contrary to the objectives of this Act.
8. A reading of the cited provision clearly indicates that it relates to the power of the Insurance Regulatory Authority (the Authority) to assist in investigation. This assistance is available to a regulatory body seeking assistance in relation to investigations of a person who has contravened or is contravening any legal or regulatory requirements. The Plaintiff is described in the plaint as a limited liability company incorporated under the *Companies Act* and carrying on insurance business under the *Insurance Act*. The Plaintiff is not a regulatory body. Accordingly, Section 3AA is not applicable to the Plaintiff. The objection in this regard thus fails.
9. I now turn to the other assertions by the Defendant, namely that the dispute in the suit between the Plaintiff as the insurer and the Defendant as the policy holder was forwarded to the Authority. Further, that parties filed and highlighted submissions and now await the Authority's verdict.
10. It is well settled that a preliminary objection cannot be raised where facts are to be ascertained. The assertions by the Defendant are all questions of fact that require to be ascertained. Accordingly, these objections fail. I am fortified in my finding by the holding in the case of *Aviation & Allied Workers*



Union Kenya vs Kenya Airways Ltd & 3 Others [2015] eKLR where the Supreme Court stated as follows:

Thus a preliminary objection may only be raised on a 'pure question of law'. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.

11. Duly guided, I find that the assertions by the Defendant are all questions of fact that require to be ascertained.
12. The improper filing of preliminary objections has been frowned upon as they do nothing but occasion delay, needlessly increase costs and even waste judicial time. In the Mukisa Biscuit case (supra), Sir Charles Newbold opined:

The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. This improper practice should stop.

13. This is evidently a clear case of improper raising of a preliminary objection and has served to unnecessarily delay the matter herein and increase costs. In the result, I find that the Preliminary Objection dated 12.11.24 lacks merit and the same is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 31ST DAY OF OCTOBER 2025

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M. THANDE

JUDGE

