



REPUBLIC OF KENYA



KENYA LAW
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**Drumvale Farmers Co-operative Society Limited v Kiama (Environment and Land
Case E483 of 2024) [2025] KEELC 7648 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7648 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E483 OF 2024
CG MBOGO, J
NOVEMBER 7, 2025**

**BETWEEN
DRUMVALE FARMERS CO-OPERATIVE SOCIETY LIMITED PLAINTIFF
AND
PETER WANJOHI KIAMA DEFENDANT**

RULING

1. Before the court for determination is the notice of preliminary objection dated 15th January 2025, filed by the defendant challenging the suit on the following grounds: -
 1. Whether the plaintiff has jurisdiction to entertain the suit under Section 66 and 77 of the Cooperative Societies Act.
 2. Does the suit offend Article 40 of the Constitution of Kenya and provisions of the Land Registration Act on ownership of land.
 3. Is this suit bad in law, vexatious, unlawful and calculated to waste the precious time of this honourable court.
 4. Is this suit res judicata.
2. The preliminary objection was canvassed by way of written submissions. The defendant filed his written submissions dated 6th March, 2025. He submitted that the instant objection is premised on Sections 6 and 7 of the Civil Procedure Act to the extent that there is a matter before the Co-operative Tribunal as CTC No. 720 of 206 involving Pius Musimba Muasya and Norman Mutua Kimatu and 1 other versus Peter Wanjohi and Commissioner of Cooperatives. Further, that disputes relating to the business of a cooperative society or amongst its members are governed by the Co-operatives Societies Act and a party can only come to this court on appeal.



3. The defendant further submitted that the current claim is based on the liquidation of the plaintiff as per paragraphs 8 and 9 of the plaint which is pending before the Co-operatives Tribunal and that which falls under Section 76 of the Cooperatives *Societies Act*. Further, the defendant submitted that the verifying affidavit is sworn by Felix Maingi Ngui who has never been a member of the plaintiff and thus cannot purport to be an official. To buttress on the above, the defendant relied on the case of Kieni Farmers Co-operative Society Ltd v Rose Wanjiru [2016] eKLR.
4. The plaintiff filed its written submissions dated 17th March, 2025. The plaintiff submitted that its contention against the defendant is that while he served as the Commissioner of the plaintiff appointed as a liquidator, he fraudulently allocated himself the suit property in the plaint and as such, the dispute is properly before this court and it cannot be determined by the Co-operatives Tribunal.
5. In conclusion, the plaintiff submitted that the defendant has completely misunderstood the matter that is before this court or is engaging in side shows which the court should not entertain.
6. I have considered the preliminary objection and the written submissions filed by the parties. The issue for determination is whether the preliminary objection has merit.
7. Law, J.A. in Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696 stated as follows: -

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

8. Also, the case of John Musakali vs. Speaker County of Bungoma & 4 others (2015) eKLR, it was held that:-

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

9. Further, Ojwang J (As he then was) in Oraro -vs- Mbaja (2005) KLR 141 where after quoting the statement of Law, J.A. in the Mukisa Biscuits case (supra) went on to state that:-

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by 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, 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 point....

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...”



10. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from pleadings and not outside of that.
11. In applying the above to the instant objection, the plaintiff filed the plaint dated 25th November, 2024 seeking the following orders:-
 - a. A declaration that the property numbers Mavoko Town Block 12/3131 and 2557 and Athi River/Athi River Block 5/743 & 745 belong to the plaintiff.
 - b. A declaration that the purported title deeds issued to the defendant on 29-8-2012 for title no. Mavoko Town Block 12/3131 and Athi River/Athi River Block 5/743 and 754 were issued irregularly and the same be revoked and or cancelled.
 - c. An order for demolition of any structure constructed by the defendant on the suit land and at the defendant's costs.
 - d. Mandatory injunction against the defendant to cease all claims against titles numbers Mavoko Town Block 12/3131 and 2557 and Athi River/Athi River Block 5/743 and 745.
12. A general reading of the plaint points toward a claim of the suit property which the plaintiff is challenging the validity and acquisition of the same by the defendant. The plaintiff has pleaded to a narration of events from the year 1993 to 2009 and acts of fraud allegedly committed by the defendant.
13. On the other hand, the defendant filed his statement of defence and counter claim dated 15th January, 2025 denying the said allegations as it appears in paragraphs 2, 3 and 5 thereof. In fact, he asserts ownership of the suit property on the grounds that he lawfully acquired the same. In his counter claim, he seeks general damages, aggravated damages, permanent injunction and costs of the suit.
14. From the above, it is clear that a preliminary objection ought to contain undisputed facts, and from the pleadings filed, the defendant disputes the allegations. On this ground alone, the objection fails.
15. Secondly, the grounds contained in the objection and the written submissions seems to be at variance to the extent that a similar claim is currently pending before the Co-operatives Tribunal. There is no proof that a similar claim exists before the tribunal. Even without seeking to go deeper into these claims, this court is clothed with jurisdiction to hear and determine the suit as per Section 13 of the *Environment and Land Court Act* for the reason that it is a land dispute and as far as the court is concerned, this jurisdiction does not lie with the Co-operatives Tribunal.
16. Third, for the court to appreciate that indeed the suit is res judicata, it would require to comb through the evidence. A preliminary objection automatically fails in the instance where the court is invited to look outside the pleadings, and more particularly in this case where an issue of a verifying affidavit has been raised.
17. In my view, the preliminary objection was not well thought out and it cannot stand the test. The only consideration for this court is the jurisdiction of this court to hear and determine the dispute owing to the location of the suit property. This is a matter which ought to be heard by the Environment and Land Court in Machakos.
18. For this reason, and looking at the prayers sought in the plaint, this file is hereby transferred to Machakos ELC for hearing and determination. The notice of preliminary objection dated 15th January, 2025 lacks merit and it is hereby dismissed. Costs shall be in the cause.



Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER, 2025.

HON. MBOGO C.G.

JUDGE

07/11/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Njonjo for the Plaintiff/Respondent – present

Mr. Wakasa Were holding brief for Mr. Wachakana for the Defendant /Applicant

