



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC LAND CIVIL SUIT NO. E075 OF 2024**

**PETER KIHARA NDIBA (*suing as the administrator of the estate of the late Samuel Ndiba Kihara*) .....**  
**.....PLAINTIFF**

**VERSUS**

**JANE NDUTA MWANGI .....1<sup>ST</sup>**  
**DEFENDANT**

**JAPHETH SOMBE MUTUNDU.....2<sup>ND</sup>**  
**DEFENDANT**

**BENEDICT MULLEN.....3<sup>RD</sup>**  
**DEFENDANT**

**ALPHONCE M. MBINDYO T/A**  
**A.M MBINDYO & CO. ADVS.....4<sup>TH</sup>**  
**DEFENDANT**

**LAND REGISTRAR MACHAKOS.....5<sup>TH</sup>**  
**DEFENDANT**

**LAND REGISTRAR MACHAKOS.....6<sup>TH</sup>**  
**DEFENDANT**

## **RULING**

1. This ruling considers the notice of motion dated 16/06/2024 filed by the plaintiff, along with two notices of preliminary objection (POs) filed by the 1<sup>st</sup> to 4<sup>th</sup> defendants dated 14/10/2024 and 18/11/2024. We will soon review a summary of these documents and their responses, offering a clear overview.
2. The motion is expressed to have been moved within the provisions of **Sections 1A, 1B & 3A** of the **Civil Procedure Act** and **Orders 40, Rules 1 (a) & (b)** and **51(1)**, of the **Civil Procedure Rules**, and all other enabling provisions of the law. The plaintiff seeks the following reliefs from this court: -

***a. Spent.***

***b. Spent.***

***c. Spent.***

***d. Spent.***

***e. That the honourable court issue an order restraining the 4<sup>th</sup> defendant from receiving members' contributions in his client account number \*\*\* at \*\*\*, in the account name A.M Mbindyo & Company Advocate, pending the hearing and determination of the suit.***

***f. THAT an order does issue compelling the 4<sup>th</sup> defendant to account for all the monies***

***received in his client account right from 12<sup>th</sup> June, 2021, to date.***

***g. That the court issue an order disbanding the illegal office bearers and compel them to produce the following documents: records of accounts, cheque books (several), books of accounts, original titles, survey maps and subdivision records.***

***h. Costs to be borne by the defendants.***

3. It is worth noting that they also pursued orders labelled “*Changed the offices of the group from Contrast Building, 5th Floor Moi Avenue to some building in Katani within Machakos County. Illegal sub-division and sell of the group’s portions of land and the proceeds are utilized for their personal gains. Several original titles collected by the 2nd Defendant from the 4th Defendant are not known where they are to date. The group and the members including the estate of the founder and main contributor to the group is likely to suffer immensely.*” This court has found it challenging to interpret these reliefs, as they seem to be just statements. For these reasons, this court will disregard them.

4. Be that as it may, the motion is supported by the grounds outlined in the body thereof and the supporting affidavit of the deceased plaintiff’s legal administrator, sworn on the same date. In summary, he stated: a) upon the demise of the deceased plaintiff, who was a founder and treasurer of

Shangilia Baba na Mama Self-help Group (**“self-help group”**), the 1<sup>st</sup> -3<sup>rd</sup> defendants were illegally appointed into office respectively as “member”, secretary and chairman on 25/02/2022; b) this appointment failed to meet the threshold as the names of the members in attendance were not disclosed and members of staff were allowed to participate therein; c) the 4<sup>th</sup> defendant participated in the illegal meeting whereby the members’ funds were deposited to its client account no. \*\*\* which funds are unaccounted for; d) the 1<sup>st</sup> defendant has since sold off several properties belonging to the self-help group, whilst without authorisation from members, the 2<sup>nd</sup> defendant has collected title documents for land parcels nos. **Mavoko Town Block 2/25953, 26096, 26095, 2/26097 and 26098** from the 4<sup>th</sup> defendant, which have since been tampered with, subdivided or sold.

5. The motion is opposed by the 3<sup>rd</sup> defendant’s detailed replying affidavit, which he deposed to on 19/11/2024. Notably, he asserted that: (a) the description of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant by the plaintiff as the self-help group’s officials was accurate, as such appointment took place following valid elections held on 25/02/2022 in accordance with its constitution; (b) the self-help group’s founding officials were Joseph Muturi Gitau as chairman, the deceased plaintiff as secretary, and Mary Wairimu as treasurer; (c) pursuant to clauses 3.6 and 5.3 of the self-help group’s constitution, the deceased’s elective position terminated upon his death, and the plaintiff’s was a stranger to it; and

6. D)As a member of the self-help group, the deceased plaintiff acquired several assets, namely: **Mavoko Town Block 2/174, LR No.12715/720, LR No.12715/684,** and **Mavoko Town Block 2/21455, 21456, 21457, 21458, 21459, 19502, and 791;** e) as the officials, they retained and instructed the 4<sup>th</sup> defendant to represent and act for the self-help group, and the members of the group sanctioned everything done by it through its elected officials, and that the 4<sup>th</sup> defendant never participated in the self-help group's elections; f) prayer 7, which seeks final orders, is not tenable.

7. Apart from the replying affidavit, the 1<sup>st</sup> - 4<sup>th</sup> defendants' POs referenced earlier herein raised the following compounded points of law not only against the motion but also against the substantive suit in the following manner: -

***a. The plaintiff in this suit does not have the locus standi to institute and or prosecute both the suit and the application, either on his own behalf, on behalf of the Estate of Samuel Ndiba Kihara, or on behalf of the members of the self-help group.***

***b. The suit is a non-starter and bad in law as it offends the mandatory provisions of Order 1 Rule 8 and 13 of the Civil Procedure Rules.***

***c. The plaintiff's suit does not disclose any reasonable cause of action or at all against***

***the 1<sup>st</sup> to 4<sup>th</sup> defendants, and the same ought to be struck out with costs.***

***d. The suit was filed prematurely and failed to exhaust laid down procedures for dispute resolution under statute and more particularly Under Sections 26 and 27 of the Community Groups Registration Act, 2022 No.30 of 2022 and thus this Honourable Court has no jurisdiction to hear this matter in the first instance other than to seat on appeal against the decision of the director for Social Development appointed under Section 3 of the said Act.***

8. The motion and POs were canvassed by written submissions. This court is incredibly grateful for the submissions filed by **Ms Ochoki & Ochoki Associates** advocates on record for the plaintiff, dated 11/11/2024 and those filed by the 4<sup>th</sup> defendant for the 1<sup>st</sup> to 4<sup>th</sup> defendants, dated 23/06/2025. Therefore, after identifying and considering the issues for determination, this ruling shall, later in its analysis and decision, consider the arguments contained in the rival submissions regarding the particular issue and also take into account the law and judicial precedents.

9. Accordingly, having reviewed the motion, their grounds, affidavits, annexures, POs, and the opposing submissions, the

issues that will be addressed concurrently and which require resolution are as follows:

***a) Whether the POs have met the legal threshold and are merited.***

***a) Whether the reliefs sought are merited.***

10. They will soon be addressed in this court's analysis and determination. However, before proceeding further, the court must note that parts of the submissions relate to issues that are now moot, and it may appear that the parties have overlooked the fact that such reliefs, such as those concerning injunctions, were sought "pending the hearing and determination of the application." Moreover, in his submissions, the deceased plaintiff invited the court to scrutinise certain documents, which this court declines to do as he should have sought leave to introduce these documents via a supplementary affidavit.

11. Now, reverting to the 1<sup>st</sup> issue, the plaintiff submitted that the POs had not met the threshold of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696**, which has long settled the tests that a PO has to meet.

12. The 1<sup>st</sup>- 4<sup>th</sup> defendants did not focus on this first limb. Instead, they addressed the merits of the PO. On the 1<sup>st</sup> point of *locus standi*, they referred to facts contained in the certificate of confirmation of the grant of the deceased plaintiff's estate. They argued that since the disputed properties were not part of the deceased plaintiff's estate, his representative lacked *locus standi*. On the 2<sup>nd</sup> point of the law of suit being a nonstarter, counsel relied on the provisions of **Order 4 Rule 1(4)** of the **Civil Procedure Rules ("CPR")**, which this court considers misplaced, as the dispute herein does have a corporation as a party. Be that as it may, the face of the plaint is explicit that the legal administrator is suing in his capacity as a representative of the deceased's estate and not filing a representative suit. Preliminarily, this court finds that this point of law, which is anchored under **Order 1 Rule 8** and **13** of the **CPR**, is misplaced.
13. Concerning the 3<sup>rd</sup> and 4<sup>th</sup> points of the PO, the 1<sup>st</sup> and 4<sup>th</sup> defendants jointly argued that no cause of action was established; furthermore, if such a cause of action existed, the appropriate remedies were provided under **Sections 26** and **27** of the **Community Groups Registration Act**, which possesses jurisdiction to hear the dispute. Additionally, they contended that the plaintiff violated the doctrine of exhaustion of remedies as prescribed by statute.
14. Having emphasised the submissions of the parties regarding this first issue, it is essential to reaffirm the pertinent principles

derived from the landmark case, **Mukisa Biscuit (Supra)**, which articulated that: -

***“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 ... 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.”***

15. In affirming **Mukisa Biscuit (Supra)**, the Supreme Court of Kenya in **Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others [2015] KESC 23 (KLR)** emphasised the following on the threshold of a PO: -

***“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. The***

***facts are deemed agreed, as they are prima facie presented in the pleadings on record.”***

16. Thus, based on these principles, when addressing this issue, the court will inquire whether the points of law are clear; whether the facts are settled and correct; do not necessitate further ascertainment; and whether the court is not being asked to exercise its prudent discretion. Concerning the points of law on reasonable cause of action and *locus standi*, it is apparent to this court that these matters require an evaluation of evidence from the parties. Accordingly, this court concludes that these do not constitute purely points of law. The legal issue concerning capacity was previously addressed, leaving the point of law regarding jurisdiction to be considered.
17. As to jurisdiction, it is the considered opinion of this court that this is a matter of pure law, as it could determine the outcome of the entire suit. It is settled law that without establishing jurisdiction, the court cannot proceed any further than to lay down its tools. Accordingly, upon close examination of the plaint, it becomes apparent that it is a mixed-grilled case as it is multifaceted, with the predominant issue being the election of the 1<sup>st</sup> to 3<sup>rd</sup> defendants as officials and the activities of these officials upon assuming office, including instructing the 4<sup>th</sup> defendant to act on their behalf and carrying out various actions on various parcels of land that allegedly belong to members.

18. This court is persuaded, and in agreement with the careful submission made by the 1<sup>st</sup> to 4<sup>th</sup> defendants, that pursuant to the provisions of **Section 26** of the **Community Groups Registration Act**, the appropriate forum to address this dispute is the High Court. Still, even so, the High Court only exercises appellate jurisdiction. It is worth mentioning that it is allowable for a party, in exceptional cases, to be excused from exhausting administrative dispute resolution mechanisms before filing a suit, as held in **William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR)**.
19. The doctrine of exhaustion stipulates that a party must fully utilise the dispute resolution mechanism mandated by law before seeking judicial intervention. In the circumstances of this case, **Section 26** of the **Community Groups Registration Act** states that the first step in resolving disputes among members is to use the dispute resolution mechanisms outlined in the self-help group's Constitution. If the dispute is between two community groups, the parties should refer the matter to the sub-county social development committee. If still aggrieved, an appeal can be lodged with the director before a final appeal is made to the High Court.
20. The Court of Appeal in **Geoffrey Muthinja and Another v Samuel Muguna Henry & 1756 Others [2015] eKLR**

explained the reasoning behind this doctrine of exhaustion as follows;

***“It is imperative that, where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of their own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution, which commands Courts to encourage alternative means of dispute resolution.”***

21. At this stage of the proceedings, the court is uncertain whether the self-help group possesses a Constitution capable of resolving the dispute herein or if the matter meets the exceptions that would justify the High Court’s exercise of jurisdiction. Nevertheless, this court lacks jurisdiction to adjudicate disputes among members of a self-help group. Accordingly, this court so finds. Consequently, a determination of the second issue is rendered unnecessary.

22. Building upon the preceding analysis and findings, the suit is deemed incompetent and is hereby dismissed. After considering the special relationships between the deceased plaintiff and the 1<sup>st</sup> to 3<sup>rd</sup> defendants, all of whom are members of the self-help group, each party shall bear their respective costs of the suit. Accordingly, the final orders that the court finds appropriate are as follows: -

***a) The suit is hereby struck out, with each party bearing their respective costs of the suit.***

***b) The file is hereby effectively marked as closed.***

It is so ordered.

**Delivered and Dated at Machakos this 4<sup>th</sup> day of November, 2025.**

**HON. A. Y. KOROSS  
JUDGE  
04.11.2025**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Mr. Sausi for the applicant.

Mr. Mbindyo for 1<sup>st</sup> to 4<sup>th</sup> respondent.

ORIGINAL