

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E005 OF 2023

AGNES MUTINDI NDETEI1ST
PLAINTIFF
ALICE NDETEI KAMENE2ND
PLAINTIFF

-VERSUS-

MARY NDUKU MUSOMBA1ST
DEFENDANT
CHIEF LAND REGISTRAR2ND
DEFENDANT

RULING

1. The Plaintiffs filed the Plaint herein dated 4th September, 2023 seeking inter alia orders for registration of the 1st Plaintiff as joint owner of land Title No. Makueni/Mukaange Scheme/589 measuring 14.39 hectares and a permanent injunction against the 1st Defendant from disposing the suit property without authorization from the Plaintiffs.
2. Vide a preliminary objection dated 17th June, 2025, the 1st Defendant raised a preliminary objection on the basis of the following grounds:-
 - i) **THAT this Honourable Court lacks the requisite pecuniary jurisdiction to entertain this suit, the value of the subject matter being below the threshold conferred upon the Environment and Land Court under Article 162 (2) (b) of the Constitution of Kenya, 2010 the Environment and Land Court Act and allied legislation.**
 - ii) **THAT pursuant to Section 26(3) and (4) of the Environment and Land Court Act read together with Section 9 of the Magistrate's Courts Act, 2015 jurisdiction in land matters is shared between**

the Environment and Land Court and subordinate courts depending on the value of the land. The subordinate courts are duly vested with original jurisdiction over land and environment claims where the value of the subject matter does not exceed Kshs.20 million.

3. On the basis of the foregoing, the 1st Defendant urged the court to strike out the suit with costs.
4. The Plaintiffs opposed the preliminary objection through a response dated 21st July, 2025 citing the following grounds: -
 - i) **The objection raises contested issues of fact, particularly the alleged pecuniary value of the subject property which can only be determined through evidence. As such, it does not meet the threshold of a proper preliminary objection as enunciated in the locus classicus case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, where the court held that a preliminary objection must be based purely on points of law.**
 - ii) **The Environment and Land Court is vested with original and exclusive jurisdiction under Article 162(2)(b) of the Constitution of Kenya and Section 13 of the Environment and Land Court Act to hear and determine disputes relating to the environment, use, occupation of and title to land. This jurisdiction is not ousted merely by reference to the alleged value of the subject property, particularly where such value is not admitted or established.**
 - iii) **The objection is improperly timed, having been raised after pretrial compliance and the matter being set down for hearing. This conduct undermines the overriding objective under Sections**

1A and 1B of the Civil Procedure Act which mandates the just, expeditious, proportionate and affordable resolution of disputes.

iv) The 1st Defendant expressly admitted this Honourable Court's jurisdiction in her statement of defence dated 14th February, 2024 and has since actively participated in these proceedings including compliance with pretrial directions. Raising a preliminary objection at this advanced stage amounts to an abuse of the court process and is a transparent attempt to delay the fair and expeditious determination of this suit.

5. The preliminary objection was canvassed by way of written submissions.
6. In the 1st Defendant's submissions dated 12th August, 2025, Counsel made reference to paragraph 7 of the Plaint in which Plaintiffs alleged purchasing a portion of the suit property on 10th September, 1994 at a purchase price of Kshs.10,000/=. On the basis of the aforesaid value, Counsel contended that the value of the suit property falls far below the pecuniary threshold of Kshs.20 million stipulated under Section 26(4) of the Environment and Land Court Act and Section 9 of the Magistrates Court Act. Counsel maintained that the proceedings herein ought to have been filed in the subordinate court.
7. Counsel further submitted that jurisdiction is not conferred by the seriousness of the dispute, the reliefs sought or the consent of parties but through express constitutional and statutory provisions. Counsel urged the court to strike out the suit and allow the preliminary objection with costs.
8. In the Plaintiffs' submissions dated 24th October, 2025, Counsel contended that the 1st Defendant's preliminary objection is premised on the alleged pecuniary value of the suit property yet the 1st Defendant had not produced any valuation report or documentary evidence to substantiate her claim. Counsel submitted

that the burden of proof lies with the 1st Defendant to demonstrate that the value of the suit property falls below the pecuniary jurisdiction of the court.

9. Counsel opined that since the value of the subject matter is a contested factual matter requiring evidence, then the preliminary objection fails to meet the threshold set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributor Ltd [1969] EA 696.**

10. Counsel contended that the jurisdiction of this court is anchored under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act. That the dispute herein falls squarely on the ownership of the land which is a matter within the purview of this court. Counsel contended that the overriding objective enshrined under Sections 1A and 1B of the Civil Procedure Act obliges parties and the court to facilitate the just, expeditious and proportionate resolution of disputes. Therefore, the 1st Defendant having participated in pretrial directions and having duly complied cannot raise a preliminary objection at this stage.

11. Counsel for the Plaintiff urged the court to dismiss the preliminary objection with costs.

12. The sole issue for determination is whether the 1st Defendant's preliminary objection herein is merited.

13. The law on preliminary objections is settled. A preliminary objection must be on a pure point of law. Justice Law coined an apt description of what constitutes a preliminary objection in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696** (at page 700) wherein the learned judge held as follows: -

“In so far as I am 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.”

14. In the same case, Sir Charles Newbold, P. held as follows: -

“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 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 had to be ascertained or if what is sought is 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.”

15. In Oraro v Mbaja [2005] eKLR, J.B. Ojwang J. (as he then was) described it as follows: -

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears 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.”

16. The 1st Defendant has sought that the suit herein be struck out on the basis that the value of subject matter herein being Title No. Makueni/Mukaange Scheme/589 falls within the pecuniary jurisdiction of the subordinate court and thus, the jurisdiction of this court is ousted.

17. Section 7(1) of the Magistrates' Court Act sets out as follows: -

(1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- a. twenty million shillings, where the court is presided over by a chief magistrate;**
- b. fifteen million shillings, where the court is presided over by a senior principal magistrate;**
- c. ten million shillings, where the court is presided over by a principal magistrate;**
- d. seven million shillings, where the court is presided over by a senior resident magistrate; or**
- e. five million shillings, where the court is presided over by a resident magistrate.**

18. The Plaintiffs filed the suit herein on 7th September, 2023. At paragraph 7 of the Complaint, it was alleged that vide a sale agreement dated 10th September, 1994, the Plaintiffs purchased one portion of the suit property at a purchase price of Kshs.10,000/=.

19. In opposition to the preliminary objection, it was contended that the value of the suit property can only be determined as a matter of evidence and therefore, the preliminary objection is not based on a pure point of law.

20. Indeed, the record does not show the current value of the suit property and the court cannot speculate on such a matter where an order for striking out has been sought. Since the value of the suit property is open to contestation at this stage, the only conclusion available to this court is that the preliminary objection is blurred by factual details. It therefore fails to meet the threshold set in the decision of *Mukisa Biscuit (supra)*.

21. In Jamii Bora Kenya Limited v Esther Wairimu Mbugua & another [2019] eKLR, the court reiterated as follows: -

“A “preliminary objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes 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....”

22. Accordingly, the preliminary objection herein is misplaced as it is founded on disputed facts regarding the value of the suit property. It does not pass the test of a valid preliminary objection.

23. In the end, the preliminary objection dated 17th June, 2025 is devoid of merit and must accordingly be dismissed with costs.

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HON. E. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 13TH DAY OF NOVEMBER, 2025.

IN THE PRESENCE OF:

Mr. Mbulu for Plaintiffs/Respondents

Mr. Kiamba for Mr. Mutava for 1st Defendant.

Court assistant – Steve Musyoki

ORIGINAL