



REPUBLIC OF KENYA



**Truvalu Enterprises 1 B.V v Muli & 2 others (Commercial Case E772 of 2024)
[2025] KEHC 17202 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E772 OF 2024
PM MULWA, J
NOVEMBER 20, 2025**

BETWEEN

TRUVALU ENTERPRISES 1 B.V PLAINTIFF

AND

ALEX MUTUA MULI 1ST DEFENDANT

MARY NDUKU MULI 2ND DEFENDANT

GOSHEN FARM EXPORTERS LIMITED 3RD DEFENDANT

RULING

1. The ruling is in respect of a Preliminary Objection dated 7th February 2025, raised by the 1st and 3rd Defendants, seeking to strike out the Plaintiff's suit dated 18th January 2025 on several grounds, namely that:
 - i. The plaint contravenes Section 974 of the *kenya act 2015 17 Companies Act, 2015*;
 - ii. The suit is filed by a non-existent person incapable of maintaining a cause of action, and the supporting affidavit is deposed by a person without authority or capacity;
 - iii. The Plaintiff is a legally non-existent entity under the *kenya act 2015 17 Companies Act*;
 - iv. The plaint offends Order 4 and Order 19 of the Civil Procedure Rules;
 - v. The Plaintiff describes itself as a limited liability company incorporated in the Netherlands under registration number 84072598 but is not registered in Kenya;
 - vi. The suit is contrary to Section 9(2) of the *kenya act 2015 4 Fair Administrative Action Act*;
 - vii. The plaint offends the doctrine of exhaustion; and



- viii. The suit is frivolous, vexatious, and an abuse of the court process.
2. In response, the Plaintiff filed submissions dated 23rd April 2025, arguing that the objection as raised does not meet the threshold of a true preliminary objection as set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, since it contains general allegations requiring factual proof. The Plaintiff maintains that its cause of action is founded on breach of contract, not administrative action, and thus the *akn ke act 2015 4 Fair Administrative Action Act* and the doctrine of exhaustion do not apply.
 3. It is further submitted that the Plaintiff is a juristic person duly incorporated under the laws of the Netherlands, and as such, recognized under international and common law as a legal entity capable of suing or being sued. The Plaintiff contends that Section 974 of the *akn ke act 2015 17 Companies Act* does not bar foreign companies from filing suits in Kenya, but merely regulates the carrying on of business in Kenya without registration.
 4. The 2nd Defendant did not oppose the preliminary objection and did not file any submissions.
 5. The 1st and 3rd Defendants in their submissions reiterate that the Plaintiff has no locus standi as it is not registered in Kenya under Section 974 of the *akn ke act 2015 17 Companies Act*, and hence cannot carry on business or maintain proceedings. They further argue that the Plaintiff failed to exhaust the dispute resolution mechanisms in the contract before resorting to court.

Analysis and determination

6. Having carefully considered the pleadings, submissions, and authorities cited, I find that the only issue for determination is whether the preliminary objection is merited
7. The test for a valid preliminary objection was established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where Law JA stated:

“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.”
8. The 1st and 3rd Defendants rely on Section 974(1) of the *akn ke act 2015 17 Companies Act*, 2015, which provides that:

“A foreign company shall not carry on business in Kenya unless it is registered under this Part.”
9. The Defendants argue that since the Plaintiff has not been registered in Kenya, it is incapable of maintaining this suit.
10. The Plaintiff argues that the instant suit is limited to the loans advanced and or secured pursuant to the promissory note dated 22nd December 2017 and the convertible loan agreement dated 21st April 2022, which are construed and governed by the Laws of Kenya. It is thus protected by *akn ke act 2010 constitution the constitution* of Kenya which guarantees all persons the right to access justice and to fair hearing.
11. A foreign company, though not registered in Kenya, is a juristic person recognized under law and capable of maintaining proceedings in Kenyan courts, provided it is not engaging in prohibited



business operations. The Court in *Spire Bank Limited v Land Registrar & 2 Others* [2019] eKLR reiterated that:

“The capacity of a corporation to sue or be sued is derived from the law of the place of its incorporation, and such recognition is ordinarily extended to foreign corporations unless expressly prohibited by statute.”

12. Therefore, the Plaintiff's lack of registration under Section 974 does not ipso facto bar it from suing to enforce contractual rights. The section only prohibits the carrying on of business in Kenya without registration, not the filing of a claim arising from past transactions.
13. Furthermore, the question of whether the Plaintiff is “carrying on business” in Kenya is a question of fact, requiring evidence, hence unsuitable for determination at this preliminary stage.
14. The Defendants' reliance on Section 9(2) of the *akn ke act 2015 4 Fair Administrative Action Act* and the doctrine of exhaustion is misplaced. The Plaintiff's claim, as pleaded, is one of breach of contract between private parties, not one challenging an administrative decision of a public body. The *akn ke act 2015 4 Fair Administrative Action Act* applies to administrative decisions by public authorities, not private commercial transactions.
15. The allegation that the suit is frivolous, vexatious, or an abuse of process is a factual contention that must be demonstrated through evidence. Such an argument cannot be properly raised or determined by way of a preliminary objection.
16. Accordingly, the 1st and 3rd Defendants' Preliminary Objection dated 7th February 2025 is dismissed with costs to the Plaintiff.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 20TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. B. Onyango h b for Ms. Noella Lubano for Plaintiff

Mr. Kariu for 1st & 3rd Defendants

Ms. Juma h b for Ms. Kinyua for 2nd Defendant

Court Assistant : Carlos

