

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 63 OF 2024

DAMARIS NJERI KAGIRI

.....APPELLANT

VERSUS

NAKURU LINE SERVICES COMPANY

LIMITED & ANOTHER1ST

RESPONDENT

FANUEL SIFUNA MACHUKU 2ND

RESPONDENT

*(Being an appeal against the Ruling in Nakuru SCCC No. 712 of 2023
delivered by Hon Edward Oboge on 7th March, 2024)*

JUDGMENT

- 1.** The appellant herein filed a claim before the Nakuru Small Claims Court in respect of renewal of her Road Service License (RSL) for motor vehicles KBA 264H and KAV 323Y by the 1st respondent Nakuru Line Services Company Ltd)
- 2.** Before the claim could be heard the respondent filed a preliminary objection (P.O) dated 16th January, 2024, challenging the court's jurisdiction to hear the matter. The trial court heard the parties on the same by way of written

submissions and delivered a ruling on 7th March, 2024 upholding the objection.

3. Being dissatisfied with the Ruling the appellant filed this appeal on the following grounds:

1. The learned Adjudicator erred in law by allowing Notice of Preliminary Objection that had its basis on pure facts and not law.

2. The learned Adjudicator erred in law by failing to consider the Appellant's written submissions and cited case law.

2. The learned Magistrate erred in law by totally misdirecting himself in the evaluation of the documentary evidence produced before him and arrived at a wrong decision thereby occasioning a miscarriage of justice.

4. The appeal was disposed of by way of written submissions.

Appellants submissions

5. These were filed by Odhiambo Paul Xistus & Co advocates and are dated 29th September, 2025. Counsel gave a brief background to the claim filed by the appellant. He identified one (1) issue for determination being whether the preliminary objection was proper in law.

6. On this he referred to the case of **Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd [1969] E.A 696** where Law JA stated:

"A Preliminary Objection consists of a point of law which arises by clear implication out of pleadings and which if argued as a preliminary 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."

7. Next is that a preliminary objection must be argued on the assumption that all facts pleaded by the other party are true. On this he referred to what sir Charles Newbold JA stated in the same case as follows:

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 is correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."

8. The 3rd point being that the preliminary objection is capable if upheld of disposing of the entire suit. On this he referred to the case of **Oraro V Mbaja [2005] KEHC 3182 (KLR)** where it was stated:

"A Preliminary Objection cannot be raised if any fact has 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 increases costs and on occasion confuses the issues."

9. Counsel further submitted that a preliminary objection cannot involve contested facts or require evidence. That where facts must be proved the preliminary objection ceases to be such. He relied on the Supreme Court decision on **Independent**

Electoral & Boundaries Commission (IEBC) V Jane Cheperenger & 2 others (Civil Application 36 of 2014) [2015] KESC 2 (KLR) (15 December, 2015) (Ruling)

which affirmed that a proper preliminary objection must be based on a pure point of law.

10. Counsel submitted that the 1st respondent is a company and dragging in the Co-operative Tribunal was introducing a factual contest as to whether the dispute concerned a Sacco or a company. This would therefore have required evidence being availed. The claim he argued was based on breach of contract, with the quantum being within the jurisdiction of the Small Claims Court. He urged the court to allow the appeal and set aside the impugned ruling with costs to the appellant.

Respondents' Submissions

11. These were filed by Mongeri & Company advocates and are dated 14th August, 2025. Counsel gave brief facts of the case. He raised one issue for determination being whether the present Appeal has merit or should be dismissed with costs to the respondents.
12. Counsel referred to section 12 of the Small Claims Act which provides

"Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—(a) a contract for sale and supply of goods or services; (b) a contract relating to money held and received; (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of

movable property;(d) compensation for personal injuries; and(e)set-off and counterclaim under any contract. "

13. Further that section 76 of the Co-operative Societies Act provides that:

"(1) If any dispute concerning the business of a co-operative society arises: -a. Among members, past members and persons claiming through members, past members and deceased members; orb. Between members, past members or deceased members, and the society, its committee or any officer of the society; orc. Between the society and any other co-operative Society; it shall be referred to the Tribunal. (2)A dispute for the purpose of this section shall include—a. A claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; orb. A claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not. c. A claim by a Sacco society against a refusal to grant or a revocation of license or any other due, from the Authority."

14. Counsel submitted that the appellant sought orders compelling the 1st respondent to reinstate the operations of her matatu within Nakuru line Shabaab Sacco- which is a pure

internal co-operative dispute. He contends that the appellant being a society member and was complaining about an internal matter should have gone to the Tribunal. Reference was made to section 76(i) (a) - (c) of the Co-operative Societies Act.

15. Counsel further submitted that the Small Claims court was in line with the decision in **“The Owners of Motor Vessel “Lilian S” V Caltex Oil (Kenya) Ltd [1989} KLR 1**. He referred to the documents filed by the claimant showing that the 1st respondent is a matatu Sacco duly registered as a society whose member the appellant is. Counsel urged this court to dismiss the appeal with costs.

Analysis and determination

16. I have carefully considered the record of appeal, grounds of appeal, submissions by both parties and the law. On ground 2 of the appeal I wish to state that at paragraph 7 of his ruling the learned trial Magistrate stated this:

“I have considered the rival submissions and the legal framework undergirding the matters and what in issue is whether the preliminary objection has merit”.

He did not have to reproduce the submissions and authorities to confirm he had considered them as claimed by the appellant.

17. The issue I find falling for determination is whether this Appeal has merit. In other words, whether the Small Claims Court’s striking out of the appellant’s claim was merited.

18.As stated by counsel for the appellant they sued the 1st respondent which is the company under which the appellant has registered her two vehicles i.e Registration No. KBA 264H and KAV 323Y. That due to failure to pay for the Road Service License her said vehicles are not allowed to operate on the roads.

19.In her claim and supporting affidavit the appellant refers to the Committee Shabab Sacco/Nakuru Line. Infact annexed to her affidavit and marked DNK 5 is a letter from the said Sacco dated 29th November, 2023. It reads: REF: SUSPENSION OF VEHICLES REG. KBA 264H & KAV 323Y.

“Following the unco-operative behaviour displayed by yourself the committee has decided to suspend all the services given to you by the office”.

The said letter was copied to:

1. Regional Manager
National Transport & Safety Authority
NAKURU
2. Sub-county Officer
Co-operative office
NAKURU

20.It is therefore clear from her pleadings and documents that it is the Committee Shababa Sacco/Nakuru Line that suspended all the services offered to her. And the said services relate to the two vehicles.

21. With the above background and the Law on Preliminary objections as stated in **Mukisa Biscuit Manufacturing Co. Ltd** (supra) and **Owner of Motor Vessel “Lilian S”** (supra), this court asks itself one question which is what the law provides in respect to the jurisdiction of the Small Claims court.

22. Section 12 of the Small Claims court provides:

- (1) *Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—*
 - a. *a contract for sale and supply of goods or services;*
 - b. *a contract relating to money held and received;*
 - c. *liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;*
 - d. *compensation for personal injuries; and*
 - e. *set-off and counterclaim under any contract.*
- (2) *Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.*
- (3) *The pecuniary jurisdiction of the Court shall be limited to one million shillings.*
- (4) *Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other*

pecuniary jurisdiction of the Court as the Chief Justice thinks fit.

In respect to section 12(2), (3), (4) - there is no evidence of any other law that has expanded the jurisdiction of the said court.

23. The issue raised by the appellant in the claim before the Small Claims Court concerned the actions by the Committee Shabab Sacco/Nakuru Line. The Annexure DNK "5" speaks volumes. It is the one that has stripped the Small Claims Court of the jurisdiction of the powers to deal with the matter filed by the appellant. Further more in her supporting affidavit at paragraph 7 and paragraph 6 of her statements she confirms that it is the Sacco that suspended services offered by it.

24. This is a matter falling under section 76 of the Co-operative Societies Act whose provisions I have set out at paragraph 13 of this Judgment. The issue affecting the appellant is between her as a member and the Sacco and the committee. It is covered under section 76 (1) (b) of the said Act and should go to the Co-operative Tribunal. That being the case the trial court was right in holding that the Small Claims court lacked jurisdiction to deal.

25. The upshot is that I find no good reason to make this court interfere with the finding by the trial Magistrate dated 7th March, 2024. I therefore find no merit in this appeal which I

hereby dismiss with costs. The ruling by the trial magistrate is upheld.

26. Orders accordingly.

Delivered, virtually, dated and signed this 28th day of November, 2025 in open court at Nakuru

**H. I. ONG'UDI
JUDGE**