



Thuo v Rambiti Farm Saw Mill Limited & another (Environment and Land Case E010 of 2022) [2025] KEELC 8602 (KLR) (10 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E010 OF 2022
SM KIBUNJA, J
DECEMBER 10, 2025**

BETWEEN

LOIS WAMBUI THUO PLAINTIFF

AND

RAMBITI FARM SAW MILL LIMITED 1ST DEFENDANT

LAND REGISTRAR MOMBASA 2ND DEFENDANT

RULING

1. The 1st defendant filed the notice of preliminary objection dated 1st July 2025, raising the following four (4) grounds, that amounts to a single ground that as the suit property is situated in Tana River County, and pursuant to section 12 of the *Civil Procedure Act*, this court lacks territorial jurisdiction to hear and determine this suit.
2. The court issued directions on filing and exchanging submissions on the 2nd July 2025. Subsequently, the learned counsel for the 1st defendant and plaintiff filed their submissions dated the 10th July 2025 and 3rd October 2025, which the court has considered.
3. The issues for determinations by the court in the preliminary objection are as follows:
 - a. Where the suit property is situated.
 - b. Whether the court has territorial jurisdiction to hear and determine this suit.
 - c. Who pays the costs?
4. The court has carefully considered the ground on the preliminary objection, pleadings filed, submissions by the learned counsel, superior court decisions cited and come to the following determinations:



- a. That from paragraphs 4, and 5 of the amended plaint dated 19th September 2023, the suit property is described as CR. 77010 within Karuwa area, Tana River County. I have perused the 1st defendant's statement of defence dated 8th November 2024 and noted the location of the suit property has not been disputed. In the case of Mukisa Biscuits Manufacturing Company Limited versus West End Distributors Limited [1969] E. A 696, the court stated as follows on what constitutes a proper preliminary objection:

“ A preliminary objection is in the nature of what used to be a demurer; 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.”

The as it is a fact that the suit property is located within Tana River County, it follows that the ground of lack of territorial jurisdiction raised in the notice of preliminary objection is a pure point of law, and is pursuant section 12 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya.

- b. The learned counsel for the 1st defendant has argued the court to uphold their preliminary objection and strike out the suit with costs. The counsel has relied on the following cases of Mary Musuki Mudachi & Another versus Anthony Muteke Mudachi & 2 Others ; Elijah K. Kimanzi & 6 Others (Interested Parties) [2021] KEELC 147 (KLR), County Government of Migori versus INB Management IT Consultant Limited (2019) eKLR, Phoenix of East Africa Assurance Company Limited versus S. M. Thiga, Mangale & Another versus Kenya Electricity Transmission Company (Environment and Land Court Appeal E002 of 2023) [2023] eKLR, Ndambuki & 4 Others versus Kanyi & Another (Environment and Land Case 29 of 2023) [2024] KEELC 4632 (KLR) (13 June 2024), and Owners of Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Limited (1989) 1KLR. On their part, the learned counsel for the plaintiff submitted that the records for the suit property are at Mombasa Lands registry, and as the 1st defendant filed its statement of defence on 8th November 2024, it had acknowledged the court's jurisdiction. That as the preliminary objection on territorial jurisdiction was not raised in the first instance it has not met the required threshold. That the 1st defendant has been indolent and its preliminary objection should be dismissed, as pleadings should not be struck out on the basis of a procedural technicality. The learned counsel relied on the cases of Dt Dobie & Company (Kenya) Limited versus Muchina (1982) KLR 1, David Karobia Kiiru versus Charles Nderitu Gitoi & Another [2018] KEELC 2240 (KLR), and Omar Dhadho versus Mohamed Masoud & Another [2019] KEELC 246 (KLR), and submitted that the court is with jurisdiction as the suit property's records are at Mombasa Lands registry and the 1st defendant registered offices are also located at Mombasa. That should the court find that the suit was filed in the wrong court, then it should transfer to ELC Malindi, which is the court with territorial jurisdiction, instead of striking it out.
- c. Both parties are in agreement that the guiding provision of the law is Section 12 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya I find it necessary to set out the provision verbatim herein below:

“ 12. Subject to the pecuniary or other limitations prescribed by any law, suits-

- a. for the recovery of immovable property, with or without rent or profits:



- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment,

where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that the suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can entirely be obtained through his personal obedience, be instituted either in the court within the local limits of whose the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”[underlining mine].

The above provision is in the statute and not rules, and the attempt to equate it to a procedural technicality by the counsel for the plaintiff is not only misplaced but also misleading, as it is not based on any legal provision.

- d. Going by the averments at paragraphs 5 to 13 and prayers (a) to (c) of the amended plaint, the plaintiff’s claim is over the ownership of thirty percent of the suit property. The claim therefore falls outside those provided for in the above proviso that could either be filed in the court with jurisdiction within the local limits where the suit property is located or the defendant resides, or carries out business, or works for gain.
- e. From the finding in (c) above, it is clear the registry where the records of a suit property is situated is not a determinant of where the plaintiff’s suit was to be filed. It is equally true that as the plaintiff’s claim falls outside those claims covered by the proviso to section 12 of the *Civil Procedure Act*, the location of the 1st defendant’s registered offices is not a factor in determining the court the suit was to be filed. It is evident that as the suit property is situate in Tana River County, the nearest Environment and Land Court, where the suit should have been filed, is at Malindi.
- f. The 1st defendant has argued the court to strike out the suit while the plaintiff has proposed that the court considers transferring it to ELC Malindi. I have reviewed the superior court decisions including those cited by the parties, supporting striking out and transfers, and I find it is just, fair and cost effective to order the suit be transferred to ELC Malindi instead of striking it out.
- g. Under section 27 of the *Civil Procedure Act*, costs follow the events unless where directed differently by the court on reasonable grounds. That the 1st defendant’s preliminary objection,



was caused by the plaintiff filing the suit in the wrong court, then the plaintiff should pay the costs.

1. Flowing from the above determinations on the 1st defendant's preliminary objection dated 1st July 2025, the court finds and orders as follows:
 - a. That this suit is hereby transferred to ELC Malindi for hearing and determination.
 - b. The plaintiff to meet the 1st defendant's costs in the preliminary objection.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : Mr Seko

Defendants: No Appearance

Kalekye-court Assistant.

S. M. Kibunja, J.

Elc Mombasa.

