



**Mungai (Administrator Suing on Behalf of the Estate of Joyce Wamuhu Mungai – Deceased) v Muchiri & 3 others (Environment and Land Case E366 of 2024) [2025] KEELC 18446 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18446 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E366 OF 2024  
CG MBOGO, J  
DECEMBER 19, 2025**

**BETWEEN**

**ALEX WAMBAA MUNGAI (THE ADMINISTRATOR SUING ON BEHALF OF THE ESTATE OF JOYCE WAMUHU MUNGAI – DECEASED) ..... PLAINTIFF**

**AND**

**MARY GATHONI MUCHIRI ..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff filed the plaint herein dated 29<sup>th</sup> August, 2024 seeking inter alia orders for registration of the plaintiff as the rightful owner of land Title No. Nairobi/Block 83/1860 and a permanent injunction against the 1<sup>st</sup> defendant from howsoever interfering with the suit property.
2. Vide a preliminary objection dated 8<sup>th</sup> November, 2024, the 3<sup>rd</sup> defendant challenged the suit on the following grounds: -
  1. The Honourable Court lacks jurisdiction to entertain the suit as the fair market value of the subject parcel of land Nairobi Block 83/1560 Located In Umoja Innercore off Manyanja Road as per the valuation report by Reliance Valuers Limited confirming that the said suit property is below the pecuniary jurisdiction of the Honourable Court as the property is valued at Kenya Shillings Twelve Million Five Hundred Thousand (Kshs. 12,500,000/=).



2. The suit property being below the value of Kenya Shillings Twenty Million should have been filed at the Magistrates Court as its pecuniary jurisdiction is capped at Kenya Shillings Twenty Million (Kshs. 20,000,000/=).
  3. The Honourable Court has no jurisdiction to hear and/or entertain the Plaintiff's suit dated 29<sup>th</sup> August, 2024 by dint of Section 4 of the [Civil Procedure Act](#), Sections 7 and 9 of the Magistrates Court Act No. 26 of 2015 and Section 13 of the [Environment and Land Court Act](#) Cap 8D.
  4. The suit property falls under the confines of the pecuniary jurisdiction of the Magistrates court under Section 9 of the Magistrate's Court Act which states that the magistrates court shall in exercise of the jurisdiction conferred upon it by Section 26 of the [Environment and Land Court Act](#) (Cap 8D) as read with Section 4 of the [Civil Procedure Act](#) and subject to the pecuniary limits under Section 7 (1) of the Magistrate's Court Act and subject to the pecuniary limits under Section 7 (1) of the Magistrate's Court Act to hear and determine claims relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
  5. The Plaintiff's suit dated 29<sup>th</sup> August, 2024 is bad in law and procedurally improper before the Honourable Court thus the same is misconceived, incompetent, fatally defective, scandalous, frivolous, vexatious and an abuse of the process of the court as per Order 2 Rule 15 of the Civil Procedure Rules 2010 and ought to be struck out with costs to the 3<sup>rd</sup> Defendant.
  6. The current suit by the Plaintiff against the 3<sup>rd</sup> Defendant before this Honourable Court is an abuse of the court process and the same ought to be struck out in limine under the court's inherent jurisdiction as prescribed under Section 3A of the [Civil Procedure Act](#) Cap 21 and in furtherance of the overriding objective as captured under Sections 1A and 1B of the [Civil Procedure Act](#) Cap 21.
  7. It is therefore just, expedient and in the interest of fairness and justice that the current suit be dismissed forthwith with costs to the 3<sup>rd</sup> Defendant and the Honourable Court should accordingly down its tools for want of jurisdiction.
3. The plaintiff opposed the preliminary objection through the replying affidavit sworn on 3<sup>rd</sup> March, 2025 by Patrick Munene, a professional valuer in the employ of Pioneer Valuers Limited. He deposed that he had been appointed by the plaintiff's advocates to conduct a valuation of the suit property which he did and prepared a valuation report dated 11<sup>th</sup> February, 2025.
  4. The valuer pointed out that there were material discrepancies in the two valuation reports. That whereas the valuation report done by Reliance Valuers Limited pertains to Title No. Nairobi/Block 83/1560 off Manyanja Road in Umoja Innercore, his report specifically covers Plot No. 167 located along Moi Drive in Umoja Innercore Section V. He further pointed out that the geographical coordinates in both reports show that the property valued by Reliance Valuers Limited is distinct from the suit property. In his professional assessment, the value of Plot No. 167 within Umoja Innercore is Kshs. 21,000,000/=.
  5. The preliminary objection was canvassed by way of written submissions. The 3<sup>rd</sup> Defendant's submissions are dated 29<sup>th</sup> October, 2025. The 3<sup>rd</sup> defendant submitted that the preliminary objection herein is based on a pure point of law as it pertains to Sections 7 and 9 of the Magistrate's Court Act and Section 26 of the [Environment and Land Court Act](#). Further, that the value of the suit property is Kshs.12,500,000/= and that as a result, it is within the pecuniary jurisdiction of the Magistrate's Court.



It was submitted that the suit herein is bad in law, procedurally improper and otherwise an abuse of the court process. The 3<sup>rd</sup> defendant urged the court to dismiss the suit with costs.

6. The plaintiff did not file its written submissions. Be that as it may, I have considered the preliminary objection and the written submissions filed. The issue for determination is whether the 3<sup>rd</sup> defendant's preliminary objection herein is merited.
7. The law on preliminary objections is settled. A preliminary objection must be on a pure point of law. In the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, it was held as follows: -

Per La, JA

“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.”

8. 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.”

9. 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 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.”

10. The 3<sup>rd</sup> defendant has sought that the suit herein be dismissed on the basis that the value of subject matter herein as per its pleadings being Title No. Nairobi/Block 83/1560 falls within the pecuniary jurisdiction of the subordinate court and thus, the jurisdiction of this court is ousted.
11. 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.”

12. In opposition to the preliminary objection, it was contended that there were material discrepancies affecting the 3<sup>rd</sup> defendant’s valuation report. Specifically, it was contended that land Title No. Nairobi/Block 83/1560 is distinct from Plot No. 167 Umoja Innecore and for that reason, the values of the two properties are not the same. Plot No. 167 for which the plaintiff has sued was valued at Kshs.21,000,000/= ousting the jurisdiction of the subordinate court under Section 7(1) of the Magistrates’ Court Act.
13. As pointed out in Oraro case (supra), a preliminary objection must not be clouded by factual details which are likely to be contested. Matters of evidence are within the ambit of the trial court and should not be raised in a preliminary objection. The court cannot speculate on which of the two valuation reports represents the true market value of the actual suit property when that too is also in contestation.
14. The 3<sup>rd</sup> defendant’s preliminary objection fails to meet the threshold set in the decision of Mukisa Biscuit (supra). It does not raise a pure point of law.
15. 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....”

16. 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.
17. In the end, the preliminary objection dated 29<sup>th</sup> August, 2024 is devoid of merit and it is hereby dismissed with costs to the plaintiff.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

19/12/2025.

In the presence of:

Mr. Benson Agunga - Court assistant



Ms. Chepching holding brief for Mr. Abdullahi for the 3<sup>rd</sup> Defendant

No appearance for the Plaintiff

No appearance for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> and 4<sup>th</sup> Defendants

