



**Said & another (Suing as the Administrators of the Estate of
Mohammed Said Zubedi) v Said & 2 others (Environment and Land Case
E411 of 2024) [2025] KEELC 18469 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E411 OF 2024
CG MBOGO, J
DECEMBER 19, 2025**

BETWEEN

**ALI MOHAMMED SAID 1ST PLAINTIFF
SAID MOHAMMED SAID 2ND PLAINTIFF
SUING AS THE ADMINISTRATORS OF THE ESTATE OF MOHAMMED SAID
ZUBEDI**

AND

**ABDALLA SAID 1ST DEFENDANT
IBRAHIM ABDALLA SAID 2ND DEFENDANT
ZEIN SAID ABDULHAFEDH AHMED 3RD DEFENDANT**

RULING

1. Before me is the notice of preliminary objection dated 6th December, 2024 filed by the 1st, 2nd and 3rd Defendants challenging the plaintiff's suit on the following grounds:-
 1. The Honourable Court lacks jurisdiction to hear and determine this matter pursuant to Section 162(2) of *the Constitution* of Kenya 2010 as read together with Section 13 of the Environment and Land Court (Chapter 12A of the Laws of Kenya) of the claim before is purely a civil matter.
 2. THAT the suit and any application on record are nonstarters and are statute barred under the statute of limitation.



3. THAT in the premises the entire suit and any application on record by the plaintiffs be dismissed with costs in limine for being frivolous, vexatious and an abuse of the court process.
2. The preliminary objection was canvassed by way of written submissions. The defendants filed their written submissions dated 25th June, 2025. The plaintiff filed their written submissions dated 28th August, 2025.
3. I have considered the preliminary objection, and the written submissions filed by the parties. The sole issue for determination is whether this court has jurisdiction to hear and determine the case.
4. In the case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] E.A* the court held 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 are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

“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 on 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.”
5. In the case of *George Oraro V Barak Eston Mbaja (Civil Suit 85 of 1992) [2005] KEHC 731 (KLR) (Civ) (6 July 2005) (Ruling)* the court held as follows:-

“Anything that purports to be a preliminary objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.
6. It is therefore imperative for this court to establish whether the preliminary objection as raised by the defendants meets the threshold as enumerated in the decision in *Mukisa Biscuits (supra)*. It was the defendants’ contention that this court lacks the jurisdiction to hear and determine the case since the issues in the suit arose from succession/inheritance and commercial trust-related obligations, which are in the domain of the civil courts.
7. It is this court’s view that this ground challenging the jurisdiction of this court as raised falls within the definition of a preliminary point of law and shall proceed to determine it.
8. I have perused through the plaint dated 3rd October, 2024 and it is not in dispute that the parties are tenants in common of property No. LR 209/136/221. It is also not in contention that the dispute revolves around the management of the suit property together with the income derived from the developments thereon.
9. The plaintiff claim that the defendants have been managing the suit property to their exclusion and that they filed this suit seeking disclosure and inclusiveness in the management of the suit parcel.



10. This court’s jurisdiction emanates from the provisions of Article 162(2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* (the ELC Act). Article 162(2)(b) of *the Constitution* provides as follows:-

“Parliament shall establish courts with the status of the high court to hear and determine disputes relating to–

(b) the environment and the use and occupation of, and title to, land.”

11. In the case of *Co-operative Bank of Kenya Limited V Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) the court held as follows:-

“41. Furthermore, the jurisdiction of the Environment and Land Court to deal with disputes relating to contracts under Section 13 of the *Environment and Land Court Act* ought to be understood within the context of the Court’s jurisdiction to deal with disputes connected to ‘use’ of land. Such contracts, ought to be incidental to the ‘use’ of land; they did not include mortgages, charges, collection of dues and rents which fell within the civil jurisdiction of the High Court. By parity of reasoning, the dominant issue in the instant case was the settlement of amounts owing from the Respondents to the Appellant on account of a contractual relationship of a banker and lender.

42. While exclusive, the jurisdiction of the Environment and Land Court was limited to the areas specified under Article 162 of *the Constitution*, Section 13 of the *Environment and Land Court Act* and Section 150 of the *Land Act*; none of which concerned the determination of accounting questions. Consequently, the dispute did not fall within any of the areas envisioned by those provisions. On the other hand, the jurisdiction of the High Court over accounting matters was without doubt, as evidenced by article 165(3) of *the Constitution*. The Appellant’s objection on jurisdiction was rightly dismissed.”

12. Flowing from the above, it is this court’s view that although the ELC has jurisdiction over disputes concerning contracts, its authority in such matters is limited to issues related to the environment, as well as the use, occupation, and title to land.

13. It is not in dispute that the present case revolves around management and matters collection of rent of the suit property and it follows that some of the prayers i.e. prayers 1, 2, 3, 4, as sought in the plaint dated 3rd October, 2024 cannot be granted by this court. Paragraph 13 of the plaint dated 3rd October, 2024 states that:-

“The plaintiffs demand for inclusion of their interest in the suit property as administrators of the Estate of Mohammed Said Zubeidi has been declined and ignored by the defendants.”

14. The court is hesitant to dismiss or strike out the plaint owing to the hybrid of the orders sought. To that extent, I believe the same is amenable to amendment if the plaintiff may wish to enable this court to deal with the issues that it has jurisdiction over.

15. From the above, I do not find merit in the notice of preliminary objection dated 6th December, 2024, and it is hereby dismissed. Costs in the cause.

Orders accordingly.



DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER, 2025.

HON. MBOGO C.G.

JUDGE

19/12/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ali for the Defendant

No appearance for the Plaintiff

