



**Hawd Builders Limited v Kaara (Miscellaneous Cause E629 of 2025)
[2026] KEHC 460 (KLR) (Commercial and Tax) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E629 OF 2025
BK NJOROGE, J
JANUARY 22, 2026**

BETWEEN

HAWD BUILDERS LIMITED APPLICANT

AND

ANASTACIA WARIARA KAARA RESPONDENT

RULING

1. This Ruling is in respect to the Respondent’s Notice of Preliminary Objection dated 11th July. 2025.

Background Facts

2. The Applicant filed the Notice of Motion dated 18th June 2025 seeking inhibition as well as interim orders of injunction. This was said to be for purposes of preserving an intended arbitral process.
3. In response to this Application, the Respondent filed a Notice of Preliminary Objection dated 11th July 2025. She sought to have the Application struck out for reason that “the Court lacks jurisdiction to determine the Application dated 18th June 2025 as this is a matter reserved for the Environment and Land Court.”
4. The Respondent also filed Grounds of Opposition dated 11th July 2025 on the grounds that;
 - a. The Court lacks jurisdiction to handle this matter as it is a matter constitutionally reserved for the Environment and Land Court
 - b. The Orders sought cannot be granted as the Applicant has not met the threshold for granting interlocutory relief under Order 40 of the Civil Procedure Rules
 - c. The Orders sought cannot be granted as the Applicant’s Application has been overtaken by events



5. In reply to the Notice of Preliminary Objection, the Applicant filed Grounds of Opposition dated 25th July 2025 on the following grounds;
- a. The Applicant's Application is anchored on Section 7 of the *Arbitration Act*, which expressly allows a party to an Arbitration Agreement to seek interim measure of protection from the High Court.
 - b. The cause of action arises from a breach of a Joint Venture Agreement, which by its nature, constitutes a commercial transaction. This Court is therefore properly seized of jurisdiction to determine the Application and grant the orders sought.
 - c. The assertion that the Applicant has not met the threshold for the grant of interlocutory relief, or that the Application has been overtaken by events, are matters for the Court to determine upon substantive consideration of the Application, and not through a Preliminary Objection.
 - d. The Defendant's Preliminary Objection & Ground of opposition are misconceived, legally untenable, and an abuse of the Court process, intended solely to delay the fair Hearing and determination of the Applicant's Application for interim measure of protection pending Arbitration.
 - e. It is evident that the Respondent's conduct is intended to unduly delay the matter, thereby allowing a subsequent transaction to proceed beyond the point at which the Applicant may obtain any meaningful recourse through Arbitration or intervention by the Court.

Issues for determination

6. The Court has considered the Preliminary Objection and the submissions therewith and frames only one issue for determination;
- a. Whether this Court has Jurisdiction to hear and determine this matter.

Analysis

7. The Respondent herein has filed a Preliminary Objection citing that the Court lacks jurisdiction to determine the Application dated 18th June 2025 as this is a matter reserved for the Environment and Land.

a. Whether this Court has Jurisdiction to hear and determine this matter.

8. A Preliminary Objection has been defined by the Courts in a number of cases. In the locus classicus case of *Mukisa Biscuits Manufacturing Co Ltd vs West end Distribution Ltd* [1969] E.A.696 a Preliminary Objection was defined as: -

“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 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 ... 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”



9. Also, in the case of *Oraro .V. Mbaja* 2005 eKLR, the Court described Preliminary Objection 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. Going by the above definition, the present Preliminary Objection passes the test of what a Preliminary Objection is, as the facts pleaded are not contested. This leads to the question: Does the court have jurisdiction?

11. The Respondent argued that Article 162 of the *Constitution* establishes the Environment and Land Court. That through the *Environment and Land Court Act*, Section 13 clearly outlines the jurisdiction of that Court.

12. Section 13 of the *Environment and Land Court Act* outlines the Environment and Land Court’s jurisdiction as follows:

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under article 162(2) (b) of the *Constitution*, the Court [the ELC] shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*.”

13. It was the Respondent’s case that the dispute raised in the Applicant’s Application relates to the use of the land which falls within the jurisdiction of the Environment and Land Court. The parties entered into a joint venture agreement for the sole purpose of developing townhouses. That the Applicant’s right to develop the land was lost when it failed to honour the terms of the Joint Venture Agreement.



14. In contrast, it was the Applicant's submission that the dispute (cause of action) at hand relates to the Breach of the Joint Venture Agreement and the remedies arising thereto, which Counsel for the Respondent acknowledged in the proceedings of 8th July 2025. The same is to be determined by Arbitration, not this Court or the Environment and Land Court.
15. It has been determined that the correct approach to determine the appropriate Court to hear land matters is to inquire what the most substantial question or issue presented in the controversy is. In *Suzanne Achieng Butler & 4 others v Redhill Heights Investments Limited & another* [2016] eKLR the Court held that;

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse. Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”
16. It is the Court's considered view that in applying the predominant purpose test to the circumstances of the present case, the suit revolves around the discharge of a property that involved a Joint Venture Agreement relating to the development of townhouses on the property.
17. Similarly, in the case of *Amina Mohamed Harith v Chakama Ranching Company Limited & 5 others* (2023) KEHC 1572 (KLR), the Court applied the "predominant purpose test" to determine whether a dispute primarily concerns land. If the predominant purpose of the transaction is land-related, the Environment and Land Court has jurisdiction.
18. Likewise, in the case of *Paul Mwai & another v John Muiruri* (2020) eKLR, the Court held that disputes involving land use, occupation, and title must be heard by the Environment and Land Court. The Court emphasized that the High Court cannot usurp the jurisdiction of the Environment and Land Court.
19. In applying the predominant purpose test, the Court considers the nature of the reliefs that are sought through the miscellaneous application.
 - a. That this Application be certified urgent and be heard ex-parte in the first instance.
 - b. That pending the hearing and final determination of this Application and the intended Arbitration, this Honourable Court does order an inhibition to be registered against the title in respect of Land Reference Number 209/7153/23 situate along Apple Cross Road Nairobi City County to bar and/or inhibit any dealings and/or otherwise transactions over the said property.
 - c. That pending the hearing and final determination of this Application, this Honourable Court does order interim orders of injunction restraining the Respondent whether by herself, her agents, servants or otherwise howsoever from transferring, charging, leasing, disposing off or



in any manner dealing with the property known as Land Reference Number 209/7153/23 situate along Apple Cross Road Nairobi City County.

- d. That pending the hearing and final determination of the intended Arbitration between the Applicant and the Respondent, this Honourable Court be pleased to issue a temporary injunction restraining the Respondent whether by herself, her agents, servants or otherwise howsoever from transferring, charging, leasing, disposing off or in any manner dealing with the property known as Land Reference Number 209/7153/23 situate along Apple Cross Road Nairobi City County.
 - e. 5. THAT the costs of this Application be provided for.
20. Further the Court notes that the Applicant has averred as follows as relates to the dispute
14. That a dispute has arisen between the parties regarding the Respondent's purported unilateral termination of the Joint Venture Agreement and the Applicant's investment in the business arrangement.
 15. That both Agreements contain an Arbitration clause providing for reference of disputes arising therefrom to Arbitration, and the Applicant now wishes to refer this matter to Arbitration.
 16. That the Respondent is likely to deal with the Property, which would render the Arbitration proceedings nugatory and cause irreparable harm to the Applicant.
 17. That it is necessary and in the interest of justice that the Court grants interim protection orders under Section 7 of the Arbitration Act, 1995, pending the determination of the arbitral proceedings.
 18. That this Honourable Court has jurisdiction to grant interim measures of protection under Section 7(1) of the Arbitration Act, 1995 to preserve the subject matter pending Arbitration.
21. On one hand the Court notes that there is a commercial dispute over the transaction that has fallen through. What needs to be unravelled is the consequences of breach arising from the termination of the Joint Venture Agreement. That would be a fairly routine commercial dispute that would lie within the jurisdiction of this Court.
22. On the other hand, the Applicant seeks to preserve the very thing that is the subject of the joint venture, being the land. They seek that it should not be transferred to third parties. That would seem to be a dispute over land for which this Court lacks jurisdiction.
23. At this juncture the dispute appears to be fairly even between a commercial dispute over a failed joint venture and a land dispute which lies before the Environment and Land Court. Seeing that this matter is proceeding for Arbitration, the Court was minded to assume jurisdiction leaning heavily on the fact that this is a commercial dispute.
24. What tilts the mind of the Court is the prayer of inhibition sought. Section 68 of the Land Registration Act states that the Court may make an order of inhibition.
68. Power of the court to inhibit registered dealings
 - (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.



- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
 - (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.
25. The Court contemplated by Section 68 above is not this Court, but the Environment and Land Court. The definition of the Court under Section 2(b) the Act does not leave any doubt.

“Court” means the Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D), and other courts having jurisdiction on matters relating to land;
26. It is on this basis that the Court finds that the dispute falls within the jurisdiction of the Environment and Land Court, as held in the above-mentioned cases. The dispute in this case relates to the use and occupation of land. The Orders sought relate to the land which fall within the exclusive jurisdiction of the Environment and Land Court. Therefore, the High Court lacks jurisdiction to hear this matter. The interim orders sought should be pursued in the Environment and Land Court.
27. The Preliminary Objection is hereby upheld.
28. As to costs, the Court has considered all the facts in this case and notes that the striking out of the application herein has not resolved this dispute. The Court has a duty to preserve and not escalate costs between parties. In exercise of the discretion of this Court in awarding costs, the Court directs that each party does bear its own costs of these proceedings.

Determination.

29. The Respondent’s Notice of Preliminary Objection dated 11th July, 2025 is allowed in the following terms: -
 - a. The Application by way of a Notice of Motion 18th June 2025 is struck out as the Court lacks jurisdiction.
 - b. Each Party to bear its own costs.
30. It is so ordered.
31. This file is marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 22ND DAY OF JANUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Boru for the Applicant.

Miss Okoth for the Respondent.

Mr. Peter Wabwire - Court Assistant.

