



**Mara North Holdings Limited v Sananka (Land Case E021 of 2025)
[2026] KEELC 387 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 387 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
LAND CASE E021 OF 2025
LN GACHERU, J
JANUARY 29, 2026**

BETWEEN

MARA NORTH HOLDINGS LIMITED PLAINTIFF

AND

MOOKI OLE SANANKA DEFENDANT

RULING

1. The matter for determination is a Notice of Preliminary Objection dated 22nd September 2025, wherein the Defendant/Applicant contends that the continued representation of the Plaintiff/Respondent by Oyomba Mosota & Wamwea Advocates offends the rules of Professional Practice and Ethics, particularly Rules 6 and 7 of the Standards of Professional Practice and Ethical Conduct (SOPPEC), 2016, on conflict of interest and advocate–client privilege, as the advocate on record for the Plaintiff/Respondent previously acted for both parties in drafting and registration of the Lease Agreement, which is now subject matter of the dispute without proper disclosure and consent, thereby prejudicing the Objector’s right to a fair hearing.
2. The Defendant/Objector averred that the instant Preliminary Objection raises a pure point of law capable of disposing of the suit in limine; and further that Clause 18 of the Lease Agreement provides a clear dispute resolution mechanism which has not been exhausted, rendering the suit premature, incompetent, null and void, fatally defective and an abuse of the court process, thus warranting dismissal and/or striking out of the Plaintiff’s suit with costs.
3. The court directed that the said Preliminary Objection be canvassed first by way of written submissions.
4. In reply and opposition to the Defendant's Preliminary Objection, the Plaintiff through the Law Firm of Oyomba Mosota& Wamwea Advocates filed written submissions dated 14th November 2025, and



submitted that the Preliminary Objection herein is legally and procedurally untenable, fails to meet the threshold of a proper preliminary objection, and is merely an attempt to derail the proceedings.

5. The Plaintiff raised the following issues for determination;
 - i. Whether the issue raised in the Preliminary Objection are pure points of law.
 - ii. Whether the Preliminary Objection can be determined without reference to disputed facts.
 - iii. Whether any facts will need to be proven through evidence.
 - iv. Whether the preliminary objection, if successful, can dispose of the entire suit.
 - v. When is an advocate disqualified from acting for a party in a case?
 - vi. Whether dispute resolution clause in contracts precludes parties from seeking injunctive reliefs in courts.
6. The Plaintiff argued that the issues raised in the Preliminary Objection are not pure points of law, and cannot be determined without reference to disputed facts. Citing *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, the Plaintiff emphasized that a proper Preliminary Objection must consist of a point of law that is discernible without reference to disputed facts or the need for evidentiary interrogation. Furthermore, the Plaintiff referred to the case of *Oraro v Mbaja* [2005] eKLR, which held that objections entangled with factual disputes must be struck out or deferred to a full hearing.
7. The Plaintiff also contended that even if the preliminary objection were to succeed, it would not dispose of the entire suit, but would only lead to the disqualification or recusal of counsel. The Plaintiff argued that striking out the entire suit due to a claim of conflict of interest would be draconian and violate the Plaintiff's constitutional right to a fair hearing under Article 50 of *the Constitution*. Accordingly, the Plaintiff concluded that the preliminary objection is speculative, procedurally defective and incapable and should be dismissed.
8. Reliance was sought in the cases of *Sunrise Properties Ltd vs Industrial Credit Bank, Davidson Mwangi Kagiri vs Ann Mary Kinyanjui* [2020] KEELC 3923 (KLR) and *Dorothy Seyanoi Moschioni vs Andrew Stuart & Another* [2014] KEHC 8238 among others.
9. In support of the Preliminary Objection, the Defendant filed his written submissions dated 22nd October 2025, through T. Nchoe & Co Advocates. The objector cited the case of *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd* (1969) EA 696, and submitted that the objection raises a pure point of law, which is capable of disposing of the suit.
10. The Defendant/Objector further submitted that the Law Firm of Oyomba Mosota & Wamwea Advocates, acted for both the Plaintiff and Defendant in the transactions forming the subject matter of this suit specifically, the lease agreement dated 1st August 2015, between Defendant as the Lessor and the Plaintiff as the Lessee.
11. The Defendant further submitted that the fiduciary duty owed to former clients, as established in *King Woolen Mills Ltd v Kaplan & Stratton Advocates* (1990-1994) EA 244, prohibits an advocate from acting against a former client in the same or substantially related matter due to the risk of misuse of confidential information.
12. The Defendant/Objector further relied on the case of *Uhuru Highway Development Ltd v Central Bank Ltd* (2002) 2 EA 654 and *Delphis Bank Ltd v Channan Singh Chatthe & 6 others* CA No. Nai 136 of 2005 (UR) ,to emphasize that an advocate must avoid situations where real mischief or



prejudice may result from their representation. He submitted that the representation of the Plaintiff herein by the Plaintiff's Advocate materially affects the Defendant by reason that the counsel for the Plaintiff is aware of the Defendant's confidential information with regards to this matter and which information negatively impacts on the Defendant.

13. The Defendant also referred to the Arbitration clause in the Lease Agreement, which mandates dispute resolution through negotiations and arbitration, arguing that the Plaintiff's suit is in breach of this clause, and constitutes an abuse of court process.
14. The Defendant/Applicant urged the court to uphold the Preliminary Objection, disqualifies the Law Firm of Oyomba Mosota & Wamwea Advocates from representing the Plaintiff, and strikes out all pleadings filed by the said Law Firm, and awards costs of the objection to the Defendant/Objector.
15. The above are the grounds for and against the instant Preliminary Objection, which objection is basically seeking to have the Law Firm of Oyomba, Mosota & Wamwea Advocates barred from representing the Plaintiff herein for acting contrary to Rule 9 of the Advocates Practice Rules and for offending clause 18 of the Lease Agreement in issue on the procedure for dispute resolution between the parties.
16. It is evident that a Preliminary Objection (PO) is a legal argument raised early in a case, before the merits and demerits of the said case are heard. The Preliminary Objection may challenge the court's jurisdiction or the validity of the proceedings, and is aimed at having the case dismissed summarily and save court/party time. It's a point of law that, if it is upheld, then it ends the suit immediately, thus preventing the court from delving into the substantive evidence. See the case of *Achiando v Domo & 2 others (Environment & Land Case E002 of 2025) [2025] KEELC 798 (KLR) (21 February 2025) (Ruling)*
17. For a valid Preliminary Objection to stand, it must meet certain criteria as was held in the case of *Mukisa Biscuits(Supra)* which has been cited by both parties herein. These criteria are; Pure Point of Law: The Preliminary Objection must be based solely on legal principles and does not require the court to investigate or ascertain new facts. Based on Pleadings: The Preliminary Objection must arise directly from the existing pleadings or by clear implication from them. Assumption of Truth: For the purpose of the objection, all facts pleaded by the opposing party are assumed to be correct. No Judicial Discretion: The Preliminary Objection cannot be raised if the court is required to exercise its own discretion to make a determination.
18. To further elaborate on the above criteria, courts have made various determination on the issue of Preliminary Objection. In the case of *Bashir Haji Abdullahi v Adan Mohammed Noor & 3 others [2004] e KLR*, the Court held that,

“We are of the considered view that if a party wishes to raise a Preliminary Objection and files in Court a Notice to that effect and is subsequently served on other parties to the suit, the Preliminary points should be sufficiently particularized and detailed to enable the other side and indeed the court to know exactly the nature of the preliminary points of law to be raised. To state that “the application is bad in law” without saying more does not assist the other parties to neither the suit nor the Court to sufficiently prepare to meet the challenge. If it is only at the hearing that the Preliminary Objection is amplified and elaborated, it gets the other side unprepared and is reminiscent of trial by ambush.”



19. Further in the case of Susan Wairimu Ndiangui Vs Pauline W. Thuo & Another [2005] eKLR, the court held as follows:-

“ A Preliminary Objection should not be drawn in a manner that is vague and non-disclosing of the point of law or issue that is intended to be raised. It should clearly inform both the court and the other party or parties in sufficient details what to expect.”
20. Again in the case of Kuria & 27 others v Mott & 12 others (Environment & Land Case 23 of 2021) [2024] KEELC 4220 (KLR) (14 May 2024) (Ruling) , the court stated as follows:

“ It is clear that a Preliminary Objection arises on a point of law only. The Court needs only to examine the pleadings and compare the issues raised therein with the law in issue and make a finding as to whether the failure to comply with what the law requires or provides is so fundamental that it goes to the root of the claim, defence, petition or plaint. This is what this Court will do in regard to the objection raised.”
21. The court will now examine only the pleadings of the parties herein and the law at this stage to determine whether what has been raised by the Defendant /Objector meets the criteria of what amounts to a Preliminary Objection as stated in the Mukisa Biscuits Case (Supra).
22. It is only when the court determines whether the objection herein is a pure t point of law, will it then determined whether the objection as raised is merited. The Defendant has contended that the Plaintiff's advocates have contravened the provisions of Rule 9 of the Advocates Rules (*Advocates Act* Cap 16 LOK).
23. The Defendant averred that the Law Firm of Oyomba Mosota& Wamwea Advocates have contravened the above provisions, and there is therefore conflict of interest, breach of confidentiality and fiduciary duty and therefore the suit should be dismissed with costs.
24. However, from the description of a Preliminary Objection, it is clear that the same has to be pure points of law, which do not require ascertainment of facts. For the court to determine whether the Law Firm of Oyomba Mosota & Wamwea Advocates acted for the Plaintiff and Defendant/Objector, it will have to consider the Lease agreement, which will be tantamount to ascertaining facts.
25. The consideration of the Lease agreement means that the court will have to call for evidence, and therefore, the said objection is not a pure point of law and cannot pass as a valid Preliminary Objection. See the case of Oraro Vs Mbaja(2005) eklr.
26. Further, in submitting that the Plaintiff's suit has offended clause 18 of the Lease agreement in issue, the court too will need to look at the said Lease agreement and examine Clause 18 in regard to disputes resolution. That in effect will mean that the court has been called to ascertain facts. Therefore, that objection is not a pure point of law, but is factual.
27. For the above reasons, this court finds and holds that the instant Notice of Preliminary Objection dated 22nd September 2025, is not a proper or valid Preliminary Objection as described in the Mukias Biscuits Case(supra)
28. Consequently, the instant Notice of Preliminary Objection cannot stand and is dismissed entirely. Having found that the Objection herein does not meet the criteria of what a proper Preliminary Objection is, then this court finds no reasons to delve into the merit and/ or demerit of the said objection.



29. In a nutshell, the Defendant/ Objector's objection dated 22nd September 2025, cannot stand and is dismissed entirely with costs to the Plaintiff/Respondent.

30. Let the suit proceed for hearing and be determined on merit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 29TH DAY OF JANUARY 2026

L. GACHERU

JUDGE

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Ms Omamo holding brief Mr. Oyomba for the - Plaintiff/Respondent

Mr. Lepore holding brief for Ms Nchoe for Defendant/Objector

L. Gacheru

Judge

29/1/2026

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