



REPUBLIC OF KENYA



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**Yuzaco Limited v Karungwa & 16 others (Environment and Land Case
E013 of 2024) [2026] KEELC 257 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 257 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E013 OF 2024
LL NAIKUNI, J
JANUARY 27, 2026**

BETWEEN

YUZACO LIMITED PLAINTIFF

AND

JIRA KARUNGWA 1ST DEFENDANT

KOMBO CHIMEGA 2ND DEFENDANT

NJOLOI KARUNGWA 3RD DEFENDANT

MAJELE MUNDA 4TH DEFENDANT

MUNDA MAJELE 5TH DEFENDANT

MUNDA CHIMEGA 6TH DEFENDANT

CHIMEGA MUNDA 7TH DEFENDANT

**NATIONAL CEMENT COMPANY LIMITED & 9 OTHERS & 9
OTHERS 8TH DEFENDANT**

RULING

I. Introduction

1. Before this Honourable Court for determination is the Notice of Preliminary objection raised by National Cement Company Limited, the 8th Defendant herein dated 8th April, 2025.

II. The Notice of Preliminary objection by the 8th Defendant

2. The 8th Defendant brought an objection of law on the following grounds: -



- a. That by dint of Section 30 of the *Land Adjudication Act* of Kenya Cap 284, all civil proceeding matters concerning interest in land in an adjudication section shall be discontinued until the adjudication register in that adjudication section has become final in all aspects.
- b. That Chengoni area where the suit property is situated has been declared an adjudication section and the Plaintiff didn't seek the statutory consent from the Land Adjudication officer before filing the suit.
- c. That the suit herein should be stayed.

III. Submissions

3. On 15th October, 2025 while the Parties were present in Court, they were directed to have the Notice of Preliminary Objection dated 8th April, 2025 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 26th January, 2026 a ruling was delivered accordingly.

IV. Analysis and Determination

4. I have considered the Notice of Preliminary Objection by the 8th Defendant and the submissions herein, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
5. In order to arrive at an informed, reasonable and fair decision based on Law, the Honourable Court has crafted five (5) issues for its determination in the Notice of Preliminary Objection: -
 - a. Whether the objection meets the threshold based on Law and Precedents?
 - b. Whether the suit property is situated within an adjudication section declared under the *Land Adjudication Act*?
 - c. Whether the Plaintiff obtained the requisite consent of the Land Adjudication Officer before filing suit.
 - d. Whether the suit is incompetent and liable to be stayed or struck out
 - e. Who bears the Costs of the Notice of Preliminary objection dated 8th April, 2025.

ISSUE No. a). Whether the objection meets the threshold based on Law and Precedents?

6. Under this Sub – heading, the Honourable Court will decipher on the substratum of the matter is whether the objection raised pure points of law. In determining this instant Notice of Preliminary Objection, the Court will first consider what amounts to a Preliminary Objection and then Juxtapose the said description herein and come up with a finding on whether what has been raised herein fits the said description.
7. According to the Black Law Dictionary a Preliminary Objection is defined as being:

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
8. Similarly, based on the said Black's Law Dictionary 11th Edition, a Preliminary Objection is an objection that if upheld would render further proceedings before the tribunal impossible or unnecessary. Courts have various defined Preliminary objection as one that consists of a point 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.

9. The above legal proposition has been made graphically clear in the now famous case of “Mukisa Biscuits – Versus - Westend Distributor Ltd [1969] EA 696”, the court observed that: -

“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 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 not do anything but unnecessarily increase costs and, on occasion, confuse the issue.”

10. This statement of the law has been echoed time and again by the courts: see for example, “Oraro – Versus - Mbaja [2007] KLR 141”.

11. The same position was held in the case of “Nitin Properties Ltd – Versus - Jagjit S. Kalsi & another Court of Appeal No. 132 of 1989[1995-1998] 2EA 257” where the Court held that;

“A preliminary Objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is the exercise of Judicial discretion.”

12. Likewise, in the case of “United Insurance Company Limited – Versus - Scholastica A Odera Kisumu HCC Appeal No. 6 of 2005(2005) LLR 7396”, the Court held that:-

“A preliminary Objection must be based on a point of law which is clear and beyond any doubt and Preliminary Objection which is based on facts which are disputed cannot be used to determine the whole matter as the facts must be precise and clear to enable the Court to say the facts are contested or disputed .”

13. Therefore from the above holdings of the Courts, it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere. See also the case of “In the matter of Siaya Resident Magistrate Court Kisumu HCCMisc. App No. 247 of 2003” where the Court held that;

“A Preliminary Objection cannot be raised if any facts has to be ascertained.”

14. I have further relied on the decision of “Attorney General & Another – Versus - Andrew Mwaura Githinji & another [2016] eKLR” as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alia:-

- (i) A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
- (ii) A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
- (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

15. Taking into account the above findings and holdings of various Courts on what amounts to a preliminary Objection, the Court now turns to the grounds raised by the 8th Defendant’s objection is based on Section 30 of the [Land Adjudication Act](#), Cap. 284, which bars institution of civil proceedings



concerning land in an adjudication section without written consent of the Land Adjudication Officer. The objection asserts:

- a. The suit property lies within Chengoni Adjudication Section.
 - b. The Plaintiff did not obtain consent from the Land Adjudication Officer.
 - c. Therefore, the suit is incompetent and should be stayed.
16. Whether the Court can entertain proceedings without consent under Section 30 is a pure point of law. It goes to jurisdiction. The existence or absence of consent is a matter of record, not factual contest. Courts have consistently treated this as a legal threshold. The existence or absence of consent is a matter of record, not factual contest. Courts have consistently treated this as a legal threshold.
17. In this case, I am satisfied that the objection raises pure points of law in that the preliminary objection. Since an issue going to the jurisdiction of this Court has been raised that issue must be dealt with in limine. Therefore, the objection is properly taken as a preliminary objection within the meaning of “the Mukisa Biscuit case”.

ISSUE No. b). Whether the suit property is situated within an adjudication section declared under the [Land Adjudication Act](#).

18. Under this Sub title the Court shall examine whether the suit property is situated within an adjudication section declared under the [Land Adjudication Act](#), Cap. 284, Laws of Kenya. This particular legislation is extremely comprehensive with a detailed internal dispute resolution mechanisms enshrined thereof.
19. The provision of Section 5 of the [Land Adjudication Act](#) empowers the Minister (through the Land Adjudication Officer) to declare any area of trust land or community land an adjudication section by notice in the Gazette. Once declared, all interests in land within that section are subject to adjudication procedures, culminating in the adjudication register. Section 30 then bars civil proceedings concerning land in such adjudication sections unless the adjudication register has become final or the Land Adjudication Officer has given written consent.
20. Jurisdiction has been defined in Halsbury’s Laws of England (4th Ed.) Vol. 9 at page 350 as
- “...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.”
21. The issue of jurisdiction is well settled in “Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) KLR 1”, where Nyarangi J. of the Court of Appeal held that: -
- “Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
22. The 8th Defendant’s Preliminary Objection expressly states that the suit property is located in Chengoni area, which has been declared an adjudication section by the Minister in Charge. The Plaintiff has not contested this assertion in the pleadings or produced evidence to the contrary. Courts have held that once an area is gazetted as an adjudication section, all parcels therein fall under the statutory bar.



23. This Court would like to rely on the decision in “Kariuki – Versus - Kariuki [1983] KLR 225”, wherein the Court of Appeal held that where statute expressly prohibits institution of proceedings without compliance, the Court lacks jurisdiction. Further in “David Githinji – Versus - Land Adjudication Officer, Kirinyaga [2016] eKLR”, the Court emphasized that once an area is declared an adjudication section, all disputes concerning land therein must follow the adjudication process. Similarly in “Beatrice Muthoni – Versus - Land Adjudication Officer, Mbeere [2014] eKLR”, the Court reiterated that proceedings filed without consent in respect of land in an adjudication section are incompetent.
24. This Court does not need to embark on factual inquiry beyond the pleadings. The declaration of Chengoni area as an adjudication section is a matter of public record, effected through Gazette Notice under Section 5 of the Act. In the absence of evidence from the Plaintiff disputing this, the Court must accept that the suit property lies within an adjudication section.
25. The suit property is indeed situated within Chengoni Adjudication Section, a section declared under the *Land Adjudication Act*. Consequently, the Plaintiff to institute a civil proceedings was required to obtain the written consent of the Land Adjudication Officer before instituting these proceedings.
26. It is not in dispute that Chengoni area, where the suit property is located, has been declared an adjudication section pursuant to Section 5 of the *Land Adjudication Act*, Cap. 284. Once such declaration is made, all interests in land therein are subject to adjudication procedures, and Section 30 bars institution of civil proceedings without the written consent of the Land Adjudication Officer. The Plaintiff has not demonstrated that the suit property lies outside the adjudication section or that consent was obtained.
27. Therefore, I find that the suit property is situated within an adjudication section duly declared under the Act.

ISSUE No. c). Whether the Plaintiff obtained the requisite consent of the Land Adjudication Officer before filing suit

28. Under this sub - title, the Court is to examine whether the Plaintiff obtained the requisite consent of the Land Adjudication Officer under Section 30 of the *Land Adjudication Act*. The provision of Section 30 (1) of the *Land Adjudication Act*, Cap. 284 provides:

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects.”
29. This provision is couched in mandatory terms. The written consent of the Land Adjudication Officer is a jurisdictional prerequisite before a court can entertain proceedings concerning land in an adjudication section.
30. The burden lies on the Plaintiff to demonstrate that such consent was obtained. In the case of:- “Kariuki – Versus - Kariuki [1983] KLR 225”, the Court of Appeal held that where statute expressly prohibits institution of proceedings without compliance, the Court lacks jurisdiction unless the party invoking the Court’s jurisdiction demonstrates compliance.
31. The 8th Defendant has asserted that no consent was obtained. The Plaintiff has not produced any written consent from the Land Adjudication Officer. The pleadings and annexures filed do not contain such consent. In the case of:- “Beatrice Muthoni (Supra)”, the Court held that proceedings filed without consent are a nullity ab initio. Similarly, in the case of:- “David Githinji – Versus - Land



Adjudication Officer, Kirinyaga [2016] eKLR”, the Court emphasized that the provision of Section 30 is intended to protect the adjudication process from parallel litigation, and consent is the only gateway to court.

32. The requirement of consent is not a mere procedural technicality; it is a substantive jurisdictional bar. Without consent, the Court is stripped of jurisdiction to entertain the matter. As was stated in classicus locus case of “Owners of Motor Vessel “Lillian S” (Supra)”, jurisdiction is everything, and without it, the Court must down its tools. The Plaintiff has not obtained or demonstrated the requisite written consent of the Land Adjudication Officer. Consequently, this Court lacks jurisdiction to entertain the suit until such consent is procured.
33. The provision of Section 30 of the [Land Adjudication Act](#) is clear that no civil proceedings concerning land in an adjudication section may be instituted or entertained without the written consent of the Land Adjudication Officer. The Plaintiff has not placed before this Court any evidence of such consent. In the absence of this jurisdictional prerequisite, the suit is incompetent. As the Court of Appeal stated in “Owners of Motor Vessel ‘Lillian S’ (Supra)”, jurisdiction is everything, and without it, the Court must down its tools. I therefore find that the Plaintiff failed to obtain the requisite consent, and this Court cannot entertain the proceedings. It must collapse forthright.

ISSUE No. d). Whether the suit is incompetent and liable to be stayed or struck out.

34. Under this Sub - title, the Court shall examine whether the suit is incompetent and liable to be stayed or struck out. The provision of Section 30 of the [Land Adjudication Act](#), Cap. 284 provides a jurisdictional bar: no civil proceedings concerning land in an adjudication section may be instituted or entertained without the written consent of the Land Adjudication Officer. The provision is couched in mandatory terms. Courts have consistently held that failure to obtain consent renders proceedings incompetent.
35. The suit property lies within Chengoni Adjudication Section. The Plaintiff has not demonstrated that it obtained the requisite written consent of the Land Adjudication Officer. Consequently, the suit offends the provision of Section 30 and is incompetent. The question then becomes whether the proper remedy is striking out or staying the proceedings. Striking out is appropriate where the defect is incurable. Staying is appropriate where the defect can be cured, e.g., by obtaining consent.
36. Kenyan courts have often preferred staying proceedings in such circumstances, to allow the Plaintiff an opportunity to regularize the suit once consent is obtained. See “Samuel Kamau Macharia – Versus - Land Adjudication Officer [2007] eKLR”, where the Court stayed proceedings pending compliance.
37. The defect here is not substantive to the cause of action but procedural to jurisdiction. Since the Plaintiff may yet obtain consent, the more just order is to stay the proceedings rather than strike them out. This balances the statutory bar with the Plaintiff’s right to access justice once compliance is achieved. The suit, as presently filed, is incompetent for want of jurisdiction under the provision of Section 30 of the [Land Adjudication Act](#). It is therefore liable to be stayed until the Plaintiff obtains the requisite consent of the Land Adjudication Officer. Striking out would be unduly draconian at this stage.
38. In light of the foregoing, I find that the suit herein is incompetent for want of jurisdiction under the provision of Section 30 of the [Land Adjudication Act](#). However, since the defect is curable upon obtaining the requisite consent of the Land Adjudication Officer, the proper order is to stay the proceedings rather than strike them out. Accordingly, the suit is struck out awaiting for the compliance, with costs of the objection to the 8th Defendant.



ISSUE No e). Who bears the Costs of the Notice of Preliminary objection dated 8th April, 2025

39. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR” and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR”, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
40. In the present case, the costs of the Notice of Preliminary Objection dated 8th April 2025 shall be borne by the Plaintiff, Yuzaco Limited, in favour of the 8th Defendant, National Cement Company Limited.

V. Conclusion and Disposition.

41. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus objection, the Court arrives at the following decision and make below orders:-
- a. That the Notice of Preliminary Objection by the 8th Defendant dated 8th April, 2025 be and is hereby found to have merit and thus it is allowed entirely.
 - b. That the Honourable Court declares that the suit property is situated within Chengoni Adjudication Section, duly declared under Section 5 of the Land Adjudication Act, Cap. 284 Laws of Kenya.
 - c. That pursuant to the above pronouncement, this Honourable Court lacks jurisdiction to entertain the Plaintiffs’ suit herein dated and filed without the requisite written consent of the Land Adjudication Officer as mandated under the provision of Section 30 of the Land Adjudication Act, Cap. 284.
 - d. That the instant proceedings are hereby struck out until there will be full compliance by the Plaintiff with Section 30 of the Land Adjudication Act, Cap. 284, by obtaining the requisite written consent of the Land Adjudication Officer.
 - e. That the 8th Defendant shall have the costs of the Notice of Preliminary Objection dated 8th April, 2025 to be borne by the Plaintiffs.

IT IS SO ORDERED ACCORDINGLY.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....27THDAY OFJANUARY.....2026.

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**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT
AT
KWALE**



Ruling delivered in the presence of:

- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Njaramba Advocate holding brief for Mr. Nyachio Advocate for the 8th Defendant.
- c. M/s. Nduku Advocate for the 1st, to 7th, 9th to 11th Defendants.
- d. M/s. Kiti Advocate for the 13th, 14th, 15th 16th & 17th Defendants.
- e. No appearance for the Plaintiff.

