



Briefcase Company Ltd v Planning & 9 others (Environment and Land Case E319 of 2025) [2026] KEELC 763 (KLR) (17 February 2026) (Ruling)

Neutral citation: [2026] KEELC 763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E319 OF 2025**

CG MBOGO, J

FEBRUARY 17, 2026

RULING

IN THE MATTER OF AN APPLICATION BY BRIEFCASE COMPANY LTD FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION AGAINST THE PERMANENT SECRETARY STATE DEPARTMENT OF LAND, & PHYSICAL PLANNING, THE DIRECTORATE OF SURVEY AND MAPPING, THE DIRECTOR LAND ADMINISTRATION & THE CHIEF LAND REGISTRAR ,STATE DEPARTMENT OF LANDS & PHYSICAL PLANNING

AND

**IN THE MATTER OF LAND REGISTRATION ACT,
LAND REGISTRATION (GENERAL) REGULATIONS 2017**

AND

**IN THE MATTER OF THE CONSTITUTIONAL
COMMISSION (NATIONAL LAND COMMISSION)
CHAPTER 5 OF THE CONSTITUTION OF KENYA**

BETWEEN

BRIEFCASE COMPANY LTD APPLICANT

AND

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT AND PHYSICAL
PLANNING 1ST RESPONDENT**

**THE DIRECTORATE OF SURVEY & MAPPING STATE DEPARTMENT OF
LANDS AND PHYSICAL PLANNING 2ND RESPONDENT**

**THE DIRECTOR LANDS ADMINISTRATION STATE DEPARTMENT OF
LANDS AND PHYSICAL PLANNING 3RD RESPONDENT**



**STATE DEPARTMENT OF LANDS AND PHYSICAL PLANNING 4TH
RESPONDENT**

THE NATIONAL LAND COMMISSION 5TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 6TH RESPONDENT

NAIROBI COUNTY GOVERNMENT 7TH RESPONDENT

LOHMON INVESTMENTS COMPANY LIMITED 8TH RESPONDENT

JAWHARA KENYA LIMITED 9TH RESPONDENT

**DIRECTOR CRIMINAL INVESTIGATION (LAND FRAUD) 10TH
RESPONDENT**

RULING

1. The 8th respondent filed the notice of preliminary objection dated 15th July, 2025 challenging the suit filed by the applicant on the following grounds:
 1. That the suit by briefcase company ltd as the applicant is incompetent and should be struck out for lack of a board resolution to file this suit.
 2. That the 8th and 9th respondents being not public bodies, no judicial review orders can be issued against them and in particular orders of prohibition and proposed in prayers 4, 5 and 6 in the leave application.
 3. That by admission of the applicant title in the names of the 8th and later 9th respondents were long issued it is trite law that the orders of prohibition cannot be granted on what has already been done.
 4. That the cause as filed as a judicial review, judicial process and/or reliefs cannot be used to settle a private dispute over title that belongs in an ordinary civil suit seeking relief in them.
 5. That the application for leave to apply for judicial review orders by the Applicant is frivolous and an abuse of court process and should be dismissed in limine.
2. Peter K. Langat, the applicant's director filed the replying affidavit sworn on 25th of August, 2025. He deposed that it is clear that he has been given authority to swear the verifying affidavit, which the law allows the applicant to just state or indicate in the affidavit as was done in the verifying affidavit. Secondly, he deposed that the willful actions and collusion by the 8th & 9th respondents with the officials of the ministry, even after a notice had been issued 2nd respondent are clearly ultra vires, without jurisdiction, illegal & void. The applicant deposed that the decisions and actions by the 1st, 3rd & 4th respondents have significant impact and affect private business which the 8th & 9th respondents fall under.
3. The applicant further deposed that there's no title issued to the 8th respondent that was transferred to the 9th respondent presented to court as proof of registration and of transfer under the current ardhisasa platform. In response to paragraphs 4 & 5 of the preliminary objection, it was deposed that the application for judicial review was filed on the 26th June, 2025 and the same was considered by Hon Justice J. Chigiti (SC) and on the 27th June, 2025 the honourable judge transferred the matter to this court being an ELC court with jurisdiction to hear the matter.



4. The preliminary objection was canvassed through written submissions. The 8th respondent filed its written submissions dated 5th November, 2025. The 8th respondent submitted that Order 53 rule 1(2) (b) and Order 4 rule 1(4) of the Civil Procedure Rules, are couched in mandatory terms that a verifying affidavit of an authorized officer of the company must accompany a suit that has been filed which necessitates a board resolution to acquire such authority, and which the applicant has not attached. It was submitted that for this reason, the applicant is not properly before the court.
5. The 8th respondent further submitted that the said verifying affidavit of the ex-parte applicant does not aver that there is no other cause pending before any other court over the same subject matter. Further, the 8th respondent argued that together with the 9th respondents, they are not public bodies capable of having orders of judicial review against them as they do not perform judicial or quasi-judicial function.
6. It was further argued that one cannot rely on both the provisions of Order 53(2) of the Civil Procedure Rules, Section 9 of the [Law Reform Act](#) and the Fair Administrative Actions Act at the same time because the procedural frameworks are distinct and different. On this point, they relied on the holding in the case of Republic v Magistrates Court at Makadara 2 others Jakaranda Gardens Management Company Limited 7 others (Ex parte Applicants (Judicial Review Application E332 of 2025)).
7. The 8th respondent further submitted that since the title to the suit property herein was already issued to them and the 9th respondent thereafter, an order of prohibition cannot issue against something that has already been done, on the grounds that the title is indefeasible as per Section 26 of the [Land Registration Act](#). Reliance was placed in the case of Kenya National Examination Council Versus Republic Ex Parte: Geoffrey Gathenji Njoroge and 9 Others [1997] eKLR.
8. The 8th respondent further submitted that the orders of certiorari and mandamus cannot issue to quash an irregular 'provisional' title as worded by the applicant as there is no such provisional title but only conversion of title to new block title and transfer to the 9th respondent. That equally, no leave can issue to apply for orders of mandamus to compel the chief land registrar, the national land commission or the Nairobi city county to process the irregular allotment in favour of the applicant as the allotment letter being the applicant's annexure SKC 9(b) clearly provides that the commission will not accept any liability whatsoever in the event of prior commitment or otherwise.
9. The other issue that the 8th respondent submitted on is that judicial review as filed under the tenets of Order 53 of the Civil Procedure Rules and Sections 8 and 9 of the [Law Reform Act](#) is concerned not with private rights or the merits of the decision being challenged but with the decision-making process. The 8th respondent relied on the case of Judicial Review 447 of 2014: Republic v National Transport for Safety Authority & 10 others Ex parte James Maina Mugo.
10. In conclusion, the 8th respondent submitted that the purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are frivolous, vexatious or hopeless to prevent the time of the court being wasted by misguided or trivial complaints or administrative error and urged the court to dismiss the application herein.
11. The 9th respondent filed its written submissions dated 24th November, 2025 and submitted that judicial review cannot be used as a forum to determine a dispute of ownership of land which require viva voce evidence and cross examination. To buttress this issue, the 9th respondent relied on the following authorities:-Republic v County Government of Narok & another; Onchweri (Exparte Applicant) (Environment and Land Judicial Review Case E002 of 2023) [2023] KEELC 20336 (KLR) (4 October 2023) (Judgment). Republic v National Land Commission Ex-Parte Ephrahim Muriuki Wilson & others [2018] eKLR. Republic v District Land Registrar, Nakuru Ex Parte Lawi Kigen Kiplagat; Lee Maiyani Kinyanjui (Interested Party) [2021] KEELC 3872 (KLR).



12. The 9th respondent further submitted that the current application purely relates to a dispute on ownership of the parcel of Land formerly known as LR No. 214/387 and now converted to NAIROBI/BLOCK/40/160, and that the sought orders seek to fundamentally change the ownership of the suit property from the 9th respondent who is the current owner of the suit property to the applicant who alleges to have been allocated the aforesaid property via an allotment ref: 7997/34, despite the suit property being a privately-owned land that can never be subject to allocation. The 9th respondent urged the court to uphold the preliminary objection and dismiss the application.
13. The applicant filed its written submissions dated 14th November, 2025. The applicant submitted that under the current law and precedents, a board resolution doesn't need to be attached but rather requires the person on oath to indicate that he has authority from the board to swear. Reliance was placed in the The Court of Appeal Of Tanzania At Dar Es Salaam (Coram: Korosso, J.A. Kitusi, J.A And Khamis, J.A.) Civil Application No. 266/16 Of 2022 Dangote Industries (T) Limited vs Warnercom (T) Limited.
14. Secondly, it was submitted that the application seeks to challenge a decision, or action and/or failure to act lawfully by the public body while it exercises its functions. Further, that those decisions by public bodies affect private businesses where the 8th & 9th respondents fall. Further, that this court has the power to make corrections where errors might have been made.
15. The applicant submitted that the entire affidavits in response to this preliminary objection & ground of opposition and other responses by the respondents are anchored on Articles 40,159 (2) (d) of *the Constitution*, Section 26 (1) of the *Land Act* & Section 3A and 3B of the *Civil Procedure Act*. The applicant submitted that these provisions empower the court to look into fair administration of justice without technicalities.
16. On the jurisdiction of this court to hear the matter, it was submitted that the application for judicial review was filed on 24th June, 2025 and placed before Hon Justice J.Chigiti on the 27th June, 2025. The same was considered and an order was issued to be transferred to this court which has the jurisdiction to hear the matter, thus it is a non-issue.
17. The applicant also raised issue that the affidavits filed by the 8th & 9th respondents are illegal in law and they are trying to bring in evidence obtained in contravention of the law through the back door and the same should be struck off the record. Further, that the signatory of the 8th respondent's affidavit is a deceased person and the other one signed by 'attorney' and/or persons purportedly with authority donated by the same deceased person.
18. On the legality of the application and transaction in question, the applicant submitted that the Law of Contract states that if any of the consideration or object including capacity of a party is unlawful and cannot be separated from the rest, the entire agreement & transaction becomes void.
19. In conclusion, the applicant submitted that the power and authority of the court to correct public entities like the ministry of lands is intended through the application for judicial review. The applicant therefore urged the court to grant it leave in respect of the application dated 24th June, 2025 in order to proceed with the substantive motion for prerogative orders.
20. I have considered the preliminary objection, and the written submissions filed by the respective parties. The sole issue for determination is whether the preliminary objection has merit.
21. The applicant herein seeks leave to institute judicial review proceedings against the issuance of a provisional certificate of title issued on the 28th March, 2025 which was disguised as 8th October, 2024 and any other or further title document in the portal & expunge the same from the record in respect



- of LR. No. 214/387 (BLOCK 40/160), by the 1st, 3rd and 4th respondents which it claims is illegal and irregular.
22. The 8th respondent herein has however raised a preliminary objection which must be addressed first as it might strike out the entire application.
23. According to the Black's 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.....”
24. The above legal position has been made clear in the now famous case of Mukisa Biscuit Manufacturing Co. Ltd –VS- West End Distributors Ltd. [1969] E.A. 696 where Law, JA, held that a proper preliminary objection constitutes a pure point of law. The learned judge then elaborated that: -
“A preliminary objection is in the nature of what used to be a demurer 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 in the exercise of judicial discretion.”
25. The first preliminary point of objection that the 8th respondent has raised is that the suit by the applicant is incompetent and should be struck out for lack of a board resolution which it was contended is mandatory for the filing of this suit. The 8th respondent relied on the provision of Order 4 rule 1(4) of the Civil Procedure Rules which provides that:
“The plaint shall contain the following particulars—
(4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”
26. The 8th respondent's argument is that the applicant has failed to attach the board resolution that gave the deponent of the verifying affidavit the authority to swear the said affidavit on behalf of the applicant company. However, it does not indicate anywhere in the above quoted provision of the Rules that such board resolution must be filed as well.
27. Fred A Ochieng' J (as he then was) in the case of Britind Industries Limited v APA Insurance Limited 2017 KEHC 9921(KLR) cited with approval as follows the case of Mavuno Industries Limited & 2 Others vs Keroche Industries Limited HCCC No. 122 of 2011:-
“As properly submitted by the defendant, under Order 4 rule 1 (4) of the Civil Procedure Rules, where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so. Nowhere is it stated that such authority or resolution must be filed..... The mere failure to file the same with the plaint or with the Registrar of Companies, as the requirement is extended by the defendant, does not invalidate the suit”
28. Thus, not filing the copy of the board resolution with the instituting pleadings does not invalidate the suit. Regarding the 8th respondent's contention that the verifying affidavit of the ex-parte applicant does not aver that there is no other cause pending before any other court over the same subject matter, I note that rules of procedure are meant to aid justice and not to lock out of justice litigants who make



negligible mistakes. As Ouko, J (as he then was) cited with approval in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others [2013] eKLR:-

“I reiterate what the Court said in Githere V. Kimungu [1976 – 1985] E.A. 101, that:
“.....the relation of rules of practice to the administration of justice is intended to be that of a handmaiden rather than a mistress and that the court should not be too far bound and tied by the rules, which are intended as general rules of practice, as to be compelled to do that which will cause injustice in a particular case.”

29. The 2nd preliminary point of objection that the 8th respondent has raised is that together with the 9th respondents, they are not being public bodies, and that no judicial review orders can be issued against them and in particular orders of prohibition as proposed in prayers 4, 5 and 6 in the leave application.

30. From the pleadings filed by the applicant, the 8th and 9th respondents were joined because they are the beneficiaries of the suit property, the very action which the applicant seeks to file judicial review orders against.

31. Besides that, if it is found that the 8th and 9th respondents were improperly joined to the application, Order 1 Rule 9 of the Civil Procedure Rules clearly states that no suit will be defeated for misjoinder of a party. The provision states as follows:-

“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

32. The 3rd point of preliminary objection raised by the 8th respondent is that by admission of the applicant that the title in the names of the 8th and later 9th respondents were long issued, and that it is trite law that the orders of prohibition cannot be granted on what has already been done. Indeed, the statement that prohibition cannot be granted on an action that has already occurred is true. However, in order for the court to establish whether titles were issued in the names of the 8th and 9th respondents, the court would have to go into disputed matters of evidence, which is not a pure point of law.

33. This holds true for the 4th point as well that the cause having been filed as a judicial review, judicial process and/or reliefs cannot be used to settle a private dispute over title that belongs in an ordinary civil suit seeking relief in them. In that case, this court will have to examine the merit of the cause and all evidence on record to establish whether this is a private dispute or whether it is deserving to be filed as a judicial review case or an ordinary suit.

34. Sir Charles Newbold, P. in the Mukhisa Biscuit case (Supra) defined what a pure point of law is 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 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.”

35. It therefore follows that a preliminary objection should be determined without going into proving contested facts. This was held by the Supreme Court of Kenya in Aviation & Allied Workers Union



Kenya v. Kenya Airways Ltd & 3 others, Application No. 50 of 2014 (2015) eKLR, which had this to say:-

“ Thus a preliminary objection may only be raised on a pure question of law’. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

36. Thus grounds 3 and 4 of the preliminary objection fail on this limb. I note that ground number 5 is ambiguous in its wording as it does not state how the application for leave is frivolous and an abuse of the court process. I will leave it at that.

37. From the foregoing, and for the reasons discussed and elaborated above, I find that the notice of preliminary objection dated 15th July 2025 lacks merit and it is hereby dismissed. The applicant is entitled to costs thereof, and the same to be borne by the 8th and 9th respondents.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 17TH DAY OF FEBRUARY, 2026.

HON. MBOGO C.G.

JUDGE

17/02/2026.

In the presence of:

Ms. Benson Arunga - Court assistant

Mr. Langat for the Applicant

Ms. Mackutwa holding brief for Mr. Achola for the 7th Respondent

Ms. Nkatha holding brief for Mr. Aden for the 9th Respondent

Ms. Jelagat holding brief for Ms. Gardale for the 5th Respondent

Mr. Allan Kamau for the 1st to 4th and 6th to 10th Respondents

Ms. Wagemu for the 8th Respondent

