

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE NO. E013 OF 2022

CENTRAL PARK PLAZA LIMITED
.....**PLAINTIFF**

-VERSUS-

RURAL HOUSING ESTATE LIMITED1ST
DEFENDANT

COUNTY GOVERNMENT OF UASIN GISHU 2ND
DEFENDANT

-AND-

MUKTA CHANDRAKANT CHEEWALA.....1ST INTERESTED
PARTY

MAMTA CHANDRAKANT CHEEWALA.....2ND INTERESTED
PARTY

SHIRIKKESH CHEEWALA.....3RD INTERESTED
PARTY

HASSAN KIPKORIR SISIWA, SALIM

KIPTOO SISIWA & MUSA KITUIR

(ADMINISTRATORS OF THE ESTATE OF AHMED

MALAKWEN ARAP SISIWA) 4TH INTERESTED
PARTY

R U L I N G

1. The 2nd defendant herein through a Notice of Preliminary Objection dated 07.05.2025 (hereinafter referred to as “the

present OS”) sought to have the Amended Plaintiff dated 20.02.2025 (hereinafter referred to as **“the pending suit”**) struck out on the following grounds; -

- i. This suit is statute barred pursuant to section 4(1) (a) and 26 of the Limitation of Actions Act, Cap 22 Laws of Kenya.
 - ii. We hereby pray that the same be struck out with costs to the 2nd defendant.
2. The present PO was served on the Plaintiff, the 1st Defendant and the 1st to 3rd Interested Parties herein.
 3. The Plaintiff herein did express its intention to oppose the present PO.
 4. The 1st Defendant and the 1st to 3rd Interested Parties did inform the Court that they were not interested to participate in the present PO.
 5. Consequently, the Court did direct that the present PO would be canvassed by way of written submissions.
 6. The 2nd Defendant in support of the present PO did file their submissions dated 10.11.2025 while the Plaintiff did file their submissions dated 15.12.2025.
 7. The Court has indeed perused the present PO, the submissions by the 2nd Defendant and the Plaintiff herein and identifies the following issues for determination; -

ISSUE NO. 1 - WHETHER THE NOTICE OF PRELIMINARY OBJECTION DATED 07.05.2025 MEETS THE

THRESHOLD OF A PROPER PRELIMINARY OBJECTION?

ISSUE NO. 2 - WHETHER THE NOTICE OF PRELIMINARY OBJECTION DATED 07.05.2025 IS MERITED?

ISSUE NO. 3 - WHO SHALL BEAR THE COSTS OF THE P.O?

8. The Court having identified the above issues for determination, the same will now be discussed herein below.

ISSUE NO. 1 - WHETHER THE NOTICE OF PRELIMINARY OBJECTION DATED 07.05.2025 MEETS THE THRESHOLD OF A PROPER PRELIMINARY OBJECTION?

9. The first issue for determination is whether the present PO meets the threshold of a Preliminary Objection as envisaged by law.
10. According to the Plaintiff, the present PO is one which seeks to rely on contested facts that raise various legal issues requiring the exercise of judicial discretion to determine the same.
11. Consequently, the Plaintiff was of the view and submission that the present PO did not meet the threshold of a pure preliminary objection raising a pure point of law to enable the fair disposal of the pending suit.

12. The law on what constitutes a preliminary objection was outlined in the case of **MUKHISA BISCUITS MANUFACTURING CO. LIMITED-VERSUS- WESTEND DISTRIBUTORS LIMITED (1969) EA 696** wherein the Court did state as follows; -

“...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.”

13. This position was reiterated in the case of **ORARO-VERSUS-MBAJA (2005) 1KLR 141** where the Court did confirm the following; -

“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”.

14. The Court has carefully gone through the present PO and notes that it is premised on the provisions of Section 4 (1)(a) and 26 of the Limitation of Actions Act, Cap 22.
15. The gist of the present suit is the Contract that was entered on the 30.08.2010 between the Plaintiff and the 1st Defendant herein.

16. All the parties in the pending suit do confirm that the Contract dated 30.08.2010 was binding on the Plaintiff and the 1st Defendant.
17. Consequently, this Court is of the considered view and finding that the present PO meets the threshold of being considered as a Preliminary Objection based on the fact that there is a binding Contract dated 30.08.2010 which all parties admit to be true and binding and therefore, the only point of law is whether the cause of action contravenes the provisions of Section 4(1)(a) and 26 of the Limitation of Actions Act, Cap 22 or not.

**ISSUE NO. 2 - WHETHER THE NOTICE OF PRELIMINARY
OBJECTION DATED 07.05.2025 IS MERITED
OR NOT?**

18. The second issue for determination is whether the Plaintiff's cause of action in the pending suit offends the provisions of Section 4(1)(a) and Section 26 of the Limitation of Actions Act, Cap 22.
19. According to the 2nd Defendant, the Contract that is the foundation of the pending suit was dated 30.08.2010.
20. The Cause of Action in the pending suit is a breach of the terms and conditions contained in the said Contract dated 30.08.2010.
21. Subsequently therefore, the reliefs sought in the pending suit includes an order of specific performance against the 1st and 2nd Defendants herein.

22. The 2nd Defendant is of the considered view that any cause of action premised on the Law of Contract must be brought before the Court within Six Years from the date of execution of the said Contract.
23. Unfortunately, the pending suit was filed on the 14.02.2022 which is about 11 Years from 30.08.2010 when the Contract between the 1st Defendant and the Plaintiff was executed.
24. In essence, the 2nd Defendant did plead and submit that the cause of action pleaded by the Plaintiff was time barred and should therefore be struck out forthwith.
25. The Plaintiff on the other hand did plead and submit that the pending suit was filed within the prescribed time under Section 4 (1) (a) and 26 of the Limitation of Actions Act, Cap 22.
26. The Plaintiff did admit that the cause of action in the pending suit emanates from the Contract dated 30.08.2010 with the 1st Defendant.
27. However, under Special Condition No. 3 of the Contract dated 30.08.2010, the Vendor was at liberty to extend the completion date of the Contract.
28. The Plaintiff did plead that the 1st Defendant being unable to provide clear title thereof before the completion date provided in the Contract dated 30.08.2010 did seek extension of the same both in writing and in conduct.
29. The Plaintiff did seek to rely on the letters dated 28.06.2021, 13.07.2021 and the responses thereof dated 20.09.2021 and 13.10.2021.

30. The Court did go through the letters outlined hereinabove and takes note that actually the Contract dated 30.08.2010 was only between the Plaintiff and the 1st Defendant.
31. The issue between the Plaintiff and the 1st Defendant is the procurement of the completion documents and the transfer of the same from the 1st Defendant to the Plaintiff.
32. The 1st Defendant has not pleaded any breach of contract against the Plaintiff based on the Contract dated 30.08.2010.
33. The Court did also peruse the Amended Plaint dated 20.02.2025 and confirmed that the Plaintiff did not plead any relationship with the 2nd Defendant.
34. The Particulars of Breach of Contract pleaded by the Plaintiff in the pending suit were specifically against the 1st Defendant.
35. In addition to the above, the Plaintiff did not seek any reliefs in the pending suit against the 2nd Defendant herein.
36. Clearly therefore, the joinder of the 2nd Defendant in the pending suit was most likely done to ensure the compliance of the Judgement and/or Decree that may be issued by this Court at the end of the hearing.
37. In essence, this Court is of the considered view that the 2nd Defendant was never a party to the Contract dated 30.08.2010 and as evidenced in the pending suit and there is no cause of action pleaded against the 2nd Defendant which this Court can authoritatively claim to have been based on the Contract dated 30.08.2010 and capable of being time barred under Section 4 (1) (a) and 26 of the Limitation of Actions Act, Cap 22.

38. To this end, this Court is of the finding that the present OS is not merited and should be dismissed.

ISSUE NO. 3 - WHO SHALL BEAR THE COSTS OF THE P.O. AND THE APPLICATION?

39. The general rule is that costs follow the event unless the Court directs otherwise.
40. The present PO having been found not merited, then the 2nd Defendant is condemned to pay the costs thereon.

CONCLUSION

41. In conclusion, this Court hereby makes the following Orders in determination of the present PO; -

A. THE PRELIMINARY OBJECTION DATED 07.05.2025 IS NOT MERITED AND IS THEREFORE DISMISSED.

B. THE 2ND DEFENDANT IS CONDEMNED TO PAY THE COSTS OF THIS PRELIMINARY OBJECTION TO THE PLAINTIFF ONLY.

DATED, SIGNED and DELIVERED in ELDORET this 18TH DAY OF FEBRUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Plaintiff: Ms. Kale holding brief for Mr. Nyaaga

Counsel for the Defendant: Mr. Oguttu for the 1st Defendant & Mr.
Mathai for the 2nd Defendant

Counsel for the Interested Parties: Mr. Mbogori