



Dembena International Limited v National Land Commission & another (Environment and Land Judicial Review Case E058 of 2025) [2026] KEELC 564 (KLR) (3 February 2026) (Ruling)

Neutral citation: [2026] KEELC 564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E058 OF 2025
MN KULLOW, J
FEBRUARY 3, 2026**

BETWEEN

DEMBENA INTERNATIONAL LIMITED APPLICANT

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

THE MANAGING DIRECTOR NATIONAL LAND COMMISSION 2ND RESPONDENT

RULING

1. The application that is before the court is the one dated 25.07.2025 where the applicant seeks the following orders
 - a. Spent
 - b. Spent
 - c. That Pending the hearing and determination of the Applicant’s substantive motion, this Honourable Court be pleased to issue an order directed at KCB Bank Kenya Limited Nssf Branch to freeze and/or earmark any sums held in account number 1XXXXXXXXX25 and National Bank Of Kenya, Hill Plaza Branch to freeze and/or earmark any sums held in accounts number 0XXXXXXXXXXX00; 7XXXXXXXXXX1; 7XXXXXXXXXX48; 7XXXXXXXXXX4; 7XXXXXXXXXX42; 7XXXXXXXXXX32; and 7XXXXXXXXXX40 and any/all other accounts or suspense accounts held by the said banks in favour of the 1st Respondent, at least up to the sum of Kes. 1,023,147,777.99 being the amount outstanding inclusive of interest as at 16th June 2025
 - d. This Honourable Court be pleased to issue any other order that it deems fit
 - e. Costs of this application be provided for.



2. The 1st respondent in response filed a notice of preliminary objection dated 3rd September 2025 and the court directed that the preliminary objection be dispensed with first. The grounds raised in the objection were as listed
 - a. That the nature of the application and orders sought therein particularly prayer No 4 on the face of the chamber summons application was conclusively dealt with by the trial court in ELC (OS NO EO05 OF 2023 Dembena International Limited -Vs- National Land Commission and dealt with via the ruling delivered on 12.06.2025
 - b. That the prayer number 4 in the chamber summons application as drafted contradicts and is in violation of section 21(4) of the *government proceedings Act*.
3. The court directed that the preliminary objection be disposed off by way of written submissions

Applicant's submissions

4. The applicant submitted that the notice of preliminary objection as raised did not meet the requirements as to what constituted a preliminary since it was not a pure point of law. That the assertions raised of the prayer no 4 having been dealt with in ELC (OS NO EO05 OF 2023 would require the court to go back to the pleadings of the said matter and look at the facts and what determination was made. Counsel relied on the case of Mukisa Biscuits Manufacturing Co. Ltd. - Vs- West End Distributors (1969) EA 696 at 700 as well as the case of Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] that set out the threshold for what amounted to a preliminary objection

1st Respondent's submissions

5. The main issue submitted on in regards to the preliminary objection was that the matter was res judicata to the application filed in ELC (OS NO EO05 OF 2023 Dembena International Limited -Vs- National Land Commission which application sought garnishee orders as against the 1st respondent. That the ruling dated having addressed the same, the prayer no 4 in the application was not tenable and further it offended section 21(4) of the governments proceedings Act.

Analysis and determination

6. Having looked at the Notice of preliminary objection, and submissions by both parties, the substantial issue for determination is
 1. Whether the notice of preliminary objection is merited
7. In regarding the issue of preliminary objections, the starting point is the often-cited decision in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, where the Court stated that: -

a preliminary objection consists of s 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 of 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.”



8. Similarly, in Oraro -Vs- Mbaja [2005] KLR 141, the court cautioned that a Preliminary Objection must be based on a settled point of law and not on matters requiring proof. The Court stated that: -

A preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, 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. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence..."

9. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Further, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial, and lastly, the same ought to stem from pleadings.
10. In the present case, the 1st respondent's objection is premised on the argument that prayer 4 sought after has been dealt with making the application res judicata and hence this Court lacks jurisdiction assertions denied by the applicant indicating the issues raised in the said application that gave rise to the ruling in in ELC (OS NO EO05 OF 2023 Dembena International Limited Vs National Land commission are quite different from the issues raised in prayer No 4. The determination of whether the matter is res judicata or not is in my view, a mixed question of fact and law that require reference to pleadings and affidavits and is thus inappropriate for a Preliminary Objection.
11. In the premises, I therefore find that the 1st respondent's Preliminary Objection filed herein raises mixed questions of law and fact and does not meet the threshold established in the Mukisa Biscuit case (supra). On this basis alone, the objection is improperly taken and is accordingly dismissed. For the reasons set out above, the Court makes the following Orders: -
- i. The 1st respondent's Preliminary Objection dated 3rd September 2025 is hereby dismissed.
 - ii. Costs of the preliminary objection to be awarded to the applicant
- It is so ordered.

DATED , SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 3RD DAY OF FEBRUARY 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered virtually in the presence of: -

Ms. David Njoroge for the Applicant

Ms. Taurus for Odongo for the Respondents

Ms. Philomena W. Court Assistant

