



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KABARNET**  
**ELCLC NO. E003 OF 2025**

ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF

**VERSUS**

SAMUEL KIPLAGAT NAMINI AND MARK KIMUTAI YAGAN  
(TRADING AS YANAM INVESTMENT) .....1<sup>ST</sup> DEFENDANT  
ISAAC KIPRUTO BET.....2<sup>ND</sup> DEFENDANT  
SAMMY SILAS KOMEN MWAITA.....3<sup>RD</sup> DEFENDANT

**AND**

COUNTY GOVERNMENT OF BARINGO .....1<sup>ST</sup> INTERESTED PARTY  
CHIEF LAND REGISTRAR .....2<sup>ND</sup> INTERESTED PARTY  
NATIONAL LAND COMMISSION .....3<sup>RD</sup> INTERESTED PARTY  
THE HONOURABLE ATTORNEY GENERAL..4<sup>TH</sup> INTERESTED PARTY

**RULING**

1. The Ethics and Anti-corruption Commissions EACC (the Plaintiff herein) moved to this court vide their Plaint dated 18<sup>th</sup> March 2025 and filed on the same day.

2. They impleaded **SAMUEL KIPLAGAT NAMININ & MARK KIMUTAI YAGAN (T/A YANAM INVESTMENT), ISAAC KIPRUTTO BETT and SAMMY SILAS KOMEN MWAITA** (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively) as well as the **COUNTY GOVERNMENT OF BARINGO, THE CHIEF LAND REGISTRAR, THE NATIONAL LAND COMMISSION and THE ATTORNEY GENERAL** (the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties respectively).
3. The basis of the Plaintiff's suit is that whereas the land parcel number **ELDAMA RAVINE 498/654 and 498/655** (the suit properties) are alienated public land set aside for use within Eldama Ravine as Bus Park/Matatu Terminus, and that although on 30<sup>th</sup> July 1996 a letter of allotment was issued to the Defendants with condition that payment be made within 30, in 2001 the said properties were illegally and fraudulently registered in the name of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants yet the same were not available for alienation and allocation to private individuals. Particulars of fraud have been pleaded in paragraphs 13 as against all the Defendants. In paragraph 15 particulars of breach of fiduciary duties as against the 3<sup>rd</sup> Defendant have also been pleaded.
4. The Plaintiff seeks Judgment as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants being an order of permanent injunction to restrain them by themselves, their agents, servants

employees, assigns and any other persons from charging, transferring, leasing, wasting, entering, developing, subdividing, occupying and/or dealing in any manner with the suit properties, an order directing the Chief Land Registrar to cancel the grants issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, an order of vacant possession of the suit properties and all the development thereon, general damages, costs and any other relief which this court may deem fit and just to grant.

5. The Plaintiffs also filed a Notice of Motion **dated 18<sup>th</sup> March 2025** seeking an order of temporary injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from alienating, selling, advertising for sale, transferring, developing, leasing, subdividing, wasting, entering and charging upon or in any way dealing with the suit properties. That application was compromised on **22<sup>nd</sup> May 2025** by an order of status quo being maintained pending the hearing of this suit.

6. The Defendants subsequently filed a Notice of Preliminary Objection dated **4<sup>th</sup> April 2025** seeking to have this suit struck out on the following grounds:

**1. That the plaint is fatally defective for being un-dated, un-signed and bereft of prayers and mandatory pleadings.**

**2. The Court lacks the jurisdiction to determine this matter on account of the rule of sub-judice.**

**3. The suit offends the mandatory provisions of sections 104(b), 108 and 114 of the Penal Code as well as the provision of the Statutory Declaration Act.**

**4. The suit riles against section 11 of the Oaths and Statutory Declarations Act.**

**5. The suit is an abuse of the court process and should be struck out.**

7. When the matter was mentioned before **WAITHAKA, J** on **23<sup>rd</sup> September 2025**, the parties agreed that the Preliminary Objection be canvassed by way of Written Submissions.

8. By 19<sup>th</sup> January 2026 when the matter came up before me to confirm compliance, only **Ms MAINA** Counsel for the Plaintiff had filled her submissions and she informed the court that although **WAITHAKA, J** had set time limits, she had not been served with the submissions by the other counsel. I therefore set a ruling date for 16<sup>th</sup> February 2026 and declined to extend time to **MR KAMAU** Counsel for the Interested Parties who was still seeking instructions.

9. I have considered the Defendant's Preliminary Objection as well as the submission by **MS MAINA**.

10. A Preliminary Objection, as was held by **SIR CHARLES NEWBOLD P**, in the case of **MUKISA BISCUIT MANUFACTURING CO. LTD V. WEST END DISTRIBUTORS LTD 1969 E.A 696**;

**“...is in the nature of what used to be a demurer. It raises a pure point at 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”.**

In the same case, **LAW J.A** defined it thus:

**“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, and 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 raise to the suit to refer the dispute to arbitration.”**

11. The first objection is that the plaint is un-dated, un-signed and is bereft of prayers on mandatory pleadings. I have perused the plaint. It is **dated 18<sup>th</sup> March 2025** and signed by **BRIGID MAINA** advocate for the Plaintiff and it

has set out the remedies sought by the Plaintiff and which I have also summarized earlier in this ruling. Even assuming that the plaint was not dated or signed, I would not consider that defect to warrant the striking out of the suit. Rather, I would have invoked **Article 159 2(d)** of the Constitution to allow the Plaintiff's Counsel time to rectify that omission rather than make such a draconian order of striking out the plaint. That ground collapses.

12. With regard to the ground that this suit is sub-judice, the Plaintiff's counsel has submitted, and rightly so in my view, that this court has not been provided with the particulars of any other suit pending in any other court between the parties herein over the suit properties. Indeed, if there is any other suit pending in any other court over the suit properties, it should have been pleaded in the defence. I have looked at the defence by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and there is no such pleading. This court will therefore conclude that there is no such other suit and therefore, the plea of sub-judice was not raised with any serious conviction. This is because, the rule of sub-judice is defined in section 6 of the Civil Procedure Act as follows:

**6. "No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or**

**proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.**

13. It follows from the above definition that unless the particulars of any such pending suit are made known to the court, the plea of sub-judice cannot be sustained. That Preliminary Objection will also be dismissed.

14. With regard to the objection that this suit offends the mandatory provisions of **sections 104 (b), 108 and 114** of the Penal Code, I have read the said provisions. I shall reproduce them for avoidance of doubt. They read:

**104 “Any person who**

**(a) -**

**(b) Without authority assumes to act as a person having authority by law to administer an oath or take a solemn dedication or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorized by law to do so or”**

**108: “Any person who, in any judicial proceeding or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding is guilty of the misdemeanor/termed perjury.”**

**114: “Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanor”**

Section 11 of the Oaths and Statutory Declaration Act provides for the penalty for false declaration.

15. I have tried to comprehend how the above provisions can support the Defendants’ plea that this suit is sub-judice. Unfortunately, I find nothing in those provisions. Perhaps if the Defendants’ counsel had filed submissions, this court would have benefited from them. But even then, I do not see how those provisions in themselves can be “**pure**” matters

of law since they would need to be qualified with the identities of the persons who have committed the acts or offences mentioned therein.

16. The bottom line is that the said provisions cannot support a plea of Preliminary Objection.

17. The up-shot at all the above is that the Preliminary Objection by the Defendants **dated 4<sup>th</sup> April 2025** is devoid of merit. It is in my view what **Sir CHARLES NEWBOLD P** had in mind when he said as follows in the case of **MUKISA BISCUIT MANUFACTURING CO LTD V WEST END DISTRIBUTORS LTD (Supra)**:

**“The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice must stop”.**

18. The Defendants’ Preliminary Objection dated 4<sup>th</sup> April 2025 is dismissed with costs to the Plaintiff.

**BOAZ N. OLAO  
JUDGE**

**16<sup>TH</sup> FEBRUARY 2026**

**Ruling dated, signed and delivered by way of  
electronic mail on this 16<sup>th</sup> day of February 2026.**

**BOAZ N. OLAO**

**JUDGE**

**16<sup>TH</sup> FEBRUARY 2026**

**ORIGINAL**