



REPUBLIC OF KENYA



KENYA LAW

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**U.B Gold Inc v Ondaba t/a Ondaba & Partners & 4 others (Commercial Case E312 of 2019)
[2026] KEHC 1208 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E312 OF 2019
AA VISRAM, J
FEBRUARY 5, 2026**

BETWEEN

U.B GOLD INC PLAINTIFF

AND

AUSTIN ONDABA T/A ONDABA & PARTNERS 1ST DEFENDANT

MR BLANCHARD MIGAMA 2ND DEFENDANT

GREAT SOURCE FREIGHT FORWARDERS 3RD DEFENDANT

PATRICK NGARE MUCHINA 4TH DEFENDANT

PARAMOUNT BANK KENYA LIMITED 5TH DEFENDANT

RULING

Introduction and Background

1. Before the Court for determination is the 1st Defendant's ("the Defendant") Notice of Preliminary Objection dated 3rd June, 2025 ("the Objection") seeking to strike out the Plaintiff's suit on the grounds that the Plaintiff is not an incorporated body established under the Companies Act (the Act), and therefore devoid of the requisite locus standi to commence, originate and/or otherwise maintain the present suit.
2. The Defendant submitted that the Plaintiff has not proved it is a juristic person, and accordingly it lacks the locus standi to bring this suit before the Court. Further, that despite it carrying on business in Kenya within the meaning of Sections 974 to 976 the Act, it has not established any legal existence by way of registration in Kenya as required law.



3. The Defendant relied on the decision of the court in *Stichting Rabo Bank Foundation v Ava Chem Limited & another* (Commercial Case E374 of 2022) [2024] KEHC 9931 (KLR) in support of the above position. The Defendant further relied on the decision of the court in *Turnkey International Trade Limited V Sunmatt Limited (Sundip Shah) Civil Suit E406 of 2022* [2024] KEHC 2701 (KLR), for the proposition that the Plaintiff's suit violates the express provisions of Sections 973 to 985 of the *Companies Act*, relating to foreign companies, and express requirement for registration in Kenya as regards legal status.
4. The parties canvassed the Objection by way of written submissions. I have considered the same will refer to the relevant submissions as part of my analysis and determination below.

Analysis and determination

5. The criteria in relation to a valid preliminary objection was set out in the seminal case of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd.* (1969) EA 696. This decision has since been affirmed by the Supreme Court in *Joho & another v Shahbal & 2 others* [2014] KESC 34 (KLR) where the dicta in *Mukisa*(supra) by Law J.A., and Newbold P. was stated as follows:-

Law, JA.:

“So far as I am aware, a Preliminary Objection consists of a pure 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 on 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.”

Newbold, P.:

“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. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.” (Emphasis mine)

6. In summary, for one to succeed in putting up a preliminary objection, the facts pleaded by the other party are assumed to be correct; it must be a matter of law which is capable of disposing off the suit; it must not be blurred by factual details calling for evidence; it must not call upon the Court to exercise discretion.
7. The Defendant, citing *Turn Key International Trade Limited* (supra) submitted that a court cannot allow an action to proceed if the Plaintiff is shown to be a non-existent legal entity. It relied on the decision of the court in *Stichting Rabo Bank Foundation* (supra) where it was held that registration for foreign companies is a mandatory condition precedent to gaining locus standi. Thus, the Defendant concluded that because the Plaintiff is not a recognized juristic person under Kenyan law, the suit is fundamentally defective and unsustainable, and should be struck out.
8. On its part, the Plaintiff admitted that it is not registered in Kenya as a foreign company, but submitted that it still has locus standi to sue. It relied on Section 974 of the *Companies Act*, which it stated regulates the operation of business in Kenya, but does not strip a foreign entity of its locus standi to seek judicial



relief. It submitted that the failure to register may carry statutory penalties, but it does not render the company non-existent. The Plaintiff submitted that its legal existence is derived from its incorporation in Ontario, Canada, and not from registration in Kenya. It pointed out that once incorporated in its home jurisdiction, it is recognized as a “person” with the capacity to sue and be sued globally.

9. The Plaintiff further maintained that a “one-off” transaction, or a claim arising from an isolated agreement does not necessarily constitute “carrying on business” in a way that triggers mandatory registration under the *Companies Act*. It submitted that the question of whether it is “carrying on business” is a factual inquiry, one that requires evidence, and may not be decided by way of Preliminary Objection. It relied on the court’s decision in *Bruton Gold Trading LLC v Amadi (t/a Amadi Associates Advocates) & 6 others* [2025] KEHC 12657 (KLR) where it was held that locus standi of a foreign company is not also necessarily dependent upon the registration requirement under Section 974 of the *Companies Act*.
10. The Defendant on its part admitted that the Plaintiff had disclosed in its Amended Plaint that it is a “...private foreign company duly registered under the laws of the Province of Ontario No 002667535 having its address at 60 Caledonia Road, Toronto, Ontario, M6E 4S4 Canada.” It was therefore aware of the Plaintiff’s status as a foreign entity from the outset.
11. I have considered the submissions of the parties and set out above, in summary. It is clear to me that the Plaintiff is not registered in Kenya. The question is whether or not it has locus standi to appear before this Court and to seek relief within the Republic of Kenya?
12. The short answer is yes. Non - registration may not with finality, preclude an entity, registered or not, from judicial relief in relation to a harm or action arising within the Republic of Kenya. Access to justice is a constitutional imperative. This Court may not therefore, with finality shut out a party without any consideration of the harm allegedly occasioned.
13. Moreover, I am not persuaded that non-registration is the same as non-existence. The practical reality is that the entity does exist. It has carried out a commercial transaction of some nature with the Defendant, presumably for mutual gain. It is logical to assume that the Defendant knew of the Plaintiff’s status at the time it entered into the commercial agreement with it. It did not stop the Defendant, at that time, from engaging in business with the Plaintiff. I do not think, it may now claim that the Plaintiff does not exist, for the purpose of access to the Court, and to seek legal redress.
14. As stated, *the Constitution* of Kenya does not contemplate a situation where a party may be denied total access to justice. I am therefore persuaded that this Court must approach the question of registration and its impact on locus standi from a broader perspective, and from a constitutional lens, based on the principle that no party ought to be denied access to justice. This is especially so, in circumstances such as the present, where the foreign entity is known to the Defendant, and there is no evidence to show that it is carrying on unlawful or a prohibited business in Kenya.
15. I say the above guided by the decision of the court in *Truvalu Enterprises 1 B.V v Muli & 2 others* [2025] KEHC 17202 (KLR) where the court held as follows:-

A foreign company, though not registered in Kenya, is a juristic person recognized under law and capable of maintaining proceedings in Kenyan courts, provided it is not engaging in prohibited business operations. The Court in *Spire Bank Limited v Land Registrar & 2 Others* [2019] eKLR reiterated that: “The capacity of a corporation to sue or be sued is derived from the law of the place of its incorporation, and such recognition is ordinarily extended to foreign corporations unless expressly prohibited by statute.” (Emphasis mine)



16. I am further guided by the decision of Gikonyo J., in Bruton Gold Trading LLC(supra) and Mulwa J., in Truvalu Enterprises 1 B.V(supra) in which the respective Lordships concluded that registration is not determinative of locus standi.
17. My view of locus standi is also informed by the decision of the Court of Appeal in Njau & 5 others v City Council of Nairobi [1983] KECA 56 (KLR), where the court defined locus standi in the following terms :-

‘The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding locus standi is the right to appear or be heard, in court or other proceedings; literally it means a place of standing - see Jowitt’s Dictionary of English Law (2nd Edn)....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.’
18. Accordingly, I am persuaded that Locus standi should be assessed in the broader constitutional context of access to justice, and not narrowly confined to compliance with company registration requirements.
19. Finally, it is important to note that Kenyan courts have the jurisdiction over an agreement or transaction that is made to be performed in Kenya. In the present matter, the Plaintiff’s suit is in respect of an alleged breach of contract that was performed in Kenya, and involved the Defendants who reside in Kenya, and all parties agreed to be bound by the laws of Kenya. I find this is sufficient to grant this Court jurisdiction over the dispute in question. In any event, the question of whether the Plaintiff is “carrying on business” in Kenya is a question of fact to be determined by way of evidence and is therefore, unsuitable for determination at this stage, and by way of a preliminary objection.

Conclusion and Disposition

20. Based on the reasons set out above, I find and hold that the Defendant’s Preliminary Objection dated 3rd June, 2025, is without merit. The same is dismissed with costs to the Plaintiff.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5TH DAY OF FEBRUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

- Plaintiff
- 1st Defendant
- 2nd Defendant
- 3rd Defendant
- 4th Defendant
- 5th Defendant

