



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge & 4 others v Ndeffo Company Ltd & 12 others (Environment and Land Case E110 of 2025) [2026] KEELC 1237 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E110 OF 2025**

**MAO ODENY, J**

**MARCH 3, 2026**

**BETWEEN**

**PETER NJENGA NJOROGE ..... 1<sup>ST</sup> PLAINTIFF**  
**HARRISON MWANGI THUO ..... 2<sup>ND</sup> PLAINTIFF**  
**PETER MWAURA KARIUKI ..... 3<sup>RD</sup> PLAINTIFF**  
**SOSPETER KABUBA KARIUKI ..... 4<sup>TH</sup> PLAINTIFF**  
**JONES NDUATI KARIUKI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**NDEFFO COMPANY LTD ..... 1<sup>ST</sup> DEFENDANT**  
**ELIUD MUGO MATHENGE ..... 2<sup>ND</sup> DEFENDANT**  
**FERDINAND GITHETHUKU MUCHOMBA ..... 3<sup>RD</sup> DEFENDANT**  
**PETERO MUGI KIMEREH ..... 4<sup>TH</sup> DEFENDANT**  
**JOSEPH MACHARIA NGAHU ..... 5<sup>TH</sup> DEFENDANT**  
**PETER MWANGI MAINA ..... 6<sup>TH</sup> DEFENDANT**  
**JAMES WITHANJI MWAURA ..... 7<sup>TH</sup> DEFENDANT**  
**CHARLES ANDERSON RONGO ..... 8<sup>TH</sup> DEFENDANT**  
**MBACHO MBUGUA KAMUNYA ..... 9<sup>TH</sup> DEFENDANT**  
**JOHN KIRIANI NJWE ..... 10<sup>TH</sup> DEFENDANT**  
**JOSEPH NGURE MWANIKI ..... 11<sup>TH</sup> DEFENDANT**  
**KISHOR KIMAT DHANJU VARSANI ..... 12<sup>TH</sup> DEFENDANT**  
**AMOLAK SINGH ISHAR SINGH & SONS ..... 13<sup>TH</sup> DEFENDANT**



## RULING

1. This ruling is in respect of the Notice of Preliminary Objection dated 4<sup>th</sup> December, 2025, by the 13<sup>th</sup> Defendant on the following grounds:
  1. This court lacks jurisdiction to entertain them;
  2. This court lacks jurisdiction to determine issues touching on shareholding and directorship in Companies which is a preserve of the Commercial Division of the High Court;
  3. As held by this court in *Awino & Another V Mburu & 10 Others* (Environment & Land Petition 004 of 2023) [2023] KEELC 678 (KLR) (9 February 2023) (Ruling), issues touching on preparation and verification of the Register of shareholders, summoning and holding of the requisite annual general meeting of Companies, declarations pertaining to the legitimacy of the current directors and the election of the Directors of a Company fall outside the mandate and jurisdiction of this court;
  4. As further held by this court in *Manchester Outfitters Limited & 2 Others V Galot Holdings Limited & 3 Others* (Environment and Land Case 358 of 2012) [2025] KEELC 6626 (KLR) (2 October 2025) (Ruling), this court's jurisdiction is limited to determining disputes relating to environment and land and not issues touching on shareholding and directorship of Companies;
  5. If, which is denied, that this court has jurisdiction to determine issues touching on shareholding and directorship in Companies, the Plaintiffs lack locus standi to institute a suit to protect the assets of Ndeffo Company Ltd;
  6. If, which is denied, that this court has jurisdiction to determine issues touching on shareholding and directorship in Companies, the Plaintiffs lack locus standi to bring a suit to protect the suit property as they are not the owners of the same because of the separate legal personality from that of the Plaintiffs as shareholders of Ndeffo Company Ltd.
  7. If, which is denied, that this court has jurisdiction to determine issues touching on shareholding and directorship in Companies, the suit is bad in law as it is for protection of the assets of Ndeffo Company Ltd which, by virtue of the rule in *Salomon V Salomon & Company Ltd* [1897] AC 22 belong to the Company and not the shareholders in and directors of that Company;
  8. If, which is denied, that this court has jurisdiction to determine issues touching on shareholding and directorship in Companies, the suit is bad in law because it is a derivative suit which has been filed by the Plaintiffs in contravention of Sections 238 and 239 of the *Companies Act* 2015 as held in *Grewal V Grewal & Another* (Commercial Case E437 of 2023) [2024] KEHC 3742 (KLR) (Commercial and Tax) (12 April 2024) (Ruling);
  9. As held in *Owners of the Motor Vessel Lilian S V Caltex Oil Kenya Ltd* [1989] KLR 1 where the court lacks jurisdiction, it must down its tools, this is a suitable case for this court to down its tools.
2. The Preliminary Objection was canvassed by way of written submissions.



### 13<sup>th</sup> Defendant's Submissions

3. Counsel for the 13<sup>th</sup> Defendant filed submission dated 14<sup>th</sup> January 2026, and relied on the cases of *Mukisa Biscuit V West End* [1969] EA 696, *John Mundia Njoroge & 9 Others V Cecilia Muthoni Njoroge & Another* [2016] eKLR, and submitted that this court lacks the jurisdiction to determine issues touching on shareholding and directorship in companies which is a preserve of the Commercial Division of the High Court.
4. It was counsel's submission that Plaintiffs in their Complaint dated 17<sup>th</sup> November 2025, seek, among others, a declaration that the 2<sup>nd</sup> to 11<sup>th</sup> Defendants have breached their statutory duty as directors of the 1<sup>st</sup> Defendant, an order compelling the Respondents to produce all financial records, audited accounts, minutes, land records and other statutory documents of the 1<sup>st</sup> Defendant for inspection and audit, an order directing the Registrar of Companies to convene a lawful Annual General Meeting of the 1<sup>st</sup> Defendant within 60 days for the purposes of election of new directors and appointment of an independent auditor, an order directing a forensic audit and investigation into misappropriation, illegal land allocations and unlawful disposals undertaken by the Defendants and General Damages for breach of fiduciary duty, oppression and mismanagement.
5. Counsel relied on the case of *Awino & Another V Mburu & 10 Others* (Environment & Land Petition 004 of 2023) [2023] KEELC 678 (KLR), and submitted that the Environment and Land Court does not have the requisite jurisdiction to hear and determine this matter.
6. Counsel further cited that case of *Manchester Outfitters Limited & 2 Others —v- Calot Holdings Limited & 3 Others* (Environment and Land case 358 of 2012) [20251 KEELC 6626 (KLR) (2 October 2025), where it was held that the court's jurisdiction is limited to determining disputes relating to environment and land and not issues touching on shareholding and directorship of Companies.
7. According to counsel, the Plaintiffs lack the locus standi to institute a suit to protect the assets of Ndeffo Company Ltd, as they are not the owners of the suit property because of the separate legal personality from that of the Plaintiffs as shareholders of Ndeffo Company Ltd and relied on the case of *Salomon v Salomon & Company Ltd* [18971 AC 22.
8. On the issue of costs, counsel relied on the case of *Jasbir Singh Rai and 3 Others V Tarlochan Singh Rai and 4 Others* [2014] eKLR and urged the court uphold the preliminary objection with costs.

### Plaintiffs' submissions

9. Counsel for the Plaintiffs identified the following issues for determination:
  1. Whether the Preliminary Objection meets the Mukisa Biscuit threshold.
  2. Whether this Honourable Court has jurisdiction.
  3. Whether the Plaintiffs have locus standi.
  4. Whether the suit is a derivative action requiring leave under Sections filed submissions dated 238-239 of the *Companies Act*.
  5. Whether the separate legal personality doctrine bars this suit.
10. On the first issue, counsel while submitting in the negative, relied on the cases of *Oraro V Mbaja* [2005] KEHC 3182 (KLR) and *Motex Knitwear Mills Limited V Gopitex Knitwear Mills Limited* [2007] KEHC 2421 (KLR), and cited that Article 162(2)(b) of *the Constitution* and Section 13 of



the *Environment and Land Court Act* and submitted that the Environment and Land Court has jurisdiction to hear and determine this suit.

11. It was counsel's submission that courts have consistently held that the presence of a company does not convert a land dispute into a commercial matter and relied on the cases of *Dynamic Engineering Ltd v Muthkara Ltd* [2020] eKLR, *Co-operative Bank v Patrick Kang'ethe* [2017] eKLR, and *Suzanne Achieng Butler v Redhill Heights Investment Ltd* [2016/ eKLR. He further stated that the key test is the subject matter, not the parties and that ELC has jurisdiction where the dispute revolves around property, regardless of company involvement.
12. On the third issue, it was counsel's submission that the Plaintiffs had the locus standi to institute the present suit as shareholders to protect their beneficial interests and relied on the case of *Kobia V M'Rukaria* [2020] eKLR.
13. On the fourth issue, counsel submitted in the negative and argued that where personal rights are affected, the matter was not derivative, and cited the case of *Ghelani Metals V Elesh Ghelani Pate* [2017] eKLR.
14. It was his submission that courts usually interfere where shareholders' proprietary interests are threatened and relied on the on the case of *Multichoice Kenya Ltd V Wananchi Group Ltd* [2020] eKLR, and urged the court to dismiss the preliminary objection with costs as it is a delaying tactic to block the Plaintiffs from protecting their land rights and a way to avoid responding to the real allegations of fraud, mismanagement and illegal allocation.

### **Analysis And Determination**

15. The main issue for determination is whether this court has jurisdiction to hear and determine this suit as raised in the Preliminary Objection.
16. The Supreme Court in the case of *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* [2014] eKLR re-affirmed the principles as set out in the *Mukisa Case*(supra) stating:

“A preliminary objection consists of a 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.”

17. From the above, it is not in doubt that a preliminary objection ought to raise a pure point of law, argued on the assumption that all facts pleaded by the other side are correct.
18. It is trite that jurisdiction is everything as was held in the case of *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* [1989] KLR 1 thus:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to



exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

19. Similarly, in the case of Phoenix of EA Company Limited v Thiga T/A Newspaper Service (Civil Appeal 244 of 2010) [2019] KECA 767 (KLR) the court held that:

“In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae.”

20. Section 13(2) of the *Environment and Land Court Act*, No 19 of 2011 provides that:

“In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”

21. Looking at the prayers in the Plaint, as rightly stated by counsel, it is clear that the orders that the Plaintiffs are seeking are: a declaration that the 2<sup>nd</sup> to 11<sup>th</sup> Defendants have breached their statutory duty as directors of the 1<sup>st</sup> Defendant, an order compelling the Respondents to produce all financial records, audited accounts, minutes, land records and other statutory documents of the 1<sup>st</sup> Defendant for inspection and audit, an order directing the Registrar of Companies to convene a lawful Annual General Meeting of the 1<sup>st</sup> Defendant within 60 days for the purposes of election of new directors and appointment of an independent auditor, an order directing a forensic audit and investigation into misappropriation, illegal land allocations and unlawful disposals undertaken by the Defendants and General Damages for breach of fiduciary duty, oppression and mismanagement.

22. These prayers fall within the jurisdiction of the High Court and not the Environment and Land Court. The upshot of the foregoing is that this court lacks the requisite jurisdiction to hear and determine the matter as the same is a preserve of the High Court.

23. Consequently, this court finds that the Preliminary Objection is merited and the same is allowed as prayed and the suit is struck out with costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3<sup>RD</sup> DAY OF MARCH 2026.**

**M. A. ODENY**

**JUDGE**

