



**Muteti v Wambui & 8 others (Environment and Land Case  
E006 of 2025) [2026] KEELC 1538 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1538 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE E006 OF 2025  
EO OBAGA, J  
MARCH 16, 2026**

**BETWEEN**

**ZIPPORAH MWONGELI MUTETI ..... PLAINTIFF**

**AND**

**JANE WANJA WAMBUI ..... 1<sup>ST</sup> DEFENDANT**

**FRANCIS NGARUIYA KIHKA ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT (KIBWEZI) .... 3<sup>RD</sup>  
DEFENDANT**

**THE LAND REGISTRAR, MAKUENI COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**DIRECTOR LAND ADJUDICATION & SETTLEMENT (NAIROBI) .... 5<sup>TH</sup>  
DEFENDANT**

**THE ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**LAND ADJUDICATION & SETTLEMENT OFFICER (MAKUENI  
COUNTY) ..... 7<sup>TH</sup> DEFENDANT**

**MARY MAINA ..... 8<sup>TH</sup> DEFENDANT**

**SAMUEL MAINA KIMITI ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a preliminary objection dated 8<sup>th</sup> July, 2025 based on the following grounds:
  1. That the Plaintiffs' suit against the 8<sup>th</sup> and 9<sup>th</sup> Defendants offends Section 12 of the [Government Proceedings Act](#) Cap 40 Laws of Kenya.
  2. That the Plaintiffs' suit is incompetent, defective, misconceived, frivolous and vexatious.



2. The parties were directed to dispose of the preliminary objection by way of written submissions. The 3<sup>rd</sup> to 9<sup>th</sup> Defendants filed their undated submission on 9<sup>th</sup> February, 2026. The Plaintiff filed her submissions dated 26<sup>th</sup> February, 2026 which were filed on 28<sup>th</sup> February, 2026.
3. I have carefully considered the submissions by the parties. The only issue for determination is whether the suit against the 8<sup>th</sup> and 9<sup>th</sup> Defendants should be struck out on the grounds raised in the preliminary objection.
4. A preliminary objection was defined in the case of Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors Ltd (1969) EA 696 as follows:

“ A preliminary objection consists of a point in 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”.

5. In the instant case, the 3<sup>rd</sup> to 9<sup>th</sup> Defendants contend that the suit against the 8<sup>th</sup> and 9<sup>th</sup> Defendants offends the provisions of Section 12 (1) of the Government Proceedings Act which states as follows:

“Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Office of the Attorney-General, as the case may be”.

6. According to the submissions by the 3<sup>rd</sup> to 9<sup>th</sup> Respondents, the 8<sup>th</sup> and 9<sup>th</sup> Defendants were the Land Adjudication and Settlement Officer and Land Registrar respectively at the time the cause of action arose in this matter. The 3<sup>rd</sup> to 9<sup>th</sup> Defendants therefore contend that they were wrongly joined in these proceedings in their individual capacities.
7. The Plaintiff contends that the preliminary objection does not meet the principles set out in the Mukisa Biscuits Manufacturing Co. Ltd case (Supra).
8. According to the Mukisa Biscuit Manufacturing Co. Ltd case (Supra), a preliminary objection cannot be raised if certain facts are to be ascertained through evidence. In the instant case, the court is being informed through submissions that the 8<sup>th</sup> and 9<sup>th</sup> Defendants were the Land Adjudication and Settlement officer and Land Registrar respectively as at the time the cause of action arose.
9. It is not clear under what circumstances the Plaintiff sued the 8<sup>th</sup> and 9<sup>th</sup> Defendants as the case is yet to be heard. This therefore means that there are certain facts to be ascertained and as such no preliminary objection can be raised when those facts need to be ascertained. On this basis, I find that the preliminary objection is devoid of merit. The same is dismissed with costs to the Plaintiff.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16<sup>TH</sup> DAY OF MARCH, 2026.**

.....  
**HON. E. O. OBAGA**



## **JUDGE**

In The Presence Of:

Mr. Onyancha for Plaintiff

Ms. Okinyi for Mr. Kivindyo for 1<sup>st</sup> Defendant

Court assistants – Steve and Nyaanga

