



**Mbeta v Ongong'a (Civil Appeal E151 of 2023)  
[2026] KEHC 4102 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4102 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E151 OF 2023  
EN MAINA, J  
MARCH 19, 2026**

**BETWEEN**

**LILIAN MWENDE MBETA ..... APPELLANT**

**AND**

**ISAAC ODHIAMBO ONGONG'A ..... RESPONDENT**

**RULING**

1. On 29th May 2025 this court delivered a ruling by which it granted leave to the Appellant to file a supplementary memorandum of Appeal. It is instructive that the application dated 18th February 2025 which culminated in that ruling was unopposed and indeed Ms. Said, Advocate for the respondent, who was present before the ruling was delivered confirmed that they had not opposed the application.
2. Currently what is before this court, is a preliminary objection dated 18th September 2025 filed by Counsel for the respondent. The preliminary objection is framed as follows:
  - “ 1. That The grounds raised in the Amended Memorandum of Appeal dated 29th May 2025 do not raise an appeal on points of law. The Applicant’s Appeal ought to be dismissed on the following legal ground;
    - a) That the Honourable court is guided by Section 38 of the *Small Claims Court Act* confirming that an Appeal from the Small Claims Court to the High Court are on points of law not fact.
  2. That the Amended Memorandum of Appeal does not raise any point of law and is purely based on argumentative facts. As such, it should be dismissed with costs to the Respondent.



3. Learned Counsel for the parties consented to canvass the preliminary objection by way of written submissions but none were received. Therefore, technically speaking the preliminary objection was not prosecuted. Be that as it may, it is my finding that the same has no merit reason being it seeks to do what counsel for the Respondent should have done from the start, which is express their opposition to the application dated 18th February 2025. Having elected not to oppose that application, they cannot now be heard to raise a preliminary objection whose effect would be to set aside the very orders which this court granted on 29th May 2025. The most they can do, is to ventilate the issues raised in this preliminary objection, in their submissions in the appeal.
4. The upshot is that this preliminary objection has no merit. It is dismissed but with no orders as to costs as no submissions were received from the Appellant's side.

**RULING SIGNED, DATED AND DELIVERED ON THIS 19TH DAY OF MARCH 2026.**

Signed by/for:

**HON. LADY JUSTICE E.N. MAINA**

**THE JUDICIARY OF KENYA.**

**MACHAKOS HIGH COURT**

