

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLOM NO. E003 OF 2024

YUVINALIS NYABUTO OMOSA.....	1ST
PLAINTIFF	
JOSEPH KIARIE KUNGU.....	2ND
PLAINTIFF	
SOLOMON MWANGI GICHU.....	3RD
PLAINTIFF	
PATRICIA MUTHONI MAINA.....	4TH
PLAINTIFF	
PAULINE WAMBUI NJUGUNA.....	5TH
PLAINTIFF	
JOSPAT IRUNGU GACHEGI.....	6TH
PLAINTIFF	
DAVID GACHUNGU MAARA.....	7TH
PLAINTIFF	
TIMOTHY WAIRI GATHUKU.....	8TH
PLAINTIFF	
MAGARET WANGUI GATHUNGU.....	9TH
PLAINTIFF	
CHARLES KINYWA MAINA.....	10TH
PLAINTIFF	
LIVINGSTONE KIPNGETICH SIGEI.....	11TH
PLAINTIFF	

VERSUS

THE COUNTY GOVERNMENT OF NAIROBI.....	1ST
DEFENDANT	
THE ATTORNEY GENERAL.....	2ND
DEFENDANT	
INSPECTOR GENERAL OF POLICE.....	3RD
DEFENDANT	
WATER RESOURCES	

MANAGEMENT	AUTHORITY.....	4 TH
DEFENDANT		
DCC	KAMUKUNJI.....	5 TH
DEFENDANT		
OCPD	BURUBURU.....	6 TH
DEFENDANT		
OCS	CALIFORNIA.....	7 TH
DEFENDANT		
CHIEF	CALIFORNIA WARD.....	8 TH
DEFENDANT		

RULING

1. The 1st defendant filed the notice of preliminary objection dated 14th November, 2025 seeking that the plaintiffs’ suit be struck out in limine on the following grounds:-

1. ***That this honourable court lacks jurisdiction to entertain the instant suit as the orders sought are res judicata having already been dealt with by this honourable court.***
2. ***That the orders sought in the present suit are similar to the orders sought by the plaintiffs in their application dated 10th October, 2024 and the matter was determined to finality by this honourable court pursuant to the ruling delivered on 30th April, 2025.***
3. ***That accordingly the instant suit:***
 - i. ***Raises no reasonable cause of action as the same has already been extinguished pursuant to this honourable court’s ruling delivered on 30th April, 2025.***

ii. Is frivolous, vexatious and a flagrant abuse of the court process and as such improperly before this honourable court.

iii. Is moot as the honourable court has already conclusively dealt with the issues in dispute.

4. That in the circumstances, the 1st defendant prays that the plaintiffs' suit be struck out with costs to the 1st defendant.

2. The notice of preliminary objection was canvassed through written submissions. The 1st defendant filed its written submissions dated 22nd February, 2026. The Plaintiffs filed their written submissions dated 19th March, 2026. I have considered the preliminary objection and the written submissions filed by the 1st defendant and the Plaintiffs. In my view, the issue for determination is ***whether the notice of preliminary objection has merit.***

3. Law, J.A. in **Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696** stated as follows:-

“So far as I am aware, 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, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

4. Also, in the case of **John Musakali vs. Speaker County of Bungoma & 4 others (2015) eKLR**, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

5. Further, Ojwang J (As he then was) in **Oraro -vs- Mbaja (2005) KLR 141** where after quoting the statement of Law, JA. in the Mukisa Biscuits case (supra) went on to state that:-

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its

authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....

Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence..."

6. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose off the issue that is before court without going to trial and lastly, the same ought to stem from and not outside of pleadings. Looking at the grounds raised in the preliminary objection, I am satisfied that its stems from the pleadings filed in this matter, and thus qualifies for determination.
7. The plaintiffs filed the amended plaint dated 10th October, 2024 seeking judgment against the defendants for:-
 - a. ***An order restraining the defendants/jointly and severally by themselves, their agents, servants and whosoever otherwise from trespassing, alienating, entering or in any other way***

interfering with the plaintiffs property known as plots numbers 211, 302,301,303,363,254,334,214, 299 all situated in Kiambu Settlement Scheme all pending the hearing and determination of this suit.

- b. An order that the status quo remains pending hearing and determination of this suit.***
- c. Such further and/or other orders be made as this honourable court may deem just and expedient in the circumstances.***
- d. That the costs of this application be in the cause.***

8. Indeed, the record shows that the plaintiffs filed the notice of motion dated 10th October, 2024, seeking the following orders:-

“1. Spent.

2. That the honourable court do grant an injunction to restrain the defendants/respondents jointly and severally by themselves, their agents, servants and howsoever otherwise from trespassing, alienating, entering or in any other way interfering with the plaintiffs’ property known as plots number 211, 301, 302, 363, 254, 334, 214, 299 all situated in Kiambu settlement scheme pending the hearing and determination of this suit.

3. ***That this honourable court do give further orders that it may deem necessary.***

4. ***That the costs of this application be in the cause.”***

9. As rightly stated by the 1st defendant, this court pronounced itself in the ruling delivered on 30th April, 2025 dismissing the plaintiffs’ application dated 10th October, 2024. From the said determination, and looking at the prayers sought in the amended plaint dated 10th October, 2024 there is nothing left for this court to determine, the same having been determined in the said ruling. While no application has been made to correct or amend the defect, this court has no issue to consider and is bereft of jurisdiction.

10. The notice of preliminary objection dated 14th November, 2025 is hereby upheld. The amended plaint dated 10th October, 2024 is thus struck out. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 24TH DAY OF MARCH, 2026.**

**HON. MBOGO C.G.
JUDGE
24/03/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Mativo for the 1st Defendant/Applicant

B. T. Atancha & Co. Advocates for the 1st Plaintiff - absent

Mr. Makori for the 4th Defendnat

ORIGINAL