



REPUBLIC OF KENYA



Muchai v Vision Afrika Sacco Limited & 2 others (Environment and Land Case E014 of 2024) [2025] KEMC 342 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEMC 342 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E014 OF 2024
PA NDEGE, SPM
DECEMBER 4, 2025**

BETWEEN

ALICE WANGUI MUCHAI PLAINTIFF

AND

VISION AFRIKA SACCO LIMITED 1ST DEFENDANT

HARRISON MUCHAI KIARIES 2ND DEFENDANT

THE LAND REGISTRAR, NAKURU 3RD DEFENDANT

(In respect to the preliminary objection by the 1st Defendant dated 25th July 2025 challenging the jurisdiction of this court under the competency of this suit as an ELC matter, yet it qualifies as a commercial dispute revolving around the business of a co-operative society under sections 76 and 81 of the Co-operative Societies Act and section 67(3) of the Sacco Societies Act)

RULING

Background.

1. The preliminary objection by the 1st Defendant is dated 25/07/2025. It is premised on two main grounds. The Defendant holds that;
 - a. The plaintiff's case has been incorrectly instituted as an ELC Matter whereas the substratum of the case seeks to question the procedure for granting of loan to the 2nd defendant and thus qualifying the case as a pure commercial dispute revolving around the business of a co-operative society to be addressed by the Co-operative Tribunal.
 - b. This honorable court lacks jurisdiction to entertain and determine the plaintiff's suit as filed concerning the 1st defendant's – society business and loaning procedures by virtue of Section 76 of the Co-operative Societies Act, Cap 490 which confers original jurisdiction in settlement of disputes upon the Co-operative Tribunal.



- c. On the same issue of jurisdiction, section 67(3) of the [Sacco Societies Act](#) Cap. 490B confers jurisdiction to determine disputes arising from Sacco business upon the Co-operative tribunal.
- d. That furthermore, this suit as filed is a non-starter and grossly incompetent for the jurisdiction of sub-ordinate court in entertaining co-operative Sacco disputes has been ousted by section 81 of the Cooperative [Societies Act](#) which stipulates that appeals from the Cooperative Tribunal shall be referred to the High Court.

Submissions by the parties.

2. On his part, the 1st Defendant filed submissions dated 09/10/2025. Relying on several authorities, it submitted that this court should uphold the Preliminary Objection, and strike out the suit with costs. That the continued pendency of this suit amounts to an extravagant usage of judicial time and resources for a vain purpose and to the clear detriment of the defendants. That such a state of affair is an abuse of the court process.
3. On his part, the plaintiff submitted that the preliminary objection does not raise pure points of law as it improperly relies on evidence. That the plaintiff is not a member of the 1st defendant society and therefore section 76 of the [Co-operative Societies Act](#) is inapplicable as this dispute concerns property and spousal rights rather than the internal affairs of a co-operative society. That this honorable court is therefore properly vested with jurisdiction under [the Constitution](#), the [Magistrates' Courts Act](#) and the [Land Act](#) to hear and determine the matter. She therefore prayed that this Honorable Court be pleased to dismiss the preliminary objection with costs to her.

Issues for determination

4. The major issue for determination arising from the submissions by the parties is whether the Defendant's preliminary objection meets the threshold set out in the Mukisa Biscuits case. Dependent on the finding on the 1st issue, the next one would be whether it is merited.

Determination

5. The Court of Appeal of East Africa in the case of Mukisa Biscuit Manufacturing Company Limited –vs- West End Distributors Limited (1969) E.A. 696, had this to say of a preliminary objection (per Law JA, as he then was);

...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit, examples are 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 suit to refer the dispute to arbitration.

6. In the Nairobi High Court Constitutional Petition No. E260 of 2021 Boniface Akusala & Another – vs- Law Society of Kenya and 12 others (unreported), the court reiterated that: -

The validity of any preliminary objection is gauged against the requirement that it must raise pure points of law capable of disposing of the suit at once. It is therefore mandatory for a court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence.



7. Ojwang J (as he then was) captured it more aptly in the case of Oraro –vs- Mbaja (2005) KLR 141, where stated 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 claim 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 objection.

8. Having carefully considered the Defendant’s preliminary objection under consideration, alongside the pleadings herein, I find the same raises pure points of law concerning jurisdiction and the competency of this suit as filed. It has therefore been properly raised.
9. This court as constituted is a gazzetted environment and lands court. The substrum of the plaintiff’s case revolves around the charge instrument registered by the 1st defendant in respect to the 2nd defendant’s parcel Nakuru Municipality Block 24/322. Further, the plaintiff’s case raises the issue of validity of the charge instrument on account of failure by the 1st defendant to secure a spousal consent before registration of the charge instrument. Basically, and as correctly submitted by the learned counsel for the 1st defendant, the plaintiff’s suit does not embroil on the use, occupation of and/or a dispute on ownership of the subject land. Therefore, this case is purely a commercial dispute and the same ought not to have been instituted, or disguise, as an environment and land matter.
10. The focus of the plaintiff’s claim can easily be deduced from the pleadings and the reliefs sough in the plaint. On the aspect of distinction between commercial disputes and disputes which should proceed before environment and land court, the superior courts, mostly the Court of Appeal, have pronounced themselves in numerous authorities, all which support the 1st defendants submissions that this case has been instituted in a wrong forum and is thus incompetent.
11. In Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & Others [2017] e KLR, the court of appeal at pages 7 and 8 of its judgment stated as follows:

Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court’s jurisdiction to deal with disputes connected to ‘use’ of land discussed hereinabove.

Such contracts, in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court...

By parity of reasoning, the dominant issue in this case was the settlement of amounts owing from the respondent to the appellant on account of a contractual relationship of a banker and lender...

12. Further, the ELC Court itself, in the case of Isaka vs Equity Bank Limited & Another [2023] KEELC 20687 (KLR) at pages 5 and 6 of its judgment expertly ousted itself of jurisdiction in such matters as the present one when it held as follows:

The dominant issues at the centre of the Appeal herein is on the validity of the spousal consent required before the registration of the charge instrument in favour of the 1st Respondent against the title of the suit parcel and whether the Appellant is actually the one



who executed the said spousal consent; approving the registration of the Charge Instrument against the title of the said land.

...

...This in my view is purely a commercial issue/ dispute and this court is therefore not vested with the requisite jurisdiction to determine the same. Further, it is only the High Court that can adequately determine the rights accruing from the said charge instrument and the extent of the Appellant's liability as a guarantor of the loan facility advanced.

13. Evidently, from the foregoing reasoning by these Superior courts, it is obvious that the plaintiff's case as filed is not a matter falling within the jurisdiction of an ELC but is an ordinary civil case in the nature of a commercial dispute. As aforestated, this court as constituted is a gazzeted ELC and thus lacks the jurisdiction to determine this pure commercial case. And for this sole ground, I find the PO herein to be with merit.
14. However on the other grounds of whether this suit ought to have been referred to the Co-operative Tribunal, I do agree with the plaintiff that the plaintiff herein is not a member or a former member or a person claiming through members, as provided for in Section 76(1) of the *Co-operative Societies Act*. This claim can thus be filed before the normal courts, but not an ELC or a court designated as such, such as the present court.
15. The upshot, however, is that this suit is incompetently before me and is therefore hereby struck out with costs to the 1st defendant. The claim may be filed at the appropriate forum.

It is so ordered.

DATED SIGNED AND DELIVERED AT NAKURU VIRTUALLY THIS 04TH DAY OF DECEMBER 2025.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the virtual presence of:

K. Ngure..... for the 1st Defendant/Objector

Cheruiyot h/b Chebii..... for the Plaintiff

