



**Sulaiman v Sigilai (Environment and Land Case E190 of 2025)
[2025] KEMC 355 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEMC 355 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E190 OF 2025
PA NDEGE, SPM
DECEMBER 4, 2025**

BETWEEN

BRIAN KORIR SULAIMAN PLAINTIFF

AND

PATRICK K. SIGILAI DEFENDANT

RULING

(In respect to the preliminary objection by the Defendant dated 28th September 2025 challenging the jurisdiction of this court under Section 18 of the [Land Registration Act](#), on the premises that the dispute between him and the Plaintiff is a boundary dispute and Section 4(2) and & 7 of the [Limitation of Actions Act](#), Cap 22, that this suit is statutorily time barred).

Background.

1. The preliminary objection by the Defendant is dated 28/09/2025. It is premised on three main grounds. The Defendant holds that;
 - a. The Honorable Court has no jurisdiction under the law in that this is a boundary dispute and this court lacks jurisdiction to hear and determine the same and should therefore be referred back to the Land Registrar for determination as required by law.
 - b. This matter is time-barred according to the provisions of section 4(2) of the Limitation of Action Act cap 22 which bars actions of tort from being brought to court 3 years from the date the cause of action accrued. Further, that this matter is time barred according to the provisions of Section 7 of the Limitations of Acton's Act cap 22, which bars actions of recovery of land from being brought to court 12 years from the date the cause of action accrued.



Submissions by the parties.

2. On his part, the Defendant filed submissions dated 09/10/2025. Relying on several authorities, he submitted that this court should uphold the Preliminary Objection, strike out the suit with costs. On his part, the plaintiff submitted that the land registrar already executed his statutory mandate under section 18(1) of the *Land Registration Act* and that therefore this court has jurisdiction to handle the matter herein as the suit is neither time-barred nor premature. Further, that this objection invites this court to investigate facts – specifically, whether the Land Registrar conducted the survey and whether the defendant complied with its findings. That these are contested factual issues that can only be determined through evidence at trial, not by way of a preliminary objection. That the objection therefore does not meet the threshold of a proper preliminary objection, is misconceived, frivolous and devoid of merit and should therefore be dismissed with costs.

Issues for determination

3. 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

4. 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.

5. 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.

6. 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.



7. Having carefully considered the Defendant's preliminary objection under consideration, alongside the pleadings herein. I find the same blurred, in fact almost completely obscured by factual details. Paragraphs 5 to 8 of the Plaintiff's pleadings aver a final determination of the boundary through a survey process directed by the Land Registrar. The same is controverted by the defendant at paragraph 6 of the Statement of Defence where he terms the said survey as illegal. Now this is an issue that must be left for the trial as they require factual interrogation of what might have constituted the alleged illegality.
8. On the other issue as to limitation of time, I do totally associate myself with the learned counsel for the plaintiff's submissions. The claim as founded in tort has been indeed filed within three years period after the boundary was determined through the impugned process and thus the claim has been filed within the statutory time limit provided.
9. Further, I do find it too early for this court at this stage to jump to the conclusion that this suit is purely for recovery of land as opposed to the tort of trespass or a boundary claim. I therefore dismiss the preliminary objection but make no orders as to costs.

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:

N/A..... for the Defendant/Objector

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

Cheruiyot: We can a date for PTD.

CT: PTD on 06/03/26. MNTI.

