



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO E435 OF 2025

BEATRICE NJERI NJOROGE (Suing as the Administratrix of the Estate of PETER NJOROGE MURIU (Deceased)

.....**PLAINTIFF**

-VERSUS-

WILLY KIHARA NJOKI KANYOTU.....1ST

DEFENDANT

HON ATTORNEY GENERAL.....2ND

DEFENDANT

RULING

Introduction

1. The Plaintiff filed the instant suit and Application dated 1st September 2025 seeking for orders inter alia that the plaintiff be declared the registered owner of Nairobi/Block/112/87 herein referred to as the suit property and permanent injunctive orders to restrain the 1st defendant from dealing with the suit property.
2. The matter was to come for hearing of the application dated 1st September 2025 however 1st defendant/Respondent filed a Notice of Preliminary objection dated 30th September 2025 on grounds that the court lacked territorial jurisdiction to hear the suit
3. The plaintiff in objecting to the notice of preliminary objection filed grounds of objection dated 2nd October 2025 on grounds that the preliminary objection to be misplaced that the suit property was located in Runda within Nairobi county

4. The notice of preliminary objection was dispensed off by way of written submissions
1st defendant's submissions
5. Counsel submitted that the issue raised was one touching on jurisdiction and it was capable of dispensing off the suit property pointing out that it rightfully captured what a preliminary objection was as in **Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd [1969] EA 69**
6. He reiterated that the court lacked territorial jurisdiction.
7. In the plaintiff's submission dated 21st January 2026 counsel reiterated the ground of objection that the suit was in Nairobi county evidenced by paying of rates to Nairobi City County.

Analysis and determination

8. Having considered the Preliminary objection and the submissions herein the only issue for determination is whether the Notices of Preliminary Objection dated 30th September 2025 is merited .The threshold of a preliminary objection was set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** as follows:"...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit.
"The Court went further to note that:
-*"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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop."

The preliminary objection in this matter is founded on the notion that the court lacks territorial jurisdiction. It goes without saying that without the requisite jurisdiction a court of law down sits tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law.

A quick reading of the plaint as contained in paragraph 5 would inform the court that the search was conducted at the Nairobi registry which makes it within Nairobi County. Even if the suit property was not within Nairobi County, in my view, an issue of territorial jurisdiction is easy to deal with simply by transferring the file to the relevant jurisdiction. The same cannot dispose of this suit.

Final disposition

9. The upshot of the above is that the notice of preliminary objection dated 30th September 2025 thus fails. The cost will be in the cause

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13th day** of **April 2026**.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Njeru..... for the Plaintiff

Mr. Njoroge..... for Defendants

Philomena W..... Court Assistant

Original File Copy