



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLC SUIT NO E454 OF 2025

MUKAMI MWANJANGARUKO MUGO

PLAINTIFF/RESPONDENT

-VERSUS-

JOHN WAMAE 1ST

DEFENDANT/APPLICANT

SAITOTI KIRETON 2ND

DEFENDANT

RULING

Introduction

1. The Plaintiff filed the instant suit and Application dated 11th September 2025 seeking for orders interalia that the plaintiff is the registered owner of Nairobi/Block/65/456 formerly plot No 209/10530/105 and orders of injunctions against trespass by the 1st defendant
2. The 1st Respondent filed a Notice of Preliminary objection dated 23rd October 2025 on the following grounds
 - a) That the 1st and 2nd defendants lack locus standi to defend the subject suit as they do not compromise the entity referred to as Siwaka Welfare Association or the committee.
 - b) The plaintiff has sued the wrong party in the cause as the remedies the plaintiff seeks cannot lie as against the 1st or 2nd defendants

- c) That the suit was instituted against the 1st and 2nd defendants in their presumed capacities as representatives of the residents of Siwaka Estate which capacity neither of them hold ‘
- d) That there is a misjoinder of parties as the 1st and 2nd defendants have no legal interest in the suit property and have been joined to this suit in the wrong capacity thus rendering the suit incompetent, fatally defective and a nullity in law.
- e) That granting the orders herein would prejudice the 1st and 2nd defendants who have been irregularly brought to this court and lack capacity to effectively address the court on this matter in their personal capacities
- f) That the plaintiff’s suit and application dated 11th September 2025 should be dismissed forthwith and costs awarded to the 1st and 2nd defendant
3. The 2nd defendant filed grounds of objection dated 23rd October 2025 indicating that he had no legal interest in the suit property and hence lacked the legal capacity to defend the suit.
4. The notice of preliminary objection is coming up for ruling and the court directed that it be dispensed off by way of written submissions
1st defendant’s submissions
5. Counsel submitted on whether the defendants had locus standi. On this issue it was submitted that the plaintiff had not produced any

evidence before the court to establish the legal standing of the 1st and 2nd defendants as officials of Siwaka Welfare Association that the title chairman of the Association was a name with no legal existence relying on the case of **Republic 0Vs- Registrar of Societies & another; Kenya International Freight & Warehousing Association (Nairobi Branch) (Exparte) (Judicial Review Application E032 of 2024) [2025] KEHC 4789 (KLR)**

Counsel submitted that the defendants have been wrongfully sued as their presence will not help the court adjudicate on the issues as the issue touched on land ownership which the 1st defendant could not shed light on.

That there was no merit in the suit and the court should have it dismissed.

Plaintiff's submissions

6. Counsel of the plaintiff submitted on whether the preliminary objection meets the threshold for a valid preliminary objection. It was submitted that the defendant's notice of preliminary objection raised factual issues that would need the court to interrogate facts and hence does not meet requirements as in the **Mukisa Biscuit Manufacturing Company Ltd. -Vs- West End Distributors (1969)**

On the issue of locus standi the plaintiff indicated that the defendants had acted in their personal capacities and not on any association hence could be sued having indicated that the suit

property was public land reserved for the residents of Siwaka estate which they formed part of hence establishing interest

On the issue of misjoinder, the plaintiff indicated that other residents of the estate had asked to be enjoined as parties claiming legal interests and the 1st defendant being a resident, cannot claim not to have interest in the suit even that is the case, it is curable under order 1 rule 9 of the Civil procedure rules and cannot dispose off a suit.

Analysis and determination

7. Having considered the Preliminary objection and the submissions herein the only issue for determination is whether the Notice of Preliminary Objection dated 23rd October 2023 is merited.

8. The threshold of a preliminary objection was set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd. -**

Vs- 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.”

In **John Musakali -Vs- Speaker County of Bungoma & 4 others (2015) eKLR** the court elaborated the foregone legal position whereby Mwita J. stated 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.”*

Also, in the case of **Oraro -Vs- Mbaja [2005] 1 KLR 141** the court held as follows:”. A *“preliminary objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with 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....”

9. It follows, therefore, that a Preliminary Objection ought to be raised on pure points of law and when argued it is likely to dispose of the suit. In the instant suit, the Preliminary Objection raised by the Defendants is based on the issue of locus standi. A claim that one lacks locus standi contests a party's right to a trial by a Court, and if a decision is rendered in favour of the said argument, the suit may be dismissed. A claim that a party lacks locus standi is a purely legal matter that must be brought up and resolved as soon as possible. In the circumstances, the Preliminary Objection as filed is proper as it raises pure points of law. Therefore, as a preliminary issue, this Court must determine the issue whether the defendants have the locus standi to institute this suit.

10. The defendants indicate that the plaintiffs have not produced any evidence in court that links them to Siwaka Estate Welfare Association and hence cannot be sued in their individual capacities as their officials. The plaintiff on the other end have indicated that the defendants acted on their personal capacities purporting to act on behalf of Siwaka Estate Welfare Association which is not registered as an association. The parties' rival arguments are an indication that the issue of whether the 1st and 2nd defendants hold any legal rights in the management of the estate and whether there is any legally registered association under which the defendants are

part of, is a contested issue that can only be unpacked, through evidence, at the hearing and that do not fall within the realm of a preliminary objection.

Final disposition

- a) The upshot of the above is that the notice of preliminary objection dated 23rd October 2023 thus fails.
- b) The cost will be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **16th day** of **April 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Ms. Kanyika..... for the Plaintiff

Ms. Motaraki..... for the Defendant

Philomena W..... Court Assistant