

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**  
**ELCLC NO.E006 OF 2025**

**JOHN WACHIRA**  
**MWANGI.....PLAINTIFF**

**VERSUS**

**MARY WAMBUI MWANGI.....1<sup>ST</sup>**  
**DEFENDANT**

**MURIITHI KOGI.....2<sup>ND</sup>**  
**DEFENDANT**

**NAIROBI CITY COUNTY GOVERNMENT.....3<sup>RD</sup>**  
**DEFENDANT**

**CHARLES WOKABI MWANGI.....4<sup>TH</sup>**  
**DEFENDANT**

**JANE WANJIRU GACHARIRA.....5<sup>TH</sup>**  
**DEFENDANT**

**CHIEF LAND REGISTRAR, NAIROBI**

**LANDS REGISTRY.....6<sup>TH</sup>**  
**DEFENDANT**

**RULING**

**1.** The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants filed the notice of preliminary objection dated 18<sup>th</sup> November, 2025 challenging the suit on the following grounds:-

***i. That the suit is frivolous, vexatious, bad in law, misleading and an abuse of this honourable court’s process, solely aimed at wasting the court’s precious time.***

***ii. That the plaintiff lacks locus standi to institute this suit as he has not produced any***

***title documents as prima facie evidence of his ownership of the suit premise.***

- iii. That noting the alleged documents produced specifically the alleged agreement dated 2<sup>nd</sup> October, 1990 as well as the alleged assignment dated 6<sup>th</sup> December, 1990 the plaintiff ought to have been able to process the title document overall that land known as plot no. D4-334 Kayole Site and Service Scheme in the ordinary manner if the said documents were legitimate.***
- iv. That this honourable court ought not to be used as a conduit to legitimize an illegal transaction through the guised prayer (i) of the amended plaint amended on 28<sup>th</sup> August 2025, or otherwise.***
- v. That this is more so noting that the plaintiff has attached an alleged draft lease in his list of documents dated 28<sup>th</sup> August, 2025 (at p 82-84) which the 6<sup>th</sup> defendant (Chief Land Registrar, Nairobi Lands Registry) never issues given the sensitivity and conclusiveness of the records of the said office is legally mandated to maintain.***
- vi. That indeed, devoid of the title document over all that land known as plot no. D4-334 Kayole Site & Service Scheme, the totality of the laws renders the entire suit bad in law and it cannot stand.***

***vii. That thus, this suit ought to be struck out with costs to the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants.***

2. The preliminary objection was argued by way of written submissions. The plaintiff filed his submissions dated 12<sup>th</sup> February, 2026. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants filed their submissions dated 30<sup>th</sup> March, 2026. I have considered the preliminary objection and the written submissions filed by the parties. The issue for determination is *whether the 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 raises 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, 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 pleadings. The question then is, does the grounds contained in the preliminary objection raise pure points of law or stem from the pleadings that would enable the striking out of the suit at this stage? I find not for the reasons discussed below.

7. In their written submissions, The 1st , 4th and 5th defendants raised three issues for determination as follows:-

***i. Whether the plaintiff/applicant is the true bona fide registered owner of the suit premise.***

***ii. Whether the plaintiff/applicant has locus standi herein.***

***iii. Whether this honourable court lacks pecuniary jurisdiction to adjudicate over this matter.***

8. To begin with and as it can be seen clearly from the issues for determination as listed by the 1st, 4th and 5th defendants, the first ground of the objection where they consider the suit as frivolous, vexatious and a waste of courts time is abandoned.

Instead, the 1st, 4th and 5th defendants went on the submit on

the ownership of the suit property, an issue which cannot be determined summarily.

9. In the case of **DT Dobie & Company (Kenya) Limited v Muchina & another [1980] KECA 3 (KLR)**, the Court of Appeal posited:-

*"A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint. "Words and Phrases, Vol, 1 p. 228.*

*12. There is some difficulty in affixing a precise meaning to the term reasonable cause of action<sup>1</sup>..... In point of law, and consequently in the view of a court of justice, every cause of action is a reasonable cause. But; obviously some meaning must be assigned to the term 'reasonable'..... a pleading will not be struck out unless it is demurrable and something worse than demurrable."per Chitty J. in Republic of Peru v. Peruvian Guano Company, 36 Ch. Div. 489 at pp. 495 and 496.*

*13. It has been said more than once that the rule is only to be acted upon in plain and obvious cases, and, in my opinion, the jurisdiction should be exercised with extreme caution. "per Swinfen Eady, L.J. in Moore v. Lawson and Another, /31 ff. L. If. 418 at p. 419... 31 T.L.R. 418 at p. 419.*

*14 It is a very strong power indeed. It is a power which, if it not be most carefully exercised,*

***might conceivably lead a court to set aside an action in which there might really, after all, be a right, and in which the conduct of the defendant might be very wrong, and that of the plaintiff might be explicable in a reasonable way. Unless it is a very clear case indeed, I think the rule ought not to be acted upon.....***

***15. Therefore, unless the case be absolutely clear, I do not think the statement of claim ought to be set aside as not showing a reasonable cause of action.”***

**10.** I have read the plaint dated 14<sup>th</sup> January, 2025 and the amended plaint 28<sup>th</sup> August, 2025. The plaintiff has pleaded to issues and acts allegedly committed by the defendants that have necessitated the filing of the suit to aid him obtain justice. There is nothing that shows that there is any unreasonableness that would be considered a waste of court’s time. The issues are in my view triable and unambiguous. Let me also say this, it appears that the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants do not seem to understand what constitutes a pure point of law. This is demonstrated by their submissions where they actually engaged in a mini trial to attempt to convince this court why the plaintiff is not the owner of the suit property. These are not issues to be canvassed in written submissions let alone in a preliminary objection as they are a

preserve of the hearing. On this issue, grounds (iii), (iv), (v), and (vi) are therefore dismissed.

11. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants argued that the plaintiff lacks the locus standi to institute this suit for not having any title documents as prima facie evidence. In the case of **Alfred Njau and Others versus City Council of Nairobi (1982) KAR 229**, the court held that:-

*“the term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”*

12. The plaintiff in this case has all the right to approach the court for any redress where he feels there is a violation on his rights. Whether the plaintiff has provided any ownership documents to legitimise his rights is a different issue altogether which can only be proven during trial. Also, does this mean that in the absence of ownership documents, the plaintiff cannot be heard? Obviously not. It is my finding that the plaintiff has locus standi to institute this suit, and thus ground (ii) fails.
13. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants attempted to introduce a new issue in their written submissions i.e. the pecuniary jurisdiction of this

court to hear and determine this suit. This was not raised in the preliminary objection. They submitted that while this court has the jurisdiction to hear and determine land matter, the suit is misplaced, and ought to be heard by the magistrates' court. Again, this is not a pure point of law for the simple reason that if the court were to determine the same, there would be need to comb through evidence.

**14.** From the above, the notice of preliminary objection is poorly thought out. A party does not raise disputed facts in an objection and expect the court to agree with the same. Also, issues where there is need to test evidence to verify the same is not fit to be argued in an objection. This is what the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants have done in their objection. There is also inconsistency in their written submissions that seems to depart from the grounds raised in their preliminary objection which demonstrates their loose grasp on what needs to be argued.

**15.** From the above, the notice of preliminary objection dated 18th November, 2025 lacks merit completely and it is hereby dismissed. The plaintiff is awarded costs of the same to be borne by the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 22<sup>ND</sup> DAY OF APRIL, 2026.**

**HON. MBOGO C.G.  
JUDGE  
22/04/2026.**

**In the presence of:**

*Ms. Benson Agungo - Court assistant*

*Ms. Ndambuki holding brief for Mr. Otieno for the Plaintiff/Applicant*

*Mrs. Mwendwa for the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants*

*Ms. Ambasa for the 3<sup>rd</sup> Defendant*