

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELCLOS NO. E074 OF 2025

**LONRHO AGRIBUSINESS
(EAST AFRICA) LIMITED**
PLAINTIFF

VERSUS

DAVID K. KORIR
DEFENDANT

RULING:

1. The Defendant herein raised an objection vide a Notice of Preliminary Objection dated 1st October, 2025, seeking to have the plaintiff's suit struck out with costs for lack/want of jurisdiction on the following ground: -

a. That this honourable court sitting as the Environment and Land Court lacks jurisdiction to entertain, hear and determine the matters raised in the plaint.

b. The substratum of the dispute and reliefs sought concerns the internal management of a company, including questions of directorship, shareholding, corporate governance and the authority to institute proceedings on behalf of the plaintiff's company. Such matters are governed by the Companies Act, 2015 and fall exclusively within the jurisdiction of the High Court (Commercial & Tax Division), not the Environment and Land

Court, pursuant to Article 165(3) of the Constitution and as delimited by Article 162(2) (b).

2. This court issued directions that the Preliminary Objection be canvassed by way of written submissions. The Defendant filed his submissions dated 02.03.2026. On 16.03.2026, when the matter came up for mention for purposes of confirming the filing of submissions, counsel for the plaintiff sought more time to enable them fully comply. This court granted them 7 days, from the date thereof, to enable them file their submissions. However, at the time of writing this ruling, I had not seen any such submissions filed by the plaintiff.
3. Be that as it may, I will proceed to render my decision on the Preliminary Objection as hereunder.

Defendant's Submissions;

4. The defendant submitted on one main issue; whether this court has the jurisdiction to hear and determine the suit as filed. Counsel relied on the Supreme Court decision in **Samuel Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others [2012] eKLR** on the issue of jurisdiction.
5. They also relied on the provisions of Article 162(2) of the Constitution, which establishes the ELC and outlines the jurisdiction of the ELC court as read with section 13 of the ELC Act.

6. It was their submission that this court lacks the jurisdiction to entertain the plaint dated 01.08.2025 since the core of the dispute and the reliefs sought therein concern the internal management of the plaintiff's company, the legitimacy of its directors, the legitimacy and mandate of the "Assets Disposal Team", matters of corporate governance.
7. These matters, they submitted, are matters that fall exclusively within the jurisdiction of the Commercial Division of the High Court under section 3 of the Companies Act and do not concern environmental planning, land use or any matters within the mandate of the ELC.
8. Counsel further relied on the decisions in the following cases to buttress that the High Court is the right forum with the requisite jurisdiction to entertain disputes touching on companies, their internal affairs and legitimacy of the directors and their actions; **Peter Chemuigut vs Kenya Seed Co. Ltd & 7 Others [2022] KEHC 2693 (KLR), Awino & Another vs Mburu & 10 Others [2023]KEELC 678** and **Republic vs Resident Magistrate's Court at Kiambu ex-parte Geoffrey Kariuki Njuguna and 19 Others [2017] eKLR** in further support of their case.
9. In conclusion, counsel urged the court to find that it has no jurisdiction to entertain the suit as filed and proceed to strike out the plaintiff's suit with costs.

Analysis and Determination:

10. From the foregoing, it is my considered opinion that the main issue arising for determination is whether this court is vested with the requisite jurisdiction to entertain the plaintiff's suit and consequently whether the preliminary objection raised is merited.
11. The present preliminary objection has been premised on provisions of Article 165(3) as read with Article 162(2) (b) of the Constitution of Kenya, which outlines the extent of the jurisdiction of the Environment and Land Court.
12. Consequently, it is the defendant's contention that from a perusal of the matters raised in the plaint dated 01.08.2025, the substratum of the dispute and the reliefs sought therein touch on/concern the internal management of a company, including questions of directorship, shareholding, corporate governance. That the matters raised by the plaintiff are matters governed by the Companies Act, 2015 and fall exclusively within the jurisdiction of the High Court and not the present court.
13. Articles 162(2) (b) and (3) of the Constitution provides as follows: -

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a)

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

14. Pursuant to Article 162(3), parliament enacted the ELC Act which outlines the jurisdiction of the Environment and Land Court. Section 13 of the Act provides as follows: -

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

15. The law on what constitutes a preliminary objection was outlined in the case of **Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd 1969 E.A. 696**, where the Court defined Preliminary Objection as follows;

“...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.”

16. This position was reiterated by the Supreme Court in the case of **Aviation & Allied Workers Union vs Kenya Airways Ltd & 3 Others, Application No. 50 of 2014 [2015] eKLR** where the court held as follows: -

“Thus, a preliminary objection may only be raised on a pure question of law. To discern such a point of law, the court has to be satisfied that there is no proper contest to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

17. The present Preliminary Objection, touching on the jurisdiction of this court to hear and determine the plaintiff's suit as filed is in my considered view a pure point of law and therefore meets the threshold set out in the Mukhisa Biscuit case above.

18. Having established that the present preliminary objection has been raised on a pure point of law and outlined the various provisions of law outlining the jurisdiction of this court, the question that therefore follows is whether this court is vested with the requisite jurisdiction to entertain the suit as filed.

19. The Supreme Court in the case of **Samuel Kamau Macharia & Another -Vs- Kenya Commercial Bank Limited & 2 Others [2012] eKLR**, while discussing the issue of jurisdiction held as follows: -

“68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

20. In determining this issue, this court is called upon to ascertain the real cause of action vis-à-vis the statutory provisions and establish whether the same constitutes land use as outlined in Article 162(2) of the Constitution as read with section 13 of the ELC Act and section 150 of the Land Act. Does the primary dispute and cause of action entail land use, occupation, title or environmental issues?

21. In the case of **Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another [2016] eKLR**, the Court held that:

“When faced with a controversy whether a particular case is a dispute about land (which

should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods; jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction.

Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse. Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”

22. The predominant purpose and/or issue test was reiterated in the Court of Appeal decision in the case of **Co-operative**

Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 Others [2017] eKLR.

23. Therefore, in determining whether this court has jurisdiction, this court shall apply the pre-dominant purpose test in identifying whether the predominant issue in the dispute is the actions of the defendant and the “Asset Disposal Team” purporting to be on behalf of the company, the legitimacy thereof and whether they had capacity to act on behalf of the directors or whether the predominant issue is the use of the land held by the plaintiff company.
24. From a cursory look at the facts pleaded in the plaint dated 01.08.2025, particularly paragraphs 5, 6, 7, 8, 9,10, 12 and 15, the same contain the plaintiff’s cause of action and claim against the defendant as well as the reliefs sought in totality. The said claims/issues mainly touch and/or concern the dealings of the defendant and his team dubbed ‘Assets Disposal Team’ allegedly for and on behalf of the plaintiff, the internal management of the plaintiff company, questions of directorship, corporate governance and the legitimacy of the defendant’s actions and his team. What then is the dominant issue in the dispute herein?
25. Guided by the decisions above as read with the statutory provisions aforesaid, and having carefully and critically looked at the plaint and the orders/reliefs sought therein, it is the considered finding of this court that the predominant purpose and issue in dispute does not concern the land use

as outlined in Article 162 (2) and (3), section 13 of the ELC Act as well as section 150 of the Land Act.

26. On the contrary, the plaintiff's claim and cause of action is in respect to the running and the internal management of the plaintiff company and whether the acts by the defendant and his alleged team were sanctioned by the plaintiff company, questions of directorship, corporate governance as well as the legitimacy and capacity of the defendant's actions and his team.
27. Consequently, this court finds that it is not clothed with the requisite jurisdiction to hear and determine the plaintiff's suit as filed.

Costs:

28. It is a well settled principle that costs follow the event unless the court directs otherwise.
29. In this case, having held that the notice of Preliminary Objection is merited I find that the defendant is entitled to the costs.

Conclusion:

30. In view of the foregoing, it is the finding of this court that the Notice of Preliminary Objection dated 1st October, 2025 is **merited**.
31. Consequently, the plaintiff's suit vide the Plaint dated 1st August, 2025 is hereby **struck out** with costs to the Defendant.

32. Costs of the suit and the preliminary objection to be borne by the plaintiff.
33. It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 30th day of APRIL, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Mr. Kiboi for the Plaintiff.

Ms. Chepngetich holding brief for Ms. Chesoo for the
Defendant

Court Assistant - Laban