



Republic v County Government of Machakos & 3 others; Kapiti Plains Estate Limited (Ex parte Applicant) (Environment and Land Judicial Review Case E004 of 2025) [2026] KEELC 2390 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2025**

NA MATHEKA, J

APRIL 29, 2026

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF MACHAKOS 1ST RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE, ECONOMY PLANNING, REVENUE MANAGEMENT AND ICT 2ND RESPONDENT

COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE .. 3RD RESPONDENT

CHIEF OFFICER 4TH RESPONDENT

AND

KAPITI PLAINS ESTATE LIMITED EX PARTE APPLICANT

RULING

1. The Respondents herein raised a preliminary Objection dated 25th November 2025 for determination in limine on the grounds that;
 1. The pleadings before Court contravene the Provisions of Order 53 Rule 4(1) of the Civil Procedure Rules 2010 and as such, the Honourable Court does not have the requisite jurisdiction to handle this matter as there are no competent Judicial Review proceedings before it capable of determination.
2. The Respondent seeks to have the proceedings herein struck out/dismissed with costs to the Respondents.



3. This court has considered the Preliminary Objection, submissions and authorities cited therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;

In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

4. The above legal proposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the court held that;

The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurer 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 in the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”

5. In the case of Attorney General & Another vs Andrew Mwaura Githinji & another (2016) eKLR the court outlined the scope and nature of preliminarily objection as;

- (i) A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
- (ii) A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
- (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

6. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter.

7. Order 53 Rule 4(1) of the Kenyan Civil Procedure Rules, 2010 deals with the filing of affidavits and grounds in judicial review proceedings, particularly after leave has been granted. It provides that: Copies of the statement accompanying the application for leave must be served with the Notice of Motion. The applicant can rely only on the grounds and reliefs set out in that statement. No additional grounds can be raised unless the court grants leave to amend.

8. The ex parte applicant stated that the Preliminary objection does not raise a pure point of law. That it raises contested factual issues relating to service which cannot be determined through a preliminary objection. That the Respondents were duly served with the relevant documents as evidenced by their affidavit of service on record.

9. The issue of service is a matter of fact and so is the issue of the which prayers are sought in the Application. I find that the issue of whether or not the Applicant has complied with Order 53 Rule 4 (1) of the civil Procedure rules is a matter of fact and cannot be determined at this preliminary stage. I find the Preliminary objection is not merited and I dismiss the same. Costs to be in the cause.

It is so ordered.



DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

