



Mage & another v Verona Huruma Sacco (Environment and Land Case Civil Suit E099 of 2025) [2026] KEELC 2789 (KLR) (7 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2789 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E099 OF 2025**

MN KULLOW, J

MAY 7, 2026

BETWEEN

ELIZABETH WANJIKU MAGE 1ST PLAINTIFF

HENRY MUNGAI 2ND PLAINTIFF

AND

VERONA HURUMA SACCO DEFENDANT

RULING

1. The matter is coming up for determination on the defendant’s notice of preliminary objection dated 15th September 2025 on the following grounds;
 - a. That the plaintiff’s suit is incompetent, fatally defective and bad in law as the same has been instituted in violation of the express provisions of section 76 of the cooperative’s *societies Act* (CAP 490) laws of Kenya
 - b. That the suit is incompetent, totally defective and bad in law as the same has been instituted in violation of the express provisions of section 3(3) of the *law of contract Act* cap 23 laws of Kenya
2. The Plaintiff filed a replying affidavit sworn on the 23rd September 2025. He deponed that the issues arising are in relation to default on the part of the defendant arising from an agreement of sale for House No T18 ON LR NO Donyo Sabuk/Komarock/Block/33351 which is an issue under the jurisdiction of this court.
3. The court directed he notice of preliminary objection be dispensed off by written submissions and both parties complied with the plaintiff drafting submissions dated 23rd September 2025 while the defendant filed submissions dated 2nd March 2026.



Respondent's submissions

4. The defendant submitted that Section 76(1) of the Cooperative Societies Act provided in mandatory terms that any dispute as between members in a cooperative society would be referred to the cooperative tribunal as a matter of 1st instance. That the plaintiffs being members of the defendants a registered cooperative society should have approached the tribunal and not this court. Counsel relied on several case laws including Gerald Wambua Makau -Vs- Lukenya Ranching & Farming Cooperative Society Limited & Another (2004) eKLR Universal Traders Sacco -Vs- Margaret Mwikali Mbithi (2015) eKLR
5. The defendant further submitted that the suit had been brought in violation of section 3(3) of the law of contract being that the claims were not based on any written contract as between the parties but a letter of offer which did not confer any proprietary rights to the plaintiff.

Plaintiff's submissions

6. The argument raised by the plaintiff was that the tribunal did not have jurisdiction to entertain dispute involving third party contracts. That the issue at hand does not relate to shareholding or any internal governance rather breach of contract tied to land well within this court's jurisdiction.

On the issue of the suit being in contravention to section 3(3) of the law of Contract Act counsel indicated that the defendant's own conduct had been an acknowledgement of a contractual relationship as between the parties and cannot claim that there is no agreement that the suit. That the doctrine of partial performance defeated the argument raised relying on the case of Wanjohi -Vs- Kariuki (1982) KLR

Analysis and determination

7. Having considered the Notice of Preliminary objection and the submissions herein the only issue for determination is

Whether the Notice of Preliminary Objection dated 15th September 2026 is merited.

The notice of preliminary objection dated 15th September 2025 is founded on the notion that the suit is improperly before this court as it lacks jurisdiction to entertain the same. It goes without saying that without the requisite jurisdiction a court of law down its 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. Jurisdiction is the power of the court to determine a matter. Jurisdiction is everything, and a court must first be satisfied that it has the jurisdiction to determine a matter before embarking on determining the same. Jurisdiction is conferred by the Constitution or statute or both and a court cannot arrogate itself jurisdiction it does not have.

In the case of Owners of the Motor Vessel "Lilian S" -Vs- Caltex Oil (Kenya) Ltd (1989), the court stated as follows; Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

8. In the instant suit the defendant argued that by dint of section 76 of the Co-operative societies Act, the trial court lacks the jurisdiction to try the dispute herein which ought to have been heard and



determined by the Co-operative Tribunal. Section 76 of the *Co-operative Societies Act* provides as follows'; Disputes

1. If any dispute concerning the business of a co-operative society arises: — (a) Among members, past members and persons claiming through members, past members and deceased members; or
 - (b) Between members, past members or deceased members, and the society, its Committee or any officer of the society; or
 - (c) Between the society and any other co-operative Society; It shall be referred to the Tribunal.
2. A dispute for the purpose of this section shall include—
 - a. A claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
 - b. A claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.
 - c. A claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

Therefore, disputes concerning the business of a co-operative society which are disputes between members of the society or between members and the society or between the society and another society, whether they are claims for debts by members against the society or by the society against members or a challenge by the co-operative society on refusal of being granted a licence, are disputes that ought to be determined by the Co-operative Tribunal.

Therefore, the issue that this court must determine at this stage is whether the dispute herein is a dispute between members of a co-operative society and/ or between a member and a co-operative society.

From the descriptive paragraphs of the plaint, the plaintiffs have admitted to being members of the defendant which is a cooperative society. The reliefs being sought after in the plaint are for breach of contractual obligations where the plaintiffs are asking for compensation from the defendant having failed to offer them the suit property as in the agreement, they entered into via the letter of offer dated 31st August 2016 attached to their documents.

The question to ask is therefore is the letter of offer conferred any rights to the parties as in a contract document. The key question here revolves around the legal tenor of a letter of offer which is formally expressed to be subject to an anticipated formal contract that never crystallizes. This question was the focal question of consideration by the Court of Appeal [Gicheru JA, Kwach JA, and Muli JA] in *East African Fine Spinners Limited (in receivership) & 3 others -Vs- Bedi Investments Limited [1994] eKLR*. Expressing himself on this question, Gicheru JA adopted the following words of Lord Westbury LC in *Chinnock -Vs- The Marchioness of Ely 4 DE G J&S 638 at 646*:

“As soon as the fact is established of the final mutual assent of the parties to certain terms, and those terms are evidenced by any writing signed by the party to be charged or his agent lawfully authorized, there exist all the materials, which this court requires, to make a legally binding contract. But if to a proposal or offer an assent be given subject to a provision as to a contract, then the stipulation as to the contract is a term of the assent, and there is no agreement independent of that stipulation.....



“Where you have a proposal or agreement made in writing expressed to be subject to a formal contract being prepared, it means what it says; it is subject to and is dependent upon a formal contract being prepared. When it is not expressly stated to be subject to a formal contract it becomes a question of construction, whether the parties intended that the terms agreed on should merely be put into form, or whether they should be subject to a new agreement the terms of which are not expressed in detail”

From the above case law, if it is expressly stated that the letter of offer is subject to a contract, then the letter of offer is not binding, but if the same is not captured then the conduct of the parties is what informs the legality of it.

In this case the letter of offer has been stated to be subject to contract which contract was never entered into. The prevailing jurisprudence on the tenor of a letter of offer of this nature is that there is no binding contract in the absence of the anticipated formal contract by way of agreement for sale. The court can therefore not adjudicate on the issues of breach there being no legally binding contract. Land sale contracts are subject to the formal statutory requirements set out in Section 3(3) of the [Law of Contract Act](#) which provides as follows: -

- “ 3(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—
- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Having held as above, I also hold that the dispute brought forth is not based on any written contract to invoke the jurisdiction of this court. Further it is the finding of this court that the said dispute is within the purview of section 76 of the [Co-operative Societies Act](#). In the premises, I find and hold that the trial court has no jurisdiction to hear and determine the dispute filed before it.

Final disposition

9. The upshot of the above is that;
- i. the notice of Preliminary Objection dated 15th September 2025 is merited and the entire suit is struck out for lack of jurisdiction.
 - ii. Costs be awarded to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF MAY, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Ochieng for the Plaintiffs

Mr. Obam for the Respondent



Philomena W. Court Assistant

