



**Njau v Mwangi (Land Case Appeal E019 of 2025)
[2026] KEELC 2743 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2743 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE APPEAL E019 OF 2025**

MN KULLOW, J

MAY 7, 2026

BETWEEN

CATHERINE MBAIRE NJAU APPELLANT

AND

SAMUEL MACHARIA MWANGI RESPONDENT

RULING

Introduction

1. The matter is coming up for determination on the notice of preliminary objection dated 27th October 2025 on the following grounds
 - a. THAT, the Memorandum and Record of Appeal dated 1st August 2025 and all subsequent pleadings filed herein were drawn, signed and filed by an advocate who at the time did not hold a valid practicing certificate for the year 2025, contrary to Section 9 of the *Advocates Act*, Cap 16, Laws of Kenya.
 - b. That by reason of the said advocate's lack of a valid practicing certificate as at 1st August 2025, the said appeal was filed by an unqualified person, and is a nullity in law, incapable of validation by subsequent renewal of her practicing certificate on 24th August 2025.
2. The appellant filed grounds of objection to the said notice of preliminary objection on grounds that the point raises was not a pure point of law that can be raised in a preliminary objection and that further that the supreme court has held that pleadings filed by an advocate with a practising certificate are not invalid and cannot be struck out.
3. The court directed for the notice of preliminary objection be dispensed off by written submissions and both parties complied with the applicant drafting submissions dated 22nd January 2026 while the respondent drafted submissions dated 27th October 2025.



Respondent's submissions

4. In support of their notice of preliminary objection the respondent submitted that the issue raised was a pure point of law touching on the competency of an advocate to represent a client which he submitted was not a mere procedural lapse but an illegality not curable by Articles 50 and 159(2)(d) of *the constitution*.
5. That pleadings filed by an advocate without a valid practising certificate is a nullity relying on section 9 of the *advocates Act* and what was stated in the case of *Obura Vs Koome (2001) eKLR* making the appeal a nullity hence struck out

Appellant's submissions

6. The applicants submitted that the respondent's preliminary objection was not raising a pure point of law hence does not meet the definition of what constitutes a preliminary objection as in *Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors Ltd (1969)*.

Counsel further submitted that the issue of pleadings filed by an advocate without a practising certificate was addressed in *National Bank of Kenya Ltd -Vs- Anaj Warehousing Ltd [2021] eKLR*, where the Supreme Court held that documents drawn and filed by an advocate without a practising certificate are not automatically invalid or a nullity as it does not go into jurisdiction of the court and further an innocent litigant should not be punished for the mistake of counsel. That each case must be considered on its own circumstances.

Counsel further submitted that Article 159(2)(d) of *the Constitution* mandates Courts to administer justice without undue regard to procedural technicalities and that it would be unfair to strike out an arguable appeal based on mistakes of a counsel. Furthermore, the respondent has alluded to the appellant's counsel renewing the said certificate on the 24th August 2025 therefore giving her capacity to prosecute the appeal.

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 27th October 2025 is merited

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."

The notice of preliminary objection dated 27th October 2025 is founded on the notion that the appeal is a nullity having been filed by an advocate who did not have a valid practicing certificate and therefore lacked the proper capacity to be before this court. The issues raised in my view would require this court to interrogate evidence to ascertain whether in deed the advocate did not have a valid practicing



certificate as at the time of filing the appeal. The respondent contends that it is just a matter of checking into the law society's portal to ascertain the averments which is actually probing into evidence. On the surface level the preliminary objection does not point to an issue of law. The objection, therefore, does not attain the threshold of a pure preliminary point of law.

8. As already stated above, a Preliminary Objection must raise pure points of law. This was held in *Mukisa Biscuit Manufacturing Co. Limited -Vs- West End Distributors Ltd* (supra), and must consist of a pure point of law, and where facts are disputed, the matter cannot be determined at the preliminary stage.
9. In my considered view, the Respondent has improperly invoked the Preliminary Objection procedure. The issues raised should be raised by way of a formal application supported by evidence and not as a Preliminary Objection, even if I was to assume the preliminary objection is valid, the appellant is entitled to be heard on any exceptional circumstances which in this case is an exceptional circumstance as the mistake cannot be attributed to the litigant but the advocate to uphold fair play and efficient justice. I would rely on what was stated in *Nderitu - Xaverian Brothers (K) Trustees Registered (Employment and Labour Relations Appeal E006 of 2025) [2025] KEELRC 1919 (KLR) (25 June 2025)* (Ruling) where the court held "On the issue of issue of Advocate's Capacity, this Court notes that the preliminary objection. Was filed on 12th February when the Advocate's status was indeed "inactive". However, by 14th February 2025, the Law Society of Kenya had issued a valid certificate (CWK4a) and updated her status to "active" (CWK4b). It is trite practice that as held in *Mumo -Vs- Makau [2005] eKLR*, technicalities should not override substantive justice. The belated regularization cures any initial defects on the advocate's eligibility to practice. The objection on the ground of incapacity is therefore overruled"

Final disposition

10. The upshot of the above is that I hold as below
 - i. That the notice of Preliminary Objection dated 27th October 2025 is not merited.
 - ii. Each party to bear their own costs.
- 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. Wachira for the Applicant

Mr. Kemboi for the Respondent

Philomena W. Court Assistant

