



**Mugo v Registered Trustees of Obama Self Help Group Estate Office & 3 others
(Land Case E530 of 2024) [2025] KEELC 5955 (KLR) (28 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E530 OF 2024
CG MBOGO, J
AUGUST 28, 2025**

BETWEEN

MICHAEL MUGAI MUGO PLAINTIFF

AND

**THE REGISTERED TRUSTEES OF OBAMA SELF HELP GROUP ESTATE
OFFICE 1ST DEFENDANT**

CHIEF INSPECTOR-CRESS OTIENO 2ND DEFENDANT

FREDRICK ONGONDO 3RD DEFENDANT

HESBORN AROKO 4TH DEFENDANT

RULING

1. Before me is the notice of preliminary objection dated 5th February, 2025 filed by the defendants, challenging the notice of motion dated 19th December, 2024 on the grounds that the jurisdiction of the court has been ousted by the provisions of Section 26 (4) of the *Environment and Land Court Act* as read together with Section 7(1) of the Magistrates Court Act since the value of the untitled subject plot of land being 25 feet by 50 feet plot in Kayole area of Nairobi is not more than Kshs.1,500,000/.
2. The preliminary objection was canvassed by way of written submissions. The defendants filed their written submissions dated 28th May, 2025. They submitted that the jurisdiction of this court is ousted by virtue of the pecuniary jurisdiction. They submitted that the plaintiff claims to have purchased the plot on 8th January, 2018 at Kshs.700,000/-, and considering the current market value, it is conclusive that the price is below Kshs.20,000,000/-. They submitted that the only value disclosed by the plaintiff is Kshs.700,000/- which falls outside the jurisdiction of this court.
3. The plaintiff filed his written submissions dated 23rd April, 2025, and raised one issue for determination which is whether the notice of preliminary objection raised a point of law. On this issue, the plaintiff



submitted that the suit property is above Kshs. 20,000,000/- and that this court is the proper forum to hear and determine this matter. Further, he submitted that the issue raised is factual and would require the court to engage in a fact finding mission to ascertain the value of the suit property. He submitted that the objection does not raise a point of law but a factual issue.

4. I have considered the preliminary objection and the written submissions filed by the plaintiff and the 1st defendant. The sole issue for determination is whether the preliminary objection has merit.
5. 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...”

6. 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.”

7. 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...”

8. 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 of the issue that is before court without going to trial and lastly, the same ought to stem from pleadings and not outside of that.
9. In my analysis, the notice of preliminary objection does not raise a pure point of law for the following reasons. The plaintiff filed the plaint dated 19th December, 2024. I have perused the same and there is no reference to Kshs.700,000/- as the value of the subject matter at the time of alleged purchase, and neither is there a statement that points towards this value as alleged. Secondly, a preliminary objection ought to contain undisputed facts. Thus, one cannot assume the present value of the plot at



Kshs.1,500,000/- without proof. The defendants have not filed a defence to enable the court decipher the disputed facts and the undisputed facts. However, and from the submissions, the value of the suit property is disputed. Thirdly, for the court to substantiate this claim, there is need to comb through evidence mostly available through a valuation report. This act alone defeats the purpose of the preliminary objection as it would be engaging in testing evidence fit for trial. Finally, the preliminary objection is equally not capable of disposing the suit.

10. From the above, the notice of preliminary objection dated 5th February, 2025 was not well thought out, and it lacks merit totally. It is hereby dismissed with costs to the plaintiff assessed at Kshs.45,000/-. The same to be paid within 30 days from the date hereof.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

28/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Omari holding brief for Mr. Namada for the 2nd, 3rd and 4th Defendants/Applicants

Macharia Gatonye & Co. Advocates for the Plaintiff – absent

