



Losokwan Camp Limited v Maasa Mara Lemek Landowners Conservancy Limited & another (Land Case E013 of 2024) [2025] KEELC 933 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
LAND CASE E013 OF 2024
LN GACHERU, J
FEBRUARY 27, 2025**

BETWEEN

LOSOKWAN CAMP LIMITED PLAINTIFF

AND

**MAASA MARA LEMEK LANDOWNERS CONSERVANCY LIMITED 1ST
DEFENDANT**

OLD BOMA LIMITED 2ND DEFENDANT

RULING

1. The Plaintiff herein Losokwan Camp Limited, filed this suit against the Defendants herein vide a Complaint dated 21st June 2024, wherein it sought for various reliefs against the Defendants jointly and severally. Among the reliefs sought are; an Order of permanent injunction to restrain the Defendants by themselves, their servants, agents, employees or otherwise howsoever from trespassing, holding over as lessors or licensees of land parcel Cis-Mara/Lemek/6541 or from interfering with the Plaintiff's use of the above parcel of land or its lawful usage of all public access roads in Lemek Conservancy area, and free ingress and egress thereto.
2. Simultaneous to the said Complaint, the Plaintiff filed a Notice of Motion Application even dated wherein, it sought for temporary injunction against the Defendants, to restrain them and/or their servants, agents, guards or otherwise from interfering with the Plaintiff's use of the Land Parcel No. Cis Mara/Lemek/6541, in its tourism business thereon or its usage of all public access roads in the Lemek Conservancy area and the Plaintiff's free ingress and egress thereto.
3. The Defendants opposed the said Notice of Motion Application vide the Replying Affidavit of Jeremiah Mutisya, the Chief Executive Officer of the 2nd defendant and Sankale ole Nabaala, the Secretary of the 1st Defendant herein sworn on 3rd July, 2024.



4. The above Notice of Motion Application was canvassed through written submissions, and 9th October 2024, the Court delivered its Ruling and allowed the Plaintiff's/Applicant's Notice of Motion dated 21st June, 2024, and granted temporary orders of injunction to restrain the Defendants/Respondents, their servants, agents, guards or otherwise from interfering with the Plaintiff's use of the suit land, and also its lawful usage of all the public access roads in Lemek Conservancy area and its free ingress and egress thereto, among other orders.
5. The above Court Orders was issued on 18th October 2024, and on 23rd October 2024, the Court received a letter from Officer Commanding Station – Olololung'a, signed by Daniel Oloingoine, for OCS Mulot Police Station seeking for verification of the said Court order. In response thereto, the Court registry replied via an email to OCS Mulot Police Station, and clarified that the said Court Order was authentic, and also the Deputy Registrar of this Court wrote a letter dated 23rd October 2024, to the OCS, Olololunga Police Station, to confirm that the Court Order issued on 18th October 2024, was genuine.
6. Immediately thereafter the Plaintiff filed another Notice of Motion Application dated 4th November 2024, seeking to join Dennis Mako, Daniel Kipeen, Robert Koriata, Dominic Nchoe, Jeremiah Mutisya in the Contempt Motion; Further, it sought for an Order to be issued against the above cited parties to show cause why they should not be held in contempt of the Court for knowingly and unlawfully disobeying the court order dated 9th October 2024, issued by this court.
7. The Plaintiff also prayed for an Order that the above parties and the Defendants be held to be in contempt of the Court and thus be condemned to purge the said Contempt and in lieu to be sentenced to jail terms or be fined Kshs. 20,000,000/= as provided by Section 29 of [Environment and Land Court Act](#), among other prayers.
8. In response to the above Notice of Motion Application, the Defendants who had filed a Notice of Change of Advocates from Kitipa Naikumi & Co. Advocates to Oyomba Mosota & Wamwea Advocates filed a Notice of Preliminary Objection dated 16th December 2024, which is the subject of this Ruling.
9. In the said Notice of Preliminary Objection, the Defendants/Objectors sought for striking of the Plaintiff's Notice of Motion Application dated 4th November, 2024 on the grounds that: -
 1. This court does not have jurisdiction to hear and determine a contempt application against persons who are parties to the court case.
 2. This court does not have jurisdiction to hear and determine an application for joinder of parties in a contempt application.
 3. Accordingly, the notice of motion application dated 4th November, 2024 is bad in law, incompetent and is for striking out.
10. The Defendants/Objectors urged the court to strike the Plaintiff's Notice of Motion Application dated 4th November 2024, with costs to the Defendants/Objectors.
11. On 17/12/2024, the Court directed that the said Notice of Preliminary Objection dated 16th December 2024, challenging the Jurisdiction of this Court be heard first, and be canvassed by way of written submissions.
12. The parties complied and the Defendants/Objectors filed their written submissions dated 16th January 2025, through Oyomba Mosota & Wamwea Advocates, and urged the court to allow their Preliminary



Objection and strike out the Plaintiff's Notice of Motion Application dated 4th November 2024, with costs as it lacked merit.

13. In their written submissions, the Defendants/Objectors set out two issues for determination being;
 - i. whether the court has jurisdiction to hear and determine contempt of Court application against persons who are not parties to the court case and against whom the subject matter orders were not made;
 - ii. whether the court has jurisdiction to hear and determine an application for joinder of parties in a contempt application.
14. The Defendants/Objectors relied on various decided cases, among them the case of Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Limited [1989] KLR, 1, Mwangi Magendu vs Nairobi City Commission (Civil Appeal No.95 of 1988); and Gathari K. Mutikika vs Baharini Farm Limited [1985] KLR 227.
15. The Plaintiff filed its written submissions dated 7th February 2025, through J. Harrison Kinyanjui & Co. Advocates, and opposed the instant Notice of Preliminary Objection. In its submissions, the Plaintiff relied on various provisions of the law being Sections 1,3, 3A and 63(a)& (c) of the [Civil Procedure Act](#), Section 29 of the ELC Act, and Order 40(3) Civil Procedure Rules.
16. The Plaintiff also relied on various decided cases, among them Mukisa Biscuits Manufacturing Co Ltd vs West End Distributors Limited [1969]EA 696, Jedrom Building and Civil Engineering Limited vs County Government of Uasin Gishu & Another[2018]eKLR and Paul Gathingu Gachie vs Cabinet Secretary for Land and Physical Planning [2021]Eklr, to support its proposition that the instant Notice of Preliminary Objection is not a pure point of law, is not merited and should be dismissed with costs to the Plaintiff.
17. The court has carefully read and considered the above rival written submissions, the instant Notice of Preliminary objection; the relevant provisions of law and cited authorities and finds that the single issue for determination is whether the instant Notice of Preliminary Objection is merited or not.
18. Before delving into the merit or demerit of this Notice of Preliminary Objection, the Court will determine first whether what has been raised by the Defendants/Objectors herein is indeed a Preliminary Objection or not.
19. It is trite that a Preliminary Objection is based on the pure points of law. In the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696, the Court held: -

“ 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”
20. Further in a Preliminary Objection, the Court is only supposed to determine the issue raised in a pure point of law, but not to ascertain facts. See the case of Oraro vs Mbogo [2005] eKLR 141, where the court held: -

“ A Preliminary Objection is now well identified as and declared to be a point of law which must not be blurred with 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 and 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 objection 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.”

21. Further, a Preliminary Objection if upheld is supposed to determine the matter “preliminarily”, that is at the preliminary stage, and nothing should be left for future determination. See the case of Quick Enterprises limited vs Kenya Railways Corporation Kisumu High Court, Civil Case No. 22 of 1999, where the Court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone.”

22. It is therefore clear that in a Preliminary Objection, what must be raised are pure points of law, with assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained, or if what is sought is the exercise of Judicial discretion. See the case of Nitin Properties Ltd vs Singh Kalsi & another [1995] eKLR.
23. With the above background in mind, this court will now consider what has been raised by the Defendants/Objectors in their Notice of Preliminary Objection dated 16th December 2024, and then determines whether the said Notice of P.O, has fulfilled the description of Preliminary Objection as was held in the case of Mukisa Biscuits (Supra).
24. The Defendants/Objectors in is prayer (1) have challenged the jurisdiction of this Court to determine the contempt application, wherein the Plaintiff has sought to join parties who are not in the suit; Further in prayer 2, the Defendants have challenged the competence of the Application dated 4th November 2024, for being bad in law and sought for striking of the same.
25. The issue of Jurisdiction goes to the root of any case, and a Court without Jurisdiction is devoid of power to proceed with any matter. Indeed, Jurisdiction is everything and without it, the court would have no option but to down its tools. See the case of owners of Motor Vessels ‘Lillian S’ vs Caltex Oil (K) Ltd 1989 KLR 1, where the Court held: -
- “when a question of jurisdiction is raised, the court is obliged to decide the issue right away on the material before it, with the court being emphatic that “jurisdiction is everything”
26. Further the question of whether an Application is bad in law or whether it is incompetent is a pure point of law. These two issues as they have been framed, they can be determined without ascertaining of facts. Therefore, the Notice of Preliminary Objection herein fits the description of what amount to a Preliminary Objection as was held in the case of Mukisa Biscuits (Supra).
27. Having found that the Notice of Preliminary Objection herein fits the description of a Preliminary Objection, the next question to pose is whether it is merited?
28. This Court gave the background of what led to the filing of the Notice of Motion Application dated 4th November 2024.



In their submissions the Defendants/ Objectors identified two issues for determination. The first issue as stated above is whether the court has jurisdiction to hear and determine contempt of court application against persons who are not parties to a case and against whom the subject matter orders were not made.

29. The persons who are sought to be joined and cited for contempt as per the Plaintiff's Notice of Motion Application dated 4th November 2024, are Dennis Mako, Daniel Kipeen, Robert Koriata Dominic Nchoe, Jeremiah Mutisya, and from the Court Record, they are indeed not parties to this suit. However, the Plaintiff has sought to join them in the contempt Application/proceedings.
30. The Court Order that was alleged disobeyed by the Defendants and the persons sought to be joined in the Contempt proceedings is attached to the Plaintiff's Affidavit in support of the said Application for Contempt. The court has considered the said Court Order, and has note that the Defendants were restrained together with their servants, agents, guards or whomsoever from interfering with the Plaintiff's use of the suit land Cis-Mara/Lemek/6541.
31. The question that would need answers is who are these persons sought to be joined? Are they servants, agents or guards of the Defendants/ Objectors herein? This question cannot be posed in this preliminary objection, but it can only be posed and answered in the main Notice of Motion Application, where facts would be ascertained through the relevant Affidavits evidence or submissions.
32. The Application for Contempt by the by Plaintiff is anchored under various provisions of law; being Section 63(a)&(c) of the *Civil Procedure Act*, and Section 29 of the ELC Act. The Court has considered section 63(c), of the *Civil Procedure Act*, and it notes that the court has power to issue temporary injunction to restrain a part from taking certain action if necessary to prevent the ends of justice from being defeated. Further, the said provision of law provides that in case of disobedience, the court can commit the persons disobeying the Order to prison, and/or order attachment and/or sale of their property.
33. The above section of law provides that an Order can be issued by the Court against the person who has disobeyed the Court order. The said provision of law does not provide that it only binds the person and/or persons who are parties to a suit. The said provision of law gives Court power to issue an Order against a person who has disobeyed the Court order, whether a party to a suit or not.
34. In contempt proceedings, the issue of knowledge of existence of the Court Order alleged disobeyed or breached is key. It will be upon the Plaintiff herein in its Application to demonstrate to the court whether the persons named in its Application and sought to be joined for contempt of Court, had knowledge of the said Court Order.
35. Further Section 29 of the ELC Act, also provides for penalties upon a person who disobeys a Court Order; and it does not specify that the said person must be a party to the proceedings or not. The Plaintiff relied on Order 40 Rule 3 of Civil Procedure Rules, which also provides what would happen if a person is in breach of the injunctive orders issued by the court.
36. The Plaintiff alleged that the Defendants and the other persons named in its Application and whom it has sought to be joined in the contempt proceedings, disobeyed and breached, the Court Order of 9th October 2024. It will be upon the Plaintiff to demonstrate whether the other mentioned persons/ parties knew of the existence of said Court Order and, then went ahead to disobey and/or breached it.



37. The Plaintiff relied on the holding of the Court in the case of Jedrom Buildings and Civil Engineering Ltd vs County Government of Uasin Gishu & another [2018]eKLR, where it was held:-

“...the 2nd respondent is not a party to the suit and does not need to be a party to the suit to be cited for contempt, but he is being cited as an alleged contemnor and therefore, there is no need for the leave of the court for the 2nd defendants to be enjoined as a party.”

38. Though the above decision is by a Court of concurrent Jurisdiction to this court, this court is persuaded by the said holding, and agrees with the brother Judge in the said holding. Therefore, this court finds that any person cited for contempt of Court can be either a party to the suit or not, so long as the Applicant can prove that the said person/ party had knowledge of the said Court order.

39. Consequently, this Court finds and holds that on issue No I, the same is not merited, since as provided by Sections 63(c), of the *Civil Procedure Act*, Section 29 of ELC Act, and Order 40 Rule (3) of the Civil Procedure Rules, the Court has capacity and jurisdiction to determine contempt application against persons who are not parties to the case, and also application for their joinder to the contempt proceedings..

40. Further the Plaintiff's Notice of Motion Application dated 4th November 2024, is anchored under Section 3A, of the *Civil Procedure Act*, which provisions of law donates unfettered power to Court to issue orders that are necessary for the end of justice to be met, and to prevent Abuse of process of court.

41. The Plaintiff has alleged that other parties/ persons who are not parties to the suit have disobeyed the Court order, it will be upon the Plaintiff to advance its claim against the said parties, and prove whether indeed they had knowledge of the said Court Order, and then they went ahead and disobeyed the same. Indeed, the Court has jurisdiction to hear the contempt application against such parties/ persons, who are not parties to the suit.

42. On the issue of whether the court has jurisdiction to hear and determine an application for joinder of parties in a contempt application/ proceedings, the Court has held as above that as provided by Order 40 Rule 3 of the Civil Procedure Rules, any person can be cited for contempt, for disobeying court order, whether that person is a party to the suit or not. If any party can be cited for contempt whether a party or not to the suit, then the Court has jurisdiction to hear an application for joinder of the other parties who are not parties to the suit, for purposes of hearing the contempt application/ proceedings.

43. In any event Order 1 Rule 10(1) of the Civil Procedure Rules grants the Court discretion to add and/ or substitute parties to a suit at any stage of the proceedings. The said joinder can be allowed through an application by either or any parties to the suit, or upon the Court's own motion, so long as the Court has believed that such joinder is necessary to resolve a dispute. See Order 1 Rule 10(1) of Civil Procedure Rules: -

“(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.”

44. There is an allegation of contempt of Court Order by persons who are not parties to this suit. Therefore, this Court believe that it is necessary to hear an Application for their joinder of the said alleged contemnors in the contempt proceedings.



45. Further, it is evident that filing of an Application for a joinder does not necessarily mean that the said Application would automatically be allowed. The Applicant has the onerous task availing sufficient evidence or reasons to convince the Court to allow the said Application; and the Court may or may not allow application for joinder, since the court has discretion, and which discretion must be exercised judiciously.
46. Having analysed the issues as above, this court finds and holds that it has jurisdiction to hear an Application for joinder of parties in a contempt application/proceedings.
47. Having found that the court has jurisdiction to hear the Application dated 4th November 2024, as filed by the Plaintiff, this Court finds the said application as filed is not bad in law; is not incompetent and that it should not struck out, as prayed by the Defendants/ Objectors.
48. Consequently, the Court finds that the argument advanced by the Defendants/ Objectors in their Notice of Preliminary Objection, are argument that can only be advanced in opposition to the Notice of Motion Application dated 4th November 2024, filed by the Plaintiff herein.
49. For the above reasons, the Court finds and holds that the instant Notice of Preliminary Objection, dated December 16, 2024, is not merited and the said Preliminary Objection be and is hereby dismissed entirely with costs to the Plaintiff herein.
50. Further, the Court directs that the said Notice of Motion Application dated November 4, 2024, should be set down for hearing expeditiously , and thereafter be determined on merit.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 27TH FEB, 2025.

Hon. L. Gacheru

Judge

27/2/2025

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr Harrison Kinyanjui for the Plaintiff/Respondent in the Preliminary Objector

M/s Omamo holding Brief for Mr. Oyomba for the Defendants/Objectors in the Preliminary Objection.

Hon. L. Gacheru

Judge

27/2/2025

