



**Kenya County Government Workers Union v County Government  
of Narok & another (Civil Appeal 007 (NAK 54 of 2020) of 2020)  
[2024] KECA 1843 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KECA 1843 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL 007 (NAK 54 OF 2020) OF 2020  
MA WARSAME, FA OCHIENG & LA ACHODE, JJA  
DECEMBER 20, 2024**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... APPELLANT**

**AND**

**COUNTY GOVERNMENT OF NAROK ..... 1<sup>ST</sup> RESPONDENT**

**NAROK COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal against the Ruling of the Employment and Labour Relations Court  
(M Mbaru J) delivered of 17th December, 2019 in ELRC Petition No. 5 of 2018)*

**JUDGMENT**

1. The genesis of this appeal is a directive issued on 23<sup>rd</sup> April 2018 by the Chief Park Warden of the Maasai Mara National Reserve. The directive required all the officers stationed at the Conservancy to withdraw their membership from the Kenya County Government Workers Union with immediate effect.
2. Some officers complied and withdrew their membership while others, through the appellant's Union, filed a petition dated 5<sup>th</sup> June 2018 in the Employment and Labour Relations Court, (ELRC), at Nakuru seeking conservatory and declaratory orders against the respondents. They claimed that the respondents infringed their right to fair labour practices contrary to the provisions of Article 41(1) of [the Constitution](#).
3. In response to the petition, the respondents filed a Notice of Preliminary Objection dated 29<sup>th</sup> June 2018 alleging that the appellant failed to disclose the cause of action. They raised the following grounds:



- i. The directive issued on the 23<sup>rd</sup> of April 2018 was directed at rangers who, by dint of law fall into the category of uniformed and disciplined members of the service as defined by and governed under the Wildlife Conservation and Management Act, No 47 of 2013.
- ii. Pursuant to the provisions of schedule 2, paragraph 5 (1) and (2) of the said Act, all uninformed and disciplined members of service are prohibited from joining a trade union or any other such bodies other than a staff association established and regulated by the rules and regulations made under the Act.

They prayed that both the Notice of Motion dated 5<sup>th</sup> June 2018 and the entire Petition of even date be dismissed.

4. In a ruling delivered on 17<sup>th</sup> December 2019, Mbaru J upheld the respondent's Preliminary Objection and dismissed the appellant's petition dated 5<sup>th</sup> June 2018. The learned Judge held that the directive issued on 23<sup>rd</sup> April 2018 was directed at the rangers who, by law, fall into the category of uniformed and disciplined members of the service, defined and governed by the Wildlife Conservation and Management Act. That pursuant to the provisions of the schedule of the said Act, rangers are removed from the Union.
5. Dissatisfied with the ruling, the appellant appealed against the decision vide a Memorandum of Appeal dated 25<sup>th</sup> June 2020. The main ground on which they rely is that the learned Judge erred in law by failing to take into consideration the basic principles governing Preliminary Objections.
6. The appellant filed written submissions dated 14<sup>th</sup> March 2024 through M/s Brian Otieno and Company Advocates. It urges that the trial court relied on factual grounds and not pure points of law to establish the Preliminary Objection. As a result, the basic principles of a Preliminary Objection were not met. They cite the locus classicus case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, which set out the principles of a Preliminary Objection.
7. The appellant also cites the Supreme Court ruling in, Independent Electoral & Boundaries Commission v Cheperenger & 2 others (Civil Application 36 of 2014) [2015] KESC 2 (KLR where the court stated as follows:  

“Thus, a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court must be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”
8. On the strength of the foregoing authority, they argue that the Court had to consider factual issues to determine whether the directive issued on 23<sup>rd</sup> April 2018 applies to the appellant's members. Moreover, the assessment as to whether the Applicant's members were governed by the said Act is factual and therefore, the court had to examine factual evidence to support its findings.
9. The appellant asserts that the grounds raised in the respondent's Preliminary Objection are of great controversy as the factual foundation that forms the subject of the dispute is contested. It does not agree with the respondent's assertion that the directive issued on 23<sup>rd</sup> April 2018 applies to the appellant's members by virtue of their being members of uninformed and disciplined service. The appellant prays that the Appeal be allowed as prayed.
10. The respondents filed their submissions dated 2<sup>nd</sup> May 2024 through M/s Momanyi and Associates Advocates. In the main they urge that the trial Court cannot be faulted as it appreciated the facts well and correctly applied the relevant law in striking out the petition.. They argue that the relevant provisions of the law were clearly stated in the Preliminary Objection. To support their argument they



refer to the decision in Independent Electoral and Boundaries Commission v Jane Cheperenger and 2 others [2015] eKLR where it was stated that:

“Preliminary Objection procedure or in limine determination of disputed facts where facts are capable of quick resolution and may be established by consideration of the materials before the Court without calling for further evidence”

11. They urge that the allegation and argument that the Preliminary Objection was not to be purely based on points of law is totally misplaced. They refer to the case of Sumaria & Another v Allied Industries Ltd [2007] KLR 1 to state the duty of this Court in this appeal as follows:

“Being a first appeal the court was obliged to consider the evidence, re-evaluate it and make its own conclusion bearing in mind that a Court of Appeal would not normally interfere with a finding of fact by the trial court unless it was based on misapprehension of the evidence or that the Judge was shown demonstrably to have acted on a wrong principle in reaching the finding he did”

12. Additionally, they cited the case of Linet Ajiambo Ochieng v Herbert Ehara and 2 others [2019] eKLR, where the Court of Appeal held that:

“And if, for any reason, the respondent felt that the trial court’s ruling is not sufficiently reasoned, again that would not be correct. The trial court considered the arguments proffered by both sides and found that the matter before it concerned occupation and/or trespass. It then applied the relevant law and struck off the suit.”

13. The respondent therefore, assert that a Preliminary Objection raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. Consequently, they urge that the trial court did not err in fact or in law, by finding merit in the Preliminary Objection. Thus the Appeal should be dismissed.

14. When the appeal came before us for plenary hearing on 28<sup>th</sup> May 2024, Ms. Akelo, learned counsel held brief for Mr. Otieno for the appellant. She relied entirely on the submissions as filed. Ms. Oduru appeared for the respondents and also relied entire on the filed submissions.

15. We have carefully considered the arguments raised in support of, and those against the appeal. The starting point is to set out what constitutes a Preliminary Objection before we determine whether the learned Judge was right to find that the Preliminary Objection raised by the respondent met the threshold.

16. In the authoritative precedent of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696 that lays out the basis of a Preliminary Objection, Law JA stated thus:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.....”

17. In the same case, Sir Charles Newbold P. added 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 issue, and this improper practice should stop.”

18. It is clear that a Preliminary Objection functions to challenge the legal sufficiency of a case, proceeding on the assumption that all factual claims presented are accurate. It is reserved solely for addressing legal points, strictly avoiding engagement with any disputed factual matters. The court’s assessment hinges on whether the objection originates exclusively from the pleadings and is rooted firmly in established legal principles.

19. Should the determination necessitate an inquiry into extraneous factual matters, or the exercise of judicial discretion, a Preliminary Objection would be deemed procedurally inappropriate. See the case of *Oraro Vs Mbaja (2005) 1KLR 141*, where the Court held that:

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

20. Therefore a Preliminary Objection cannot be raised if any fact has to be ascertained, or if the court is called upon to exercise judicial discretion. The court will also take into account that the Preliminary Objection must stem from the pleadings and raise pure point/s of law. It should not deal with disputed facts, nor should it derive its foundation from factual information. See the holding in the case of *Oraro Vs Mbaja (2005) 1KLR 141*, that:

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

21. Having set out what constitutes a Preliminary Objection, we will now test the Preliminary Objection raised by the respondents to establish whether it met the threshold. In the case before us, the Preliminary Objection hinged on the legal interpretation of the *Wildlife Conservation and Management Act*, in relation to the directive of April 23, 2018. All that the trial court was required to do was to look at the definition of a ranger as provided under schedule 2, paragraph 5 (1) and (2) of the Wildlife Conservation and Management *Act, No 47 of 2013*, (WCM) to establish whether by law, he/she falls under the category of uniformed and disciplined members of the service.

22. The Chief Park Warden’s directive was addressed to uniformed and disciplined officers under the WCM Act and by law security officers under this Act are the rangers. Section 3(1) of the WCM Act provides as follows:

“There is hereby established a uniformed and disciplined service to be known as the Kenya Wildlife Service.”

While Section 2 of the WCM Act defines a ‘ranger’ to mean:

..... a member of the Service, not being a warden, designated as such by the Director.’

23. From the foregoing analysis it is evident that this is a dispute on the interpretation of the provisions of the WCM Act. It does not require interrogation of factual evidence. The directive itself, a key component of the presented argument, clearly defines the rangers’ legal standing, hence the objection. In our considered view, the learned Judge rightfully made a decision based on points of law which



did not need further investigation of facts. She appreciated the principles applicable to a Preliminary Objection well and correctly applied the law. We therefore have no basis to fault the trial court on this score.

24. Consequently, the appeal filed by the appellant is found to be lacking in merit and is hereby dismissed.

There are no orders as to costs.

**DATED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024**

**M. WARSAME**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL**

