



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ondora v Ondora (Environment & Land Case E007 of 2023)  
[2024] KEELC 4393 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4393 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT & LAND CASE E007 OF 2023**

**AY KOROSS, J**

**MAY 30, 2024**

**BETWEEN**

**ANASTACIA AWINO ONDORA ..... PLAINTIFF**

**AND**

**GERALD ADAMS OWINO ONDORA ..... DEFENDANT**

**RULING**

1. The matter that is the subject of this ruling is the defendant’s preliminary objection (PO) dated 5/03/2024 in which he raised the following grounds: -
  - a. The suit as instituted offends provisions of Sections 4, 12, and 15 of the [Civil Procedure Act](#).
  - b. The suit is bad in law, an abuse of the court process, and frivolous and should be struck out.
2. In submissions that supported his PO, the defendant’s counsel Mr. Odera C.O. filed written submissions dated 21/03/2024 which identified 3 issues for determination which were consecutively whether the PO has properly been raised, whether the PO has merits and lastly whether the plaintiff has locus standi to institute the suit.
3. On the 1<sup>st</sup> issue, counsel submits the principles of a PO were settled in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696, where the Court held as follows:

“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... 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.”

4. Counsel submits the PO meets the threshold as it raises pure points of law, facts pleaded by the plaintiff were presumed to be correct, facts were undisputed, and the PO could preliminarily dispose of the entire suit.
5. On the 2<sup>nd</sup> issue, counsel submits land parcel no. North Ugenya/Doho/169 (suit property) is located in the Ugenya sub-county which is within the precincts of Ukwala Law Courts and thus, fell within the pecuniary jurisdiction of that court. Counsel argues that consequently and by Sections 11, 12, and 15 of the Civil Procedure Act and Section 3(2) of the Magistrate's Court Act, this court is bereft of jurisdiction.
6. It is noted despite counsel relying on the authorities of Paulo Anyanzwa Kutekha v Steel Structures Limited (2018) and Peter Ouma Nyapara v Willis Ouru Okoth (2021) eKLR, these authorities were not tendered to this court and for that reason, they will not be considered.

#### **Plaintiff's submissions**

7. The plaintiff did not oppose the PO but instead, by the law firm of M/s. J.V. Juma & Company Advocates which represents him, his counsel filed written submissions dated 27/03/2024.
8. Counsel submits it is evident the defendant misapprehended the plaintiff's claim as this court is a superior court and exercises jurisdiction throughout Kenya. As to the issue of locus standi, counsel submits this was not raised in the PO.

#### **Preliminary issues**

9. The issue of locus standi was never raised by the defendant as a ground of PO and it is only raised in the defendant's submissions and on that basis, this court will disregard this issue. Besides, the defendant did not substantiate on his allegations that the plaintiff's suit was frivolous.

#### **Issues for determination, Analysis, and Determination**

10. Having carefully considered the grounds of the PO and parties' submissions, the issues that arise for determination and which shall be considered concurrently are: -
  - a. Whether the PO has met the legal threshold.
  - b. If (a) is in the affirmative, whether this court has jurisdiction to entertain this suit.

#### **a. Whether the PO has met the legal threshold.**

11. I agree with Mr. Odera that the decision of Mukisa Biscuit Manufacturing Co. Ltd (*Supra*) has long settled the principles of preliminary objections.
12. And, from this decision, it is deduced that for a PO to succeed, it must meet 3 tests which are, it raises a pure point of law, on the assumption that all the facts pleaded by the other side are correct, and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. In addition, the PO should be capable of disposing of a suit.
13. Since the defendant has raised the issue of this court's jurisdiction, the Supreme Court of Kenya's decision of Mary Wambui Munene v. Peter Gichuki Kingara and 2 Others, [2014] eKLR comes to



the fore and avers the question of a court's jurisdiction is a pure point of law when it stated thus in its obiter dictum: -

“The question of jurisdiction is a pure question of law. This Court has on several occasions adopted the dictum of Nyarangi JA in the *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down.”

14. On application of the summarized tests and binding decision from the apex court, it is undoubted the PO meets all the tests because it raises a pure point of law on the issue of this court's jurisdiction and since it is trite law jurisdiction is everything and without which the court cannot move one step further, it is capable of disposing of the suit.
15. Moreover, since the PO does not raise matters of fact and none of the facts in the issue have been disputed, I must find the PO has met the threshold of a preliminary objection.

**b. If (a) is in the affirmative, whether this court has jurisdiction to entertain this suit.**

16. The ELC is a creature of Article 162 (2) (b) of the Constitution and in giving effect to this provision and by powers bestowed upon it under Article 162 (4) of the Constitution, parliament enacted the [ELC Act](#).
17. Section 13 of the ELC Act sets out the jurisdiction of this court in the following words: -
  - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—
    - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
    - (b) relating to compulsory acquisition of land;
    - (c) relating to land administration and management;
    - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
    - (e) any other dispute relating to environment and land.
  - (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*.
  - (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
  - (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—



- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (d) compensation;
- (e) specific performance;
- (f) restitution;
- (g) declaration; or
- (h) costs.”

18. To ensure reasonable and equitable access to justice in counties and in exercise of Article 169 (2) of the Constitution, Section 26 (3) and (4) of the ELC Act provides that gazetted magistrates are conferred with jurisdiction to handle matters on land and environment but subject to pecuniary and territorial limitations which are provided for in Section 9(a) of the Magistrates' Act, Section 26 (4) of the ELC Act and Sections 12 and 15 of the Civil Procedure Act. This Section 26(4) of the ELC Act states: -

- “(4) Subject to Article 169(2) of the *Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —
- (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
  - (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

19. It seems the defendant’s counsel is contending that in the exercise of its original jurisdiction, this court has comparable jurisdiction as the magistrates’ court.

20. Nay, far from it, this court has overall jurisdiction over disputes over land and environment and does not have pecuniary restraints that ensue in the magistracy. Suffice to say, that this court has an unlimited jurisdiction to hear all disputes on land and environment including those emanating from Ukwala sub-county where the suit property is ostensibly located irrespective of the nature or value of the suit property. Thus, the challenge of this court’s jurisdiction is misplaced.

21. It is noted the suit property’s value is not disclosed and had it been disclosed and this court satisfied itself that the pecuniary limits are within that of Ukwala Law Courts, this court in the exercise of its power under Section 18 (1) of the Civil Procedure Act, could have transferred the suit to Ukwala Law Courts.

22. Bearing in mind the overall jurisdiction of this court, I must mention that in my view, Sections 4, 12, and 15 of the Civil Procedure Act are administrative provisions and cannot bar this court from discharging its principal objective of facilitating the just, expeditious, proportionate, and accessible resolution of disputes as provided for in Section 3 of the ELC Act or usurp this court’s unlimited jurisdiction. Ultimately and for the foregoing reasons, I find the PO dated 5/03/2024 is not merited and it is hereby dismissed with costs.

Orders accordingly.



**DELIVERED AND DATED AT SIAYA THIS 30<sup>TH</sup> DAY OF MAY 2024.**

**HON. A. Y. KOROSS**

**JUDGE**

**30/5/2024**

Ruling delivered virtually through Microsoft Teams Video

Conferencing Platform in the Presence of:

Mr. Juma for the Plaintiff

N/A for the defendant

Court assistant: Ishmael Orwa

