



**Mwandau & 2 others v Challa Hotel Limited (Environment & Land Case 16 of 2023)
[2025] KEELC 518 (KLR) (Environment and Land) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 16 OF 2023
EK WABWOTO, J
FEBRUARY 12, 2025**

BETWEEN

**MATANO JOHN MWANDAU 1ST PLAINTIFF
JOSEPH KIMOJU MWAZO 2ND PLAINTIFF
DOMINIC JOHN MWAZO 3RD PLAINTIFF**

AND

CHALLA HOTEL LIMITED DEFENDANT

RULING

1. This ruling is in respect to the Defendant’s Preliminary Objection dated 15th October 2024. The said Preliminary Objection was premised on the grounds that the plaint dated 30th January 2023 is facie incompetent, fatally and incurably defective in law and as such cannot stand or be ventilated before this court, the Plaintiffs have no locus standi against the Defendant based on the Plaintiff’s further list of documents being certificate of official search for Title No. Taveta Township/Block I/123 dated 22nd April 2024 and green card of the land certified by the Land Registrar on 21st March 2024 and further that the suit offends provisions of Order 1(1) and (3) of the Civil Procedure Rules, 2010 on who may sue or to be sued and that if anything the Plaintiffs neither sued the Registrar of Titles of Land Taveta nor the Registrar of Titles of Land sued the defendant challenging its ownership and possession of the suit property.
2. In the said Preliminary Objection, the Defendant sought for dismissal of the suit herein.
3. The Preliminary Objection was canvassed by way of written submissions pursuant to the directions issued by this court on the 22nd October 2024 and 18th November 2024. The Defendant filed its written



submissions dated 15th November 2024 while the Plaintiffs filed their written submissions dated 10th January 2025.

4. The Defendant's submitted on the following issues, whether the Preliminary Objection is merited and whether the Defendant has satisfied the ingredients to have this suit struck out with costs.
5. It was the Defendant's contention that the main focus of the Preliminary Objection is that the Plaintiff's suit offends Order 1 Rule (1) and Rule (3) of the Civil Procedure Rules on who may sue or be sued and in the instant suit the Plaintiff had sought to mislead the court by initiating the instant suit using a forged title deed which is ordinary supposed to be taken up as conclusive evidence of ownership in the absence of contrary evidence.
6. It was further contended that the copies of the green card and search which had been filed both alluded to the fact that the suit property was registered in the Government of Kenya's name and that the Plaintiff had failed to provide or produce any evidence as to how they acquired ownership of the suit property.
7. It was further submitted that the credibility of the certificate of lease has been challenged and the Plaintiff did not join the Registrar of Titles to the suit. The Defendant argued that true it was wrongly charged to court by the Plaintiff and as such the Plaintiffs did not have locus standi to lodge this suit.
8. On whether the suit ought to be struck out, it was submitted that Order 2 Rule 15 of the Civil Procedure Rules provides a number of reasons as to when a suit may be struck out and that in the instant case the Plaintiffs case ought to be struck out on account of lack of legal capacity to sue pursuant to the evidence submitted by the Registrar of Titles.
9. The Plaintiffs in opposing the Preliminary Objection filed written submissions dated 10th January 2025. It was submitted that the Preliminary Objection is misconceived and an abuse of the court process. The same does not meet the threshold set out in the case of Mukisa Biscuits case where a Preliminary Objection can only be raised on a pure point of law which has been pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit. It was also submitted that the search certificate and Green Card produced by the Plaintiffs are documents contents of which cannot possibly be said to raise a point of law. The court was urged to dismiss the same with costs.
10. Having considered the Preliminary Objection and written submissions filed by the parties, it is clear that the main issue for determination is whether the Defendant's Preliminary Objection dated 15th October 2024 is merited.
11. Both parties agreed in their written submissions that a Preliminary Objection must be clear on a point of law which has been pleaded or which arise out of pleadings which is argued on the assumption that all facts pleaded are correct. It cannot be raised if the facts have to be ascertained or if what is sought is the exercise of judicial discretion.
12. It is trite law that a Preliminary Objection must be raised on a point of law as reiterated in the case of Mukhisa Biscuits Manufacturing Co. Ltd V. West-End Distributors Limited (1969). E.A 696.
13. In Nitin Properties Ltd v Singh Kalsi & another [1995] eKLR the Court of Appeal highlighted that:

“...A Preliminary Objection 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...”



14. The circumstances under which a Preliminary objection can be raised and canvassed was discussed in the case of Oraro v Mbaja [2004] eKLR, where the court (per Ojwang J. as he then was);

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood, 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 processes 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.”[Emphasis mine]

15. In the instant case the Preliminary Objection makes and places heavy reliance on documents and evidence which ought to be considered during trial and as such the same may require further interrogation of the said documents and evidence that ought to be adduced by the parties during trial.

16. In view of the foregoing, it is the finding of this court that the objection was not raised on a pure point of law but on a factual basis upon which it would not be prudent for the court to pronounce itself summarily at this moment. As has been rightly stated in the Oraro vs Mbaja Case (supra), a preliminary objection must not be blurred with factual details liable to be contested. In alignment with the sentiments of the precedent suits above, I find that the preliminary object must fail.

17. In conclusion, it is the finding of this court that the Defendant’s Preliminary Objection is unmeritorious and the same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 12TH FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

.....for Plaintiffs.

.....for Defendant.

Court Assistants: Mary Ngoira and Norah Chao

