



**Mangi & 5 others v Noor (Environmental and Land Originating Summons E003 of 2024) [2024] KEELC 14173 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14173 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2024  
FM NJOROGE, J  
DECEMBER 17, 2024**

**BETWEEN**

**CHARO KARISA MANGI & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS ..... PLAINTIFF**

**AND**

**MOHAMED OSMAN NOOR ..... DEFENDANT**

**RULING**

1. The preliminary objection dated 2/8/2024 has been filed by the defendant.  
The preliminary objection is premised on two grounds, namely:
  - a. That the present suit is res sub judice and also res judicata Malindi ELCC 286 of 2016, Petition 5 of 2022, ELC 385 of 2022;
  - b. The OS does not meet the threshold for adverse possession as set out under the law.
2. I have considered the two limbs of preliminary objection as well as the submissions filed by the parties.
3. Regarding the first ground this court is of the view that it would not be possible to verify the claims by the objector to enable the court determine such an objection unless the court went out of the pleadings before it and sought out other information from the mentioned suit in which case it would cease being a preliminary objection within the meaning of *Mukisa Biscuit Manufacturing Co Ltd Vs West End Distributors 1969 EA 46*. Mukisa (supra) is authority for the rule that an objection is usually argued on the basis that all the facts pleaded are correct, must be one that raises a pure point of law and it ceases being a preliminary objection if fact has to be ascertained.
4. On the second limb, for this court to establish whether the OS has attained the threshold of adverse possession, a hearing of the evidence of the parties must take place.



5. For the above reasons I find that the objection does not attain the threshold of a preliminary objection and it is hereby dismissed with costs.
6. This matter shall be mentioned on 11/2/2024 for confirmation of compliance and issuance of directions as to hearing.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 17<sup>TH</sup> DAY OF DECEMBER 2024.**

**MWANGI NJOROGE  
JUDGE, ELC, MALINDI**

