



**Fortune Savings and Credit Co-operative Society Limited v Kithaka (Civil Suit E794 of 2024) [2025] KEHC 1011 (KLR) (Civ) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1011 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL SUIT E794 OF 2024  
JN MULWA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**FORTUNE SAVINGS AND CREDIT CO-OPERATIVE SOCIETY  
LIMITED ..... APPELLANT**

**AND**

**STEPHEN GATEI KITHAKA ..... RESPONDENT**

**RULING**

1. Before Court is the Notice of Preliminary Objection (PO) dated 18<sup>th</sup> July, 2024 filed by Respondent challenging the jurisdiction of this court to hear and determine the intended Appeal dated 9<sup>th</sup> July 2024 invoking Section 81(1) of the *Co-operative Societies Act* Laws of Kenya. There is no dispute that the Appellant filed the appeal dated 9/7/2024 against the impugned Order of the Tribunal dated 15/3/2024 way after the 30 days provided under the Act.
2. In the case of *Rebecca Chumo v Christina Cheptoo Chumo* [2021] EKLR the Court stated;
  - a. “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 that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.
3. Section 81(1) of the *Co-operative Societies Act* which states as follows;
  - a. Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:
4. It was the Respondent’s submission that its preliminary Objection dated 18<sup>th</sup> July 2024 had met the threshold of such applications as set in the aforementioned case and that the Respondent impugns this



Honourable Court’s jurisdiction based on the above Section of the Law and as it is trite Law, where a statute expressly gives a litigant specific time to comply and they fail, such parties must always first seek leave of Court as permitted in Law to extend time before prosecuting the matter.

5. Further in the case of Kenya Commercial Bank Limited Vs Manaseh Esipeya [1999] eKLR, the Court of Appeal stated that;
  - i. “where a preliminary issue alleging misjoinder, limitation, lack of jurisdiction or res judicata fails and a suit is permitted to proceed, no preliminary decree arises but only an order; the unsuccessful party has a right of appeal with leave and accordingly the appeal was incompetent ...”
6. Additionally, In *Mbaya v Kamau & another* (Civil Appeal E012 of 2023) [2023] KEHC 24945 (KLR) (7 November 2023) (Ruling) the court stated the following while dealing with the question of leave;
  - i. “In essence, this court has no jurisdiction to hear the intended appeal unless leave of the Court from which the order was made is sought and obtained.”
7. It is the Respondent’s submission that the Appellant had the right to Appeal to this Court against the Orders of the Honourable Co-operative Tribunal dated 15<sup>th</sup> March 2024 within thirty days from the date of issue which time lapsed on 15<sup>th</sup> April 2024. The Appellant had the option of curing the delay by seeking leave of Court to file its application as well as the Appeal out of time, which it did not.
8. Counsel for the Respondent submitted that the Appellant’s in its prayers sought no leave to file the Appeal out time or extend time for filing of the same.
9. A Preliminary Objection is a pure point of law raised on the pleadings on the basis that the facts relied upon are not in dispute. see also *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696.
10. In the premises, the court finds and holds that the Preliminary Objection dated 18<sup>th</sup> July 2024 is merited and proceeds to strike out the Application dated 9/7/2024 as well as the appeal filed by a Memorandum of Appeal dated 9/7/2024.
11. The Respondent is awarded costs of the application and the court order staying the proceedings is hereby discharged.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025**

.....  
**JANET MULWA.**  
**JUDGE**

