



REPUBLIC OF KENYA



KENYA LAW
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Sagini & 4 others v Kenya Rural Roads Authority & 2 others (Civil Case E002 of 2025) [2025] KEHC 1283 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL CASE E002 OF 2025
TA ODERA, J
FEBRUARY 26, 2025**

BETWEEN

**KENNEDY SAGINI 1ST PLAINTIFF
SAMWEL MISHAEL OKEMWA 2ND PLAINTIFF
ANTONY MONDA 3RD PLAINTIFF
HENRY ORIANSA 4TH PLAINTIFF
JOB BWANA MAISIBA 5TH PLAINTIFF**

AND

**KENYA RURAL ROADS AUTHORITY 1ST DEFENDANT
DIRECTOR GENERAL KENYA RURAL ROADS AUTHORITY 2ND
DEFENDANT
DEPUTY DIRECTOR KENYA RURAL ROADS AUTHORITY KISII
REGION 3RD DEFENDANT**

RULING

1. The notice of motion dated 13.2.25 came up for hearing on 25.2.25 when Miss Bosire for the respondent indicated that they had filed a notice of preliminary objection dated 21.2.25 on the jurisdiction of the court. She sought that the same be heard first. Mr. Wesonga for the applicant submitted that the preliminary objection is not pegged on pleadings as required by law. Miss Bosire submitted that the court lack jurisdiction to hear the matter.

Determination

2. I have considered the objection raised by Mr. Wesonga and the reply. The locus classicus on the definition of preliminary objections is the case Mukisa Biscuit Manufacturing Co. Ltd –vs.- West End



Distributors (1969) EA 696: where it was held “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.

3. In the case of Avtar Singh Bhamra & Another –vs- Oriental Commercial Bank – Civil Suit No. 53 of 2004, the High Court sitting at Kisumu held that “a Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”.
3. It is clear from the foregoing that a preliminary objection must be based on pleadings filed by parties and pure points of law. In the instant case defence has not yet been filed. I find that the preliminary objection is premature and I proceed to strike it out with costs to the applicant.

T.A ODERA

JUDGE

Delivered virtually via Teams Platform in the presence of:

Court Assistant - Oigo

Mr. Wesonga for the Applicant

Miss Bosire for Respondent

T.A ODERA

JUDGE

Miss Bosire: We seek that we be given time to file reply.

Wesonga: They have sufficient time to file a response.

Bosire: We seek time as the documents to be annexed to the replying affidavit are very bulky, we can take a ruling date in the meantime.

Court: I have heard both parties. Reply be filed and served by close of business on 28.2.25. The applicant is at liberty to file a further affidavit by close of business on 3.3.25. I proceed to set it for ruling on 5.3.25. I am not inclined to grant interim orders this stage.

T.A ODERA

JUDGE

