



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Tower Sacco & another (Civil Case E008 of 2024)
[2025] KEHC 5285 (KLR) (Civ) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

CIVIL

CIVIL CASE E008 OF 2024

KW KIARIE, J

APRIL 29, 2025

BETWEEN

RUFUS GIMLET KAMAU PLAINTIFF

AND

TOWER SACCO 1ST DEFENDANT

KIMMARUKI SELF HELP GROUP 2ND DEFENDANT

RULING

1. Tower Sacco and Kimmaruki Self Help Group, the defendants herein, raised a preliminary objection dated the 3rd day of February 2025, premised on the following grounds:
 - a. That the suit is fatally defective and bad in law as it offends the provision of section 6 of the [Civil Procedure Act](#), 2010.
 - b. The parties have a suit pending determination in Ol'Kalou Magistrate Court, MCCC No. 83 of 2024, touching on the same subject matter.
 - c. The court lacks jurisdiction to hear and determine this matter since the same raises matters pertinent to the disposal of the suit premises already in issue at Ol'Kalou Magistrate Court, MCCC No. 83 of 2024.
 - d. The entire suit is brought in bad faith, frivolous, vexatious, and an abuse of the court process, hence a good candidate for striking out with costs.
2. Rufus Gimlet Kamau, the plaintiff respondent, opposed the preliminary objection on the following grounds:



- a. The defendants/applicants have not met the appropriate criteria to establish a preliminary objection. The aforementioned preliminary objection is mixed with facts and evidence rather than solely presenting points of law.
 - b. The applicants have not filed any response to the plaint. Thus, the preliminary objection has no legal basis.
 - c. Whether the issues in this case are similar to those in an existing case is a question of fact.
3. Section 6 of the *Civil Procedure Act* provides:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

4. A preliminary objection raises purely issues of law. The Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited* (1969) EA. 696 (Sir Charles Newbold P) observed as follows:

... 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 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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse issues. This improper practice should stop.

5. This court must analyse the facts to determine whether the issues in this matter are the same as those in *Ol'Kalou Magistrate Court, MCCC No. 83 of 2024*. This cannot be said to be a pure point of law. In the case of *Margaret Wachu Karuri v John Waweru Ribiro* (2021) eKLR, the court faced a similar question: whether sub-judice could be raised as a preliminary point. It held as follows:

For the court to determine whether the issues herein were directly and substantially in issue with the other suit, it is this court's considered view that it will have to ascertain facts and probe evidence by ascertaining whether the issues raised in the instant suit are the same as the ones in the appeal aforesaid and further interrogate the prayers sought whether they are the same and relate to the same issues. On whether or not the same is sub-judice, facts have to be ascertained and a preliminary objection cannot be raised on disputed facts. Therefore, this court holds and finds what has been raised by (the) defendant/objector does not amount to a preliminary objection, and thus the preliminary objection is not merited.

6. From the foregoing, I find that the arguments presented by the defendants/applicants do not meet the threshold for a preliminary objection. Therefore, the preliminary objection is dismissed, and costs are awarded to the plaintiff.

DELIVERED AND SIGNED AT NYANDARUA THIS 29TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

