



**Ngaira v Ndwiga & 2 others (Civil Suit 26 of 2023)  
[2025] KEHC 12130 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 26 OF 2023**

**F WANGARI, J  
JUNE 30, 2025**

**BETWEEN**

**EVANS NGAIRA ..... PLAINTIFF**

**AND**

**JAMES EVANS NDWIGA ..... 1<sup>ST</sup> DEFENDANT**

**ROBERT KARUKU KIMONDO ..... 2<sup>ND</sup> DEFENDANT**

**ANTONY MICHAEL MULWA T/A SWIFTWAY AUCTIONEERS .... 3<sup>RD</sup>  
DEFENDANT**

**RULING**

1. The Plaintiff herein instituted this suit through the Complaint dated 24/03/2025. The dispute involves a dispute over distress for rent where the Plaintiff is the tenant in the suit premises, the 1<sup>st</sup> Defendant being the Landlord, the 2<sup>nd</sup> Defendant being the caretaker and the 3<sup>rd</sup> Defendant being the auctioneer.
2. The Respondent herein filed a Notice of Preliminary Objection dated 24/01/2025. The Respondent stated that this court lacked the requisite jurisdiction by dint of section 13 (7) of the *Environment and Land Court Act*. The reliefs sought by the Plaintiff are found in the said Act.
3. It was directed that the Preliminary Objection be canvassed by way of written submissions. Both parties complied by filing their rival written submissions with the supporting authorities.

**Analysis and Determination**

4. I have perused through the Complaint, the Preliminary Objection and the submissions filed, the authorities cited as well as the law and I discern the following issues for determination: -
  - a. Whether the Preliminary Objection has merits.



- b. What is the order as to costs?
5. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696. at page 700, Law, JA stated: -
- “ 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.”
6. For a Preliminary Objection to succeed the following tests ought to be satisfied;
- a. it should raise a pure point of law;
  - b. it is argued on the assumption that all the facts pleaded by the other side are correct; and
  - c. it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
7. A valid Preliminary Objection should, if successful, dispose of the suit or application. The Defendant state that the Environment and Land Court has the jurisdiction to hear the matter as it involved a rent dispute. On the other hand, the Plaintiff states that the suit is not about rent but claim for damages.
8. The *Constitution of Kenya* under Article 162 (2) (b) establishes the Environment and Land Court. It provides as follows;

Systems of courts

- 162 Parliament shall establish courts with the status of the High Court to hear and  
 (2) determine disputes relating to—
- (b) the environment and the use and occupation of, and title to, land.

9. The jurisdiction of the court is mentioned under section 13 (1) and (2) of the *Environment and Land Court Act*, No. 19 of 2011 which provides as follows;

Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this *Act* or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;



- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

10. I have perused through the Complaint dated 24/03/2023. The reliefs sought are as hereunder in summary;

- a. Damages
- b. Injunction restraining the Defendants from interfering with the goods taken from his premises
- c. Mandatory injunction compelling the Plaintiff to have unlimited access to the suit property
- d. Stay of proceedings in the Chief Magistrate's court

11. Apart from the relief of damages, the Plaintiff is also seeking injunctive orders in respect to the suit property which he occupied as a tenant. This is in respect to the use and occupation of land.

12. The issue of jurisdiction was settled in the case of "*Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where Justice Nyarangi, JA, as then he was held as follows: -

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis <http://www.kenyalaw.org> - Page 8/27 *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given"

13. From the provisions of the law as stated herein above, the court that has jurisdiction over this matter is the Environment and Land Court. This court has got no jurisdiction even to transfer this matter



to the said court of equal status. The court has got no option but to down its tools. I find that the Preliminary Objection is merited.

14. On costs, it is settled that the same follows the event. However, the court retains discretion whether to grant them or not. Furthermore, this discretion must be exercised judiciously and courts should not deprive a plaintiff/defendant of his or her costs unless it can be shown that they acted unreasonably. I find no reason to deny the Defendant the costs of this application.

15. Having found as above, the following orders flow therefrom: -

- a. The Preliminary Objection dated 24/01/2025 is hereby upheld.
- b. The suit is hereby struck out.
- c. Costs to the Defendant

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**F. WANGARI**

**JUDGE**

In the presence of:

Mr. Tindika Advocate for the Plaintiff

Mr. Mwakisha Advocate for the Applicant

Ms. Getrude, Court Assistant

