

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT SIAYA

ELC PET/E002/2026

NEWTON

OWINOPETITIONER

VERSUS_

JAZIR TEJA 1ST

RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND

RESPONDENT

THE LAND REGISTRAR, SIAYA COUNTY 3RD

RESPONDENT

THE HON. ATTORNEY GENERAL 4TH

RESPONDENT

RULING

- 1 The 1st Respondent raised the preliminary objection dated 10th April 2026 which is subject of this ruling seeking to have the Claimant's suit herein dismissed with costs to the Respondents on grounds that: -

- 1) The Honourable court lacks substantive jurisdiction to entertain the instant Petition.
 - 2) The suit offends the strict provisions of Article 162(2) ((b) of the Constitution of Kenya, 2010.
 - 3) The suit offends the strict provisions of Section 13(2) of the Environment and Land Court Act, Chapter 8D Laws of Kenya.
 - 4) The dispute herein is commercial dispute disguised as a constitutional petition.
 - 5) The Petition offends the well-established legal doctrine of constitutional avoidance.
 - 6) The instant claim is misconceived, gravely incompetent, frivolous and an abuse of the Court process and ought to be dismissed with costs to the Respondent.
- 2 The Petitioner responded to the preliminary objection by way of grounds of opposition dated 13th April 2026 as follows;
1. The Environment and Land Court (ELC) has original and exclusive jurisdiction to hear and determine disputes relating to the title, use, and occupation of land. The core of this Petition is the protection of Land Title No. South Gem/Gombe/23, which the 1st Respondent seeks to encumber.
 2. While the Petition cites violations of the Bill of Rights (Articles 29, 47, and 49), these violations were the unlawful means used to achieve the extraction of a land pledge. Jurisdiction is determined by the nature

of the grievance, which in this case is a threat to the Petitioner's right to property under Article 40.

3. The Court of Appeal has established that where constitutional violations are "inextricably linked" to a land dispute, the ELC is properly clothed with jurisdiction to determine both the constitutional questions and the resulting land dispute to avoid a multiplicity of suits.
4. Under Section 13 of the ELC Act, the Court has the power to hear disputes relating to contracts or instruments granting an interest in land. The "Settlement Agreement" dated 19th January 2026 is an instrument creating a purported interest in the suit property; therefore, its validity is a matter for this Court.
5. Since the property has not yet been transferred, the Petitioner seeks a declaration that the underlying contract is void ab initio. Only the ELC has the specialized mandate to issue orders to the 3rd Respondent to expunge or prevent encumbrances on the suit property.
6. Striking out this Petition on a technicality of jurisdiction would deny the Petitioner a timely remedy, as the High Court cannot grant the land-specific reliefs (Certiorari and Restitution of title) as effectively as this specialized Court.

SUBMISSIONS

- 3 The court issued directions that the preliminary objection be canvassed by with by way of written submissions.
- 4 The firm of Auma & Company Advocates filed submissions dated 11th May 2026 on behalf of the 1st Respondent in support. The firm of Amondi Oketch & Associates Advocates on the other hand filed submissions on behalf of the petitioner herein and in opposition of the preliminary objection.

1st Respondents Submissions

- 5 The 1st Respondent submitted that the dominant issue for determination concerns enforcement of obligations arising from a commercial transaction and an informal charge, matters which fall within the jurisdiction of the High Court or the subordinate courts exercising civil jurisdiction. Reliance was placed on ***Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] KECA 79 (KLR)*** for the proposition that disputes relating to charges and securities are commercial disputes and do not amount to disputes relating to land use contemplated under Article 162(2)(b) of the Constitution. The decision in ***Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co. Advocates [2019] KECA 504 (KLR)*** was equally cited in support of the dominant issue test.

- 6 On the competence of the Preliminary Objection, the Respondent maintained that the objection raises a pure point of law concerning jurisdiction based on facts admitted in the Petition itself, namely that the parties entered into a commercial agreement which culminated in the creation of an informal charge. It was submitted that no factual investigation is necessary for determination of the jurisdictional question and that the Preliminary Objection therefore satisfies the principles enunciated in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696.***
- 7 The Respondent further relied on the celebrated decision in ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1*** to submit that jurisdiction is everything and once a court determines that it lacks jurisdiction it must immediately down its tools. Consequently, the Court was urged to uphold the Preliminary Objection, strike out the Petition and award costs to the 1st Respondent.

Petitioners Submissions

- 8 The Petitioner argued that the Preliminary Objection is misconceived, incompetent and legally unsustainable because it does not raise a pure point of law but instead raises contested factual matters requiring evidential interrogation at trial.

- 9 The Petitioner submitted that the gravamen of the Petition is not enforcement of a commercial agreement but the protection of his constitutional rights and proprietary interest in Land Parcel No. South Gem/Gombe/23 from an instrument allegedly procured through unlawful detention, police intimidation and coercion. According to the Petitioner, the impugned settlement agreement and the resulting land pledge were executed after he had allegedly been detained beyond the constitutionally permissible period and denied access to legal representation. It was therefore contended that the dispute principally concerns protection of title to land from an allegedly void and coerced instrument.
- 10 On the validity of the Preliminary Objection, counsel relied upon **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** and **Oraro v Mbaja [2005] eKLR**, submitting that the objection invites the Court to determine disputed factual matters, including whether the impugned settlement agreement was procured through coercion and whether the dispute is constitutional or commercial in nature. It was argued that such issues can only be resolved upon evaluation of evidence during the substantive hearing and therefore fall outside the proper scope of a preliminary objection.
- 11 Regarding jurisdiction, the Petitioner submitted that the Environment and Land Court possesses jurisdiction under Article 162(2)(b) of the Constitution and Section 13(2) of the Environment and Land Court Act because the dispute

concerns an instrument affecting an interest in land and seeks protection of the Petitioner's title against unlawful encumbrance. Counsel distinguished the decision in **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] KECA 79 (KLR)** on the basis that the present Petition challenges an allegedly coerced instrument affecting land ownership rather than enforcement of a statutory power of sale.

- 12 The Petitioner further submitted that the doctrine of constitutional avoidance is inapplicable since the Petition alleges violations of Articles 29, 40, 47 and 49 of the Constitution arising from unlawful arrest, detention, police intimidation and deprivation of property. Counsel maintained that these constitutional violations are inseparably connected with the dispute concerning the Petitioner's land and that splitting the dispute between different courts would occasion multiplicity of proceedings and deny the Petitioner effective access to justice. The Court was therefore urged to dismiss the Preliminary Objection with costs.

ANALYSIS AND DETERMINATION

- 13 Having carefully considered the grounds of the Preliminary Objection (PO) and rival submissions together with authorities relied upon it is the considered of this court that the main issue for determination is whether the Notice of Preliminary Objection as raised is valid and merited.

- 14 I will start by setting out what a proper preliminary objection is. According to the **Black Law Dictionary** a Preliminary Objection is defined as:

“In a case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

- 15 The scope, nature and meaning of a Preliminary Objection was aptly discussed in **Attorney General & Another - Versus - Andrew Mwaura Githinji & another [2016] eKLR**: as follows; -

- a. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
- b. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
- c. The improper raising of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

- 16 In view of the above, it is clear that a preliminary objection should raise pure points of law and which are argued on the assumption that all facts are correct. The 1st Respondent's case is that the instant petition is a commercial dispute that has been disguised as a

constitutional petition. That the court is devoid of the requisite jurisdiction to handle the matter and the same thus ought to be dismissed. It is also contended that the petition offends the well-established principles of the doctrine of constitutional avoidance.

- 17 This court is of the view that the question of jurisdiction is an issue of law and the same goes to the core of the suit. It is capable of disposing the suit without going into hearing on merit. This court finds the preliminary objection is properly placed before court.
- 18 I have perused the petition. The Petitioner claims that he is the registered owner of land parcel South Gem/Gombe/23. That sometime in November 2023 he entered into a commercial arrangement with the 1st Respondent for processing fish leather but along the way two parties disagreed and the quality of the leather was rejected. The Petitioner averred that due to the said disagreement and on the instigation of the 1st respondent, he was arrested together with his wife and detained at Kisumu Central Police Station and was further threatened of dire consequences by the 1st Respondent.
- 19 The Petitioner states at paragraph 9 of the petition that on Monday 19th January 2026 he was escorted to a lawyer's office and compelled to sign a settlement agreement and pledge the suit property land parcel no South Gem/Gombe/23 as security for Kshs 4,000.000/- in order to secure his release.

- 20 From the above set of facts, I will first determine whether the petition offends the doctrine of constitutional avoidance. I will later deal with the issue of jurisdiction.
- 21 The doctrine of constitutional avoidance is a judicial principle that discourages courts from deciding constitutional issues when a matter can be resolved through statutory or ordinary legal mechanisms.
- 22 In **Bernard Murage v Fine Serve Africa Ltd & 3 others [2015] eKLR**, Muriithi J held that: ‘Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, that route must be pursued first. The Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] eKLR** succinctly held: The principle of constitutional avoidance entails that a court will not determine a constitutional issue when a matter may properly be decided on another basis. It is a sound judicial practice for courts to decide cases on non-constitutional grounds if that course is available. Likewise, in **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, the Court of Appeal stated that where a clear procedure is prescribed by law for redress of a grievance, that procedure must be strictly followed before resorting to constitutional remedies.
- 23 In relying on the above-mentioned principles in the present case, the Petitioner’s case is that he was

unlawfully arrested and detained and the act of being deprived his freedom is what has led to the filing of the petition. It is further alleged that he was forced to sign an agreement over his land as security and it is noted by this court that his apprehension over the said agreement has not been clearly stated. But even then, it is my considered view that the pre dominant issue in this matter is the alleged unlawful arrest and settlement of a debt of Kshs 4,000,000/- which is definitely not a preserve of this court. In this regard the court is guided by the Court of Appeal decision in **Pumwani Riyadha Mosque Committee & Another v Gikomba Business Centre Limited (Civil Appeal E965 of 2024) [2025] KECA 1257 (KLR) (11 July 2025) (Judgment)**

- 24 Additionally, it is important to appreciate that among the powers donated by section 13(2)(a) of the Environment and Land Court Act to the Environment and Land Court is the authority to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
- 25 Further the Petitioner urges that he was made to sign an informal charge against his land making the matter fall under the jurisdiction of this court. In my view whether the charge is formal or informal it is still an encumbrance and the court with jurisdiction to determine its validity or otherwise clearly would not be the ELC. My hands are tied

drawing from the Court of Appeal decision in this regard. I'm guided by the case of **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others (supra)**.

- 26 I will point out that issues of arbitrary arrests and detention are violations of a person's freedom and fall under the domain of the constitutional court as the same are abuse of rights. The petition in my view is thus rightfully drafted/presented. However, the same clearly falls out of the jurisdiction of this court and cannot thus be further entertained before the ELC court.
- 27 In view of the foregoing, this Court declines to entertain this Petition on the basis of lack of jurisdiction pursuant to the provisions of Section 13 of the Environment and Land Court Act. I must therefore down my judicial tools at this point.
- 28 The Court makes the following Orders: -
1. The 1st Respondents Preliminary Objection dated 10th April 2026 is merited and sustained
 2. The petition is hereby struck out
 3. While costs follow the event, they are also discretionary and in view of the circumstances of the case the court orders each party to bear their own costs.

It is so ordered

Delivered and Dated This 6th Day of July 2026

**HON. LADY JUSTICE A.E. DENA
JUDGE
06/7/2026**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Jumba for the Petitioner

Mr. Cheruiyot for the 1st Respondent

No appearance for the rest of the Respondents

Court Assistant – Abiud Wekesa