Sirikwa Squatters Group v Commissioner of Lands & 9 others (Environment & Land Petition 4 of 2016) [2025] KEELC 4308 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4308 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND PETITION 4 OF 2016

CK YANO, J

MAY 21, 2025

(FORMERLY HIGH COURT PETITION NO. 7 OF 2012)

PETITIONERS CONSTITUTINAL RIGHTS UNDER ARTICLE 19, 20, 21, 22, 23, 35, 40, 47 AND 165 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

SIRIKWA SQUATTERS GROUP ..... PETITIONER

AND

THE COMMISSIONER OF LANDS ..... 1ST RESPONDENT

THE CHIEF REGISTRAR OF TITLES ..... 2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 3RD RESPONDENT

DIRECTOR OF SURVEY ..... 4TH RESPONDENT

DISTRICT LANDS OFFICER, UASIN GISHU DISTRICT ..... 5TH RESPONDENT

LORNHO AGRI BUSINESS (EA) LTD ..... 6TH RESPONDENT

MARK KIPTARBEI TOO ..... 7TH RESPONDENT

DAVID K KORIR ..... 8TH RESPONDENT

HIGHLAND SURVEYORS LTD ..... 9TH RESPONDENT

KENNEDY KUBASU ..... 10TH RESPONDENT

RULING

1. The Petitioners/Applicants filed a Notice of Motion dated 20th September, 2024 seeking among other orders, an interpretation of the ruling delivered 10th November, 2017. In response, Counsel for the 6 & 8th Respondents as well as Counsel for the 7th Respondent raised two separate Preliminary Objections (PO) to the said Application. This ruling is with respect to the two POs.

2. The 7th Respondent's PO is dated 14th November, 2024 and is on the following grounds:-

    a. In a judgment dated 15th December, 2023 in Supreme Court Petition No. 32/2022 the Supreme Court decreed that the Petitioners' claims to the suit property were misconceived, frivolous and devoid of merit. The Petitioners claims to the suit were dismissed in entirety. In terms of Article 163(7), the determination is binding on the parties hereto as well as this court.

    b. The Petitioners' Motion is founded on a feigned issue namely that the Appeal lodged in the Court of Appeal should have been against the order of review ruling issued on 10th November, 2017. The issue is feigned in that it was raised as an issue by the Petitioners in the Court of Appeal and subsequently withdrawn.

    c. As the issue was raised in the Court of Appeal and could indeed have been argued in court, commencement of the proceedings herein is debarred by the principle of res judicata and issue estoppel.

    d. In addition to the foregoing, the Petitioners are debarred from re-litigating the feigned issue by principle of approbating and reprobating.

    e. To the knowledge of the Petitioners, the late Mark K. Too passed away on 31st December 2016. Absent substitution, the suit against the late Mark K. Too abated upon expiry of the statutory period.

    f. As the proceedings are intended to harass the family of the late Mark K. Too, the cost should be borne by the Petitioners' counsel.

3. The 6th & 8th Respondents filed a lengthy Preliminary objection dated 13th December, 2024 which they crystallised into the following prayers:-

    a. The Petitioner's notice of Motion dated 20-09-2021 (sic) to be struck out with costs for lack of jurisdiction.

    b. A declaration that the Environment & Land Court lacks jurisdiction to interpret, clarify, or revisit issues conclusively determined by the Supreme Court in its Judgment dated 15-12-2023.

    c. Costs of this Preliminary Objection and the Motion dated 20-09-2021 (sic) be borne by the Petitioner at a higher scale in favour of the 6th and 8th Respondents.

Submissions:

4. When the matter came up for hearing on 20th February, 2025 the court directed that the two POs would be heard first. Parties were directed to file their written Submissions on the same and the matter was fixed for highlighting of Submissions.

The 7th Respondent's Submissions

5. Mr. Ngatia (SC) appeared for the 7th Respondent and argued in favour of their PO. Counsel explained that the matter was heard and determined vide judgment delivered on 9th February, 2017. That this prompted the AG to seek a review as the land decreed included land occupied by public utilities. He explained that the review was with respect to the public utility land and was upheld. The other parties in the suit were however bound by the judgment.

6. Mr. Ngatia submitted that an appeal was lodged and the court of Appeal in its judgment acknowledged the review motion, and upheld the Trial Court's decision. He submitted that there was a further appeal to the Supreme Court, which also appreciated the review motion. That all courts including the Supreme Court took into consideration the judgment of the trial court as well as the review thereof.

7. Counsel contended that in its ruling delivered on 15th December, 2023, the Supreme Court set aside the judgment and orders of the trial court, as well as the Court of Appeal judgment. That in essence, all the decisions were nullified, quashed and rendered obsolete. Counsel argued that under Article 163(7) of *the Constitution*, decisions of the Supreme Court are binding on all courts below it, thus the effective decision in this matter is that rendered by the Supreme Court.

8. For this reason, Counsel submitted that there is nothing to interpret. Counsel relied on the case of Kenya Commercial Bank Ltd vs Muiri Coffee Estate Ltd & Ano. (2016) eKLR, where in a case similar to this one, the court raised the issue of res judicata, that once a matter is determined, the principle prevents any further applications or suits being filed. He also relied on Kenya Commercial Bank Limited vs Benjoh Amalgamated Limited (2017) KECA 98 (KLR). He submitted that the Applicant is seeking to have a second bite at the cherry, by applying sophistry and ingenuity, but the same is bound by constitutional ethic. He reiterated his reliance on Article 163(7) of *the Constitution* and the cases in the 7th Respondent's Digest of Authorities, and prayed that the application be dismissed with costs.

The 6th & 8th Respondents' Submissions;

9. Ms. Chesoo for the 6th & 8th Respondents submitted that her PO of 13th December, 2024 raised pure points of law arsing by clear implication of the Petitioner's Motion of 20th September, 2024. Counsel submitted that the binding nature of Article 163(7) is absolute and not discretionary. She argued that this court is informed and guided by the Supreme Court judgment of 15th December, 2023 and cannot depart from or purport to interpret it. She urged the court not to sit on appeal on the Supreme Court judgment. She urged that this would violate the concept of finality of judgment and jurisdictional hierarchy of courts, as well as amount to an excess of jurisdiction.

10. Counsel further submitted that this court cannot arrogate to itself jurisdiction in excess of that which flows from Article 163(7). She explained that the Respondents have been stuck in court for 13 years and are entitled to enjoy the finality of the judgment and to rest from this litigation. She relied on the cases in her Digest of Authorities, asserting that it is in the interest of justice that there should be an end to litigation. Counsel urged the court to uphold the two POs with costs.

The Petitioners Submissions;

11. Mr. Kenei for the Petitioners asked the court to restrict itself to the POs raised and not the merits of the Application. He submitted that what was appealed against was the judgment of this court and not the reviewed judgment, stating that the review came after the commencement of the Appeal. With respect to the 7th Respondent's PO, Counsel argued that it had been filed by an advocate who is not

properly on record. That the firm of M/S Ngatia & Co. Advocates came on record after delivery of the judgment without leave contrary to Order 9 Rule 9 of the Civil procedure Rules.

12. On whether the PO meets the threshold of a PO, Counsel submitted that the court had been invited to consider factual issues to determine the PO. He pointed out that the judgments of the Court of Appeal and the Supreme Court had not been placed before this court, thus the Respondents were asking the court to look for the judgments and interpret them. Further, that the court was being asked to consider contested facts, as it was clear the parties have different interpretations of the judgments of the superior court.

13. Counsel submitted that the contention that the Petitioner's Motion offends Article 163(7) is either misconceived or an attempt to mislead the court on the import of the said Application. He explained that they were not inviting the court to review, set aside or overturn the decision of the Supreme Court, but were only asking it to interpret its own judgment. He asserted that the Respondents were not challenging the Court's power to interpret its own decisions.

14. Counsel denied the allegation that the issues raised in the application are res judicata or that they have been determined by the Supreme Court. He opined that there was no proof that the issues in the Motion had been referred to the Supreme Court and determined. He thus asked the court to find no merit in the two POs and dismiss or strike them out with costs to the Petitioners.

7th Respondent's Rejoinder;

15. Responding to the Petitioner's submissions, Mr. Ngatia, senior counsel conceded that the Petitioner was not seeking interpretation or execution of the Supreme Court judgment, but an interpretation of the trial court's judgment and ruling. Counsel however submitted that by virtue of Article 163(7), there is nothing to interpret, and that it is absurd to seek an interpretation of that which has been nullified and ceased to exist. He referred to paragraph 36 of the COA judgment and paragraph 18 of the SCORK judgments, which he said are available to this court because they emanated from a dispute before it.

16. On whether he is properly on record, Counsel explained that Prof. Ojienda, Senior counsel came on record after judgment but did not file a notice of change of Advocates, and he proceeded with the matter to the court of Appeal, yet the issue of representation was not raised. He accused the Petitioners of seeing the speck in his neighbours eye while he had a log in his eye. He further submitted that the Petitioners had given no answer to the main issues of res judicata and Article 163(7).

The 1st-5th and the 9th-10th Respondents;

17. On 24th April, 2025 when the matter came up for highlighting, Counsel for the 1st-5th Respondents informed the court that they did not file submissions and thus did not intend to highlight. There was no appearance for the 9th & 10th Respondent, and they also seem to not have participated in the Application or the POs.

Analysis and Determination:

18. I have considered the POs raised herein, the written submissions as well as the arguments tendered in court during highlighting, and the authorities cited. The following are the issues identified for determination:-

    i. Whether the firm of Ngatia & Company Advocates is properly on record;

    ii. Whether the POs meet the threshold for a proper PO;

iii. Whether the 6th & 8th Respondents' Notice Preliminary Objection dated 13th December, 2024 has any merit

a. Whether the firm of Ngatia & Company Advocates is properly on record;

19. This issue was raised in court during highlighting of submissions. However, being that the issue of representation is a vital component in litigation, this court must address it where allegations of breach of procedure thereto are raised.

20. In this instance, Counsel for the Petitioners argued that the 7th Respondent's PO was filed by a firm that was not properly on record. Counsel contended that firm of M/S Ngatia & Company Advocates came on record after delivery of judgment without leave of court as required under Order 9 Rule 9.

21. In response, Counsel for the 7th Respondent submitted that his firm took over conduct of the matter from Prof. Ojienda, senior counsel who took the matter all the way to the supreme court without filing a notice of change of Advocates and the issue of representation was not raised at the time. I get the feeling that Senior Counsel is of the opinion that since the issue was not raised at the time, it should be waived or ignored as the case may be.

22. The provision said to have been breached here is Order 9 Rule 9 of the Civil Procedure Rules, which provides that:-

> 9. Change to be effected by order of court or consent of parties [Order 9, rule 9]
>
> When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
>
> (a) upon an application with notice to all the parties; or
>
> (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

23. It is therefore mandatory under the provisions of Order 9 Rule 9 that any change of Advocates after delivery of judgment, can only be done in two ways. The first is with leave of the Court upon application with notice to all parties; and secondly upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The reasoning behind the provision was well articulated in the case of S. K. Tarwadi vs Veronica Muehlemann (2019) eKLR, where the judge observed as follows:

> " ...In my view, the essence of Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him..."

24. I took it upon myself to unravel the mystery that is the 7th Respondent's representation in this suit. I have perused the record and came across a letter form the firm of Arusei & Company Advocates dated 9th May, 2017. It was seeking confirmation on whether there had been any change of advocates either through a formal application or a written consent between the firm of Kalya & Associates and the firm of Prof. Tom Ojienda regarding the representation of the 7th Respondent.

25. Vide a letter dated 16th May, 2017 the court responded, stating that on 22nd February, 2017 the firm of Ojienda filed a Notice of Change of Advocates of the same date. It was further clarified that the court record did not show any application or consent. Nothing seems to have come out of this inquiry.

26. To throw a spanner into the works, I have also come across email correspondence between the firm of Ngatia & Associates and Ojienda & Associates. In an email dated 11th December, 2024 the firm of Ojienda indicates that they only received instructions from the 7th Respondent to file an appeal against the judgment of 9th February, 2017. That they filed a Notice of Appointment for Fanikiwa Ltd for purposes of obtaining typed proceedings. They denied filing any Notice of Change or consent to enter appearance for the 7th Respondent.

27. Nevertheless, I have seen the Notice of Appointment of Advocates dated and filed on 22nd February, 2017 and can confirm that the same was with respect to the estate of the 7th Respondent. The same firm also filed a Notice of Appeal on behalf of the said estate. I note that judgment having been delivered on 9th February, 2017, by the time the firm of Ojienda was coming on record, leave should have been sought and granted before the said firm took any steps in the matter. It would appear however, that the firm of Prof. Tom Ojienda did not obtain leave before coming on record.

28. Having failed to obtain leave to come on record, in my view, the firm of Ojienda & Associates was never properly on record in this suit or at all. It remains that the 7th Respondent is still represented by the Firm of Kalya & Company Advocates who were on record at the time judgment was delivered.

29. For that reason, the firm of M/S Ngatia & Co. Advocates should have sought this court's leave to come on record as acting for the 7th Respondent in place of Kalya & Company. Contrary to this mandatory requirement, the said firm went ahead and filed a Notice of Appointment without following the laid down procedures. No evidence has been tendered or even alluded to, that the firm of Ngatia & Company obtained leave to represent the 7th Respondent in these proceedings.

30. The fact that the firm of Prof. Tom Ojienda conducted the matter on Appeal has no bearing in this instance. It is trite that an Appeal is a separate case for which a party is at liberty to instruct a different advocate from the one who represented them at trial. There is however no proof that the firm of Prof. Tom Ojienda ever came on record in this suit, and neither is there proof that the firm of Ngatia & Associates complied.

31. That aside, under Order 9 Rule 9(b), a consent may be filed between the outgoing advocate and the proposed incoming advocate to the effect that they are not opposed to the proposed change. No such consent has been filed in this case. The email correspondence indicating that the firm of Ojienda had no objection to the firm of Ngatia taking over conduct of this matter, does not amount to a consent properly filed before this court. And even if a proper consent was filed, since the firm of Ojienda itself was not properly on record as admitted by Counsel for the 7th Respondent, then it was not the proper party to issue that consent.

32. It cannot be disputed that no application was lodged for leave to come on record, or leave granted in that regard. Consequently, the firm of Ngatia & Associates is not properly on record in this suit. Therefore, the PO filed on behalf of the 7th Respondent dated 14th November, 2024 was lodged by a stranger to this suit, and this finding applies to any other document filed by the said firm. The only result that can turn on the same is to strike it out as I hereby do.

b. Whether the POs meet the threshold for a proper PO;

33. Despite the dismissal of the 7th Respondent's PO, there is still the 6th & 8th Respondents' PO also raising the same issues as those in the 7th Respondent's PO. The said PO, though lengthy, boils down to one issue, that of jurisdiction of this court to entertain the Petitioners' Motion dated 20th September, 2024.

34. Counsel for the Petitioners argued against the POs, stating that it did not meet the threshold for a PO since, as he claimed, it raised matters of fact. Therefore, before proceeding to the merits of the PO, I must first consider whether the PO raised by the 6th and 8th Respondents is a proper PO.

35. In the case of Hassan Ali Joho & another vs Suleiman Said Shabal & 2 Others (2014) eKLR, the Supreme Court held that:-

> " 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."

36. As to what may constitute a preliminary objection, in Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696, Law, JA held that:-

> " So far as I am aware, 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."

37. In the same case, Sir Charles Newbold P. explained that:-

> " 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop."

38. In their preliminary objection, the 6th and 8th Respondents want the Petitioner's Motion to be struck out with costs for lack of jurisdiction. Secondly, that this Court lacks jurisdiction to interpret, clarify, or revisit issues conclusively determined by the Supreme Court in its Judgment dated 15th December, 2023.

39. Jurisdiction, courts have held, flows from either *the constitution* or legislation or both. A Court cannot therefore arrogate itself jurisdiction in excess of that which is by law donated to it. In the celebrated case of The Owners of Motor Vessel "Lilian S" vs Caltex Oil Kenya Limited (1989) KLR 1, it was held that:-

> " 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 for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

40. The question is whether jurisdiction is a pure point of law capable of disposing of a matter preliminarily. In answer to this, the Supreme Court in Mary Wambui Munene vs Peter Gichuki Kingara and Six Others (2014) eKLR held that:-

> " The issue, whether these proceedings were a nullity ab initio is an issue that goes to the jurisdiction of this Court to entertain this matter. The question of jurisdiction is a pure question of law. This Court has on several occasions adopted the dictum of Nyarangi J.A in

the Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1 that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down tools. This is the approach this Court adopted when it considered the application for conservatory orders in this matter. We will, therefore consider this issue of nullity first, as it touches on the jurisdiction of this Court."

41. From the foregoing, it is clear that jurisdiction goes to the root of a matter and as such it is a pure point of law that needs to be raised at the earliest opportunity. There can be no doubt therefore that the PO meets the threshold of a proper PO.

c. Whether the 6th & 8th Respondents' Notice Preliminary Objection dated 13th December, 2024 has any merit

42. The arguments tendered in support of the 6th & 8th Respondents' are to the effect that this court cannot render an interpretation of its judgment owing to the fact that the same, as well as is ruling on the review application, were overturned by the Supreme Court.

43. I need not repeat that jurisdiction is everything, and that it denotes the authority or power to hear and determine judicial disputes. The Supreme Court held in R vs Karisa Chengo (2017) eKLR that:-

> " By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or 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 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 both these characteristics... where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

44. *The Constitution* at Article 162(2)(b) established this court and clothed it with jurisdiction to determine disputes relating to the environment and the use and occupation of, and title to, land. The same Constitution at Article 163(7), which provision Counsel for the 6th and 8th Respondent heavily relied on, provides that:-

> All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.

45. This provision is the Constitutional embodiment of the doctrine of stare decisis by which courts in this country are bound. The relevance of this doctrine was set out in Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (2024) KESC 34 (KLR), where the Supreme Court explained that:-

> 53. As we have stated before in several cases, unlike in other jurisdictions, Kenya's stare decisis principle is a constitutional obligation meant to enhance the legal system's predictability and certainty. In the case of Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others, SC Petition No. 2B of 2014 (2014) eKLR, we stated that Article 163 (7) of *the Constitution* is the embodiment of the time-hallowed common law doctrine of stare decisis. It holds that the precedents set by this Court are binding on all other Courts in the land. It is imperative for all courts bound by decisions to rigorously uphold their authority, ensuring the effective functioning of the administration of justice. Without this steadfast and uniform

commitment, the legal system risks ambiguity, eroding public trust, and causing disorder in the administration of justice.

46. It is not in doubt that the suit herein was determined vide the judgment delivered on 9th February, 2017 in favour of the Petitioners/Applicants herein. Upon delivery of the said judgment, the AG by an application dated 5th April, 2017 sought review of the judgment on the basis that there was an error apparent on the face of the record. The error was that the court should have excluded all public utilities such as the Eldoret International Airport, Moi University, public roads, public schools and all administrative centres on the suit parcels from the parcels granted to members of the Petitioner. By a ruling dated 10th November 2017, this Court allowed the application and reviewed its judgment to the extent sought.

47. That notwithstanding, an appeal was proffered to the Court of Appeal, being Eldoret Court of Appeal Civil Appeal No. 45 of 2017 as consolidated with Civil Appeal No. 44 & 68 of 2017. On 18th November, 2022 the Court of Appeal delivered its judgment, dismissing the Appeals and allowing the Petitioners' Cross Appeal, in effect, it upheld the decision of the trial court.

48. A further Appeal was lodged in the Supreme Court of Kenya vide Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated). The Supreme Court on 15th December, 2023 allowed the Appeal and at Order (ii) of its judgment held that:

> "The judgment and orders of the trial and appellate courts are hereby set aside in their entirety."

49. The main prayers in the Motion dated 20th September, 2024 are Prayers 1 &2 which are:-

> "1. THAT this court do provide an interpretation of the effect of the ruling and orders made in an application for review dated 5th April, 2017 and ruled on the 10th November, 2017 to the Judgment and or decree which was rendered by this Court on the 9th February, 2017 and declare whether the final Judgment of the ELC court herein was the reviewed Judgment rendered on the 10th November, 2017.
>
> 2. THAT upon such interpretation in terms of Order 2 above, the Honourable court be pleased to issue an order and/or interpretation to the effect that upon the review ruling and order dated the 10th November, 2017, then the original Judgment and/or decree rendered on the 9th February, 2017 ceased to exist in view of and/or to the extent of the reviewed Judgment herein."

50. The Supreme Court set aside the judgments and orders of the Court of Appeal and the ELC in their entirety. This, therefore, means that the decisions of this court with respect to the suit parcels of land herein, are no longer operational.

51. For the avoidance of doubt, the review ruling dated 10th November, 2017 did not replace the judgment of this court. From the wording of the review ruling, it was regarding the fate of the public utilities falling within the suit property and it was to be read with the judgment of this court. Consequently, the holding by the Supreme Court of Kenya to the effect that the judgment and orders of the trial and appellate court were set aside in their entirety, includes both the judgment and the review ruling by the trial court.

52. It is true that the Petitioners have not sought to review, set aside or overturn the decision of the supreme court. They are however asking this court to interpret its decision in a matter that has now been heard by the apex court of this land, and a final decision issued thereon. I do not see how interpreting the review ruling can be useful to any of the parties herein. The review ruling can have no effect on the impugned decision of the trial court since that judgment, as well as the review ruling, were both rendered obsolete by the Supreme Court.

53. In any event, any interpretation of the ruling and/or judgment may possibly result in this court contradicting the decision of the superior court, effectively reviewing or setting it aside. It is trite that this Court cannot overturn or make any orders touching on final decisions issued by higher courts than itself, especially on appeal. In the same vein, it has no jurisdiction to purport to interpret a decision that has been set aside by the Supreme Court of the land. Thus any attempt to do so, as the court is being asked to do so here, would be at best without jurisdiction, and at worst in excess of its jurisdiction.

54. If the Petitioners indeed want to seek any interpretation, it should be on the Judgment of the Supreme Court, which is the only operative decision where the suit land that is subject matter of this suit is concerned. And any such interpretation, can only be given by the Supreme Court which rendered that judgment.

55. I note that the Petitioners have had since 2017 to seek any clarifications on matters raised in the trial court judgment, but they did not do so. They waited until a final decision had been rendered by the SCORK, one which they have no further avenue to Appeal against, to now approach this court for an interpretation. The Application for interpretation is 7 years too late, and no doubt this court has no jurisdiction to undertake such an action.

56. This matter went from this court, all the way to the Supreme Court. Along the way, every manner of argument has been tendered. In the course of my research I came across a Notice of Motion dated 20th December, 2023 filed by the Petitioners, seeking a review of the Supreme Court's judgment delivered on 15th December 2023. That Application was dismissed on 31st May, 2024.

57. It appears that having reached the end of the road, the Petitioners have now decided to start at the root, where this dispute started, and that is this court. They have done so through the Notice of Motion dated 20th September, 2024 seeking an interpretation of the judgment delivered by this court. This can be nothing but an attempt to keep the matter alive at all costs. But it is time now to put matters to rest.

58. There must be an end to litigation, and the filing of frivolous applications such as the one of 20th September, 2024 violates the very principle of finality.

Orders:-

59. That being said, I hereby make the following orders:-

    a. The 7th Respondent's Preliminary objection dated 14th November, 2024 is hereby struck out for reason that it was filed by an advocate who is not properly on record.

    b. The 6th & 8th Defendant's Preliminary objection dated 13th December, 2024 has merit, and the same is hereby upheld.

    c. The Petitioners will bear the 6th & 8th Respondents' costs for this Preliminary objection.

60. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 21ST DAY OF MAY, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of;

Mr. Ngatia S.c for 7th Respondent.

Mr. Kenei for Petitioners.

Ms. Chirchir holding brief for Ms. Chesoo for 6th and 8th Respondent.

Mr. Kutei holding brief for Ms. Cheruiyot for A.G for 2nd, 3rd, 4th and 5th Respondents.

Court Assistant - Laban.