



**Chemor & 3 others v Chemor (Environmental and Land Originating
Summons E013 of 2024) [2025] KEELC 4683 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4683 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024**

EM WASHE, J

JUNE 24, 2025

**IN THE MATTER OF: LAND PARCEL NO. MOIBEN/MOIBEN
BLOCK 9(BARSOMBE)/319 IN UASIN GISHU COUNTY**

-AND-

**IN THE MATTER OF: SECTION 38 OF THE LIMITATION
OF ACTIONS ACT CHAPTER 22 LAWS OF KENYA**

**-AND- IN THE MATTER OF: ORDER 36 RULE 7 OF THE CIVIL
PROCEDURE RULES 2010, THE ENVIRONMENT AND LAND COURT
ACT AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

BETWEEN

JACKSON KIMUTAI CHEMOR 1ST APPLICANT

ERNEST KIMELI CHEMOR 2ND APPLICANT

JOHN CHERUIYOT CHEMOR 3RD APPLICANT

PAUL JOHN CHEMOR 4TH APPLICANT

AND

JOSEPH KIPKOECH CHEMOR RESPONDENT

RULING

1. The Respondent herein (hereinafter referred to as “the Applicant”) filed a Preliminary Objection dated 19.03.2025 (hereinafter referred to as “the present PO”) against the 1st to 4th Applicants (hereinafter referred to as “the Respondents”) Originating Summons dated 30.09.2024 (hereinafter referred to as “the pending OS”) seeking for the following Orders; -



- a. The Suit is Res Judicata under the provisions of Section 7 of the [Civil Procedure Act](#), Cap 21.
 - b. The Court has no jurisdiction to try this suit.
 - c. This suit is vexatious, frivolous and otherwise an abuse of the process of the Court.
2. The present PO was duly served on the Respondents who expressed their intention to oppose the same.
 3. The Court directed the present PO to be canvassed by way of written submissions wherein the Applicant filed his submissions in support on the 25.04.2025 while the Respondents filed their submissions in opposition dated 02.05.2025.
 4. According to the Applicant, the Respondents filed the pending OS seeking an Order of adverse possession for a portion of 1.6 Acres within the Applicant's property known as LR.NO. Moiben/Moiben Block 9(Barsombe)319 (hereinafter referred to as "the suit property").
 5. The Respondents further sought a Declaration to that effect that the County Land Registrar, Uasin Gishu County do sub-divide the suit property and register the portion of 1.6 Acres from the suit property in their names accordingly.
 6. The Applicant in response to the pending OS filed a Replying Affidavit dated 25.02.2025 in opposition.
 7. The Applicant in his Replying Affidavit dated 25.02.2025 pleaded that he was the lawful registered owner of the suit property.
 8. The Applicant further pleaded that the ownership dispute of the suit property began way back in 2012 when the Estate of the Late Chemjor Chesigary Koibelell instituted proceedings against him known as Eldoret ELC NO. 499 OF 2012.
 9. The proceedings known as Eldoret ELC NO. 499 OF 2012 were heard and determined on merit through a Judgement and Decree dated 25.09.2014.
 10. The Applicant being aggrieved by the Judgement and Decree dated 25.09.2014 in the proceedings known as Eldoret ELC NO.499 OF 2014 filed an Appeal before the Court of Appeal which was known as Eldoret Court Of Appeal Civil Appeal NO. 111 OF 2015 whose judgment was pronounced on the 28.06.2019.
 11. In the Judgement and Decree dated 28.06.2019 by the Court of Appeal in Eldoret Court Of Appeal Civil Appeal NO. 111 OF 2015, a Judgement was entered in favour of the Applicant hence bestowing him the ownership of the suit property.
 12. The Estate of the late Chemjor Chesigary Koibelell being aggrieved by the Judgement dated 28.06.2019 by the Court of Appeal in Eldoret Court Of Appeal Civil Appeal NO. 11 OF 2015 filed an Application dated 31.01.2024 seeking to set-aside and/or review the said Judgement but the Application dated 31.01.2024 was dismissed through a Ruling dated 26.09.2024.
 13. In essence, the Applicant stated that the ownership of the suit property had already been litigated upon by the Estate of the late Chemjor Chesigary Koibelell in the two proceedings known as Eldoret ELC NO.499 OF 2012 and Court Of Appeal Civil Appeal NO. 111 OF 2015.
 14. Consequently, the present OS was Res Judicata the proceedings known as Eldoret ELC NO. 499 OF 2012 and Court Of Appeal Civil Appeal NO. 111 OF 2015.



15. The Court has duly perused the present P.O, the pleadings filed by the Respondents and the Applicant as well as the submissions in support and opposition of the present PO and identifies the following issues for determination; -

Issue No. 1 – Whether or not the present os is res judicata?

Issue No. 2- Whether or not the court has jurisdiction to hear & determine the pending os?

Issue No. 3- Whether or not the pending os is an abuse of the court process?

Issue No. 4- Whether or not the present po is merited or not?

Issue No. 4- Who bears the costs of the present po?

16. The Court having identified the above issues for determination, the same will now be discussed as provided herein below;

Issue No. 1 – Whether Or Not The Present Os Is Res Judicata?

17. The first issue for determination is whether or not the pending OS is Res Judicata the proceedings known as Eldoret ELC NO. 499 OF 2012 and the Court Of Appeal Civil Appeal NO. 111 OF 2025.

18. The doctrine of Res Judicata is expressly provided for under Section 7 of the *Civil Procedure Act*, Cap 21 which states as follows;-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

19. The essence of the doctrine of Res Judicata is to prevent Courts from re-determining a matter/issue that has been finally determined by a competent Court.

20. Based on the provisions of Section 7 of the *Civil Procedure Act*, and various Judicial decisions, the ingredients that a person raising the issue of Res Judicata must prove are as follows; -

- a. The matter in issue is identical in both suits
- b. That the parties in the suit are substantially the same
- c. There is a concurrence of jurisdiction of the court
- d. That the subject matter is the same and finally
- e. That there is a final determination as far as the previous decision is concerned.

21. To begin with the first ingredient, the Court in determining an issue of Res Judicata must verify and confirm whether or not the issue and/or cause of action for determination is similar in proceedings before the Court.

22. A perusal of the pending OS before this Court confirms that the Respondents occupation on the portion of 1.6 Acres within the suit property is based on a purchase done by their deceased father Chemjor Chesigary Koibelegg from the Applicant.



23. The Respondents further pleaded in Paragraph 6 of the Supporting Affidavit to the Originating Summons as follows; -

“That the suit parcel of land having been acquired by the deceased prior to his death, now belongs to his estate.”

24. It is therefore clear in the mind of this Court that the Respondents herein instituted the pending OS on the strength of the ownership of the late Chemjor Chesigary Koibelell now deceased over a portion of 1.6 acres within the suit property which belongs to the Applicant.

25. Going back to the two previous proceedings known as Eldoret ELC NO. 499 OF 2012 and Eldoret Court Of Appeal Civil Appeal NO. 111 OF 2015, it is clear that the dispute in both proceedings was the ownership the same suit property between the Estate of the late Chemjor Chesigary Koibelel and the Applicant herein.

26. In essence, this Court hereby makes a finding that indeed the issue in the pending OS is the same and similar to cause of action and/or the suit property in the two previous proceedings known as Eldoret ELC NO. 499 OF 2012 and Court Of Appeal Civil Appeal NO. 111 OF 2015 being the ownership of the suit property.

27. The second ingredient is whether the parties in the pending OS are similar to the parties in the previous two proceedings known as Eldoret ELC NO. 499 OF 2012 and Eldoret Court Of Appeal Civil Appeal NO. 111 OF 2015.

28. In the pending OS, the Respondents have described themselves as the Children on the late Chemjor Chesigary Koibelell who passed away on the 07.07.1990 in accordance to the Death Certificate attached in the Supporting Affidavit sworn on the 30.09.2024.

29. On the other hand, the owner of the suit property is the suit property has been described as the Applicant in the present PO.

30. In the previous proceeding known as Eldoret ELC NO. 499 OF 2012, the Plaintiff was the Estate Of The Late Chemjor Chesigary Koibelell suing through Kimaiyo Chemor & Barnaba Chumo Chemor while the Defendant was Joseph Kipkoech Chemor.

31. The description of the Respondents in the pending OS is that they are children of the late Chemjor Chesigary Koibelell and therefore are part of the beneficiaries of the late Chemjor Chesigary Koibelel.

32. This being the case, it goes without saying that the Respondents are part of the Estate of the late Chemjor Chesigary Koibelel who was the Plaintiff in the original proceedings known as Eldoret ELC NO. 499 OF 2012 and the Respondent in the proceedings known as Eldoret Court Of Appeal Civil Appeal NO. 111 OF 2015.

33. On the other hand, the Applicant herein was also the Defendant in the original suit known as Eldoret ELC NO. 499 OF 2012 and the Appellant in the proceedings known as Eldoret Court Of Appeal No. 111 OF 2015.

34. Explanation No. 6 given under Section 7 of the *Civil Procedure Act* provides that: -

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.



35. In essence thereof, this Court hereby makes a finding that the Respondents in the present PO who are also the Applicants in the pending OS are part of the Estate of the late Chemjor Chesigary Koibelel who participated in the previous two proceedings known as Eldoret ELC NO. 499 OF 2012 and Court Of Appeal Civil Appeal NO. 111 OF 2015 against the Applicant in the present PO who is also the Respondent in the pending OS and the Defendant in the previous proceedings known as Eldoret ELC NO. 499 OF 2012.
36. The third ingredient is whether the present Court is of concurrent jurisdiction to that which determined the cause of action and/or issues for determination in the previous proceedings.
37. According to the proceeding known as Eldoret ELC NO. 499 OF 2012, this Court was confirmed to have jurisdiction to hear and determine the issues of ownership relating to the suit property.
38. Similar, the parties in the pending OS have also admitted to the jurisdiction of this Court to hear and determine the issues before it.
39. However, it is important to state that the decision that resolved the dispute about the ownership of the suit property between the Estate of the late Chemjor Chesigary Koibelel and the Applicant herein was the Judgement pronounced on 28.06.2019 in the proceeding known as Eldoret Court Of Appeal Civil Appeal No. 111 Of 2019.
40. As such, the decision pronounced on the 28.06.2019 in the proceeding known as Eldoret Court Of Appeal Civil Appeal No. 111 Of 2019 is binding on this Court in totality and hence this Court cannot interfere in the said suit property contrary to the Decree on the 28.03.2022 in the said proceedings.
41. The fourth ingredient is whether or not the subject matter is one and the same in the present suit and the previous suit.
42. The answer to this question is rather straight forward and the property in dispute in the pending OS is described as LR.NO.Moiben/Moiben Block 9 (Barsombe)/319 which is the same property that was subject of the litigation in the proceedings known as Eldoret Elc No. 499 OF 2012 and Eldoret Court Of Appeal Civil Appeal No. 111 Of 2015.
43. The last ingredient is whether or not there is a previous decision determining the same issue with finality which had earlier been pronounced.
44. As earlier stated, the dispute as to the ownership of the suit property between the Estate of the late Chemjor Chesigary Koibelel and the Applicant in the present PO was determined with finality on the 28.06.2019 by the Court of Appeal in the proceeding known as Eldoret Court Of Appeal No. 111 OF 2015.
45. The Court of Appeal being an Appellate Court whose Judgements and Rulings bind the Superior Court, then it goes without saying that the issues as regards ownership of the suit property were determined with finality by the Appellant Court and this Court cannot interfere with the findings therein.
46. In conclusion, this Court is of the considered option and finding that the pending OS is indeed Res Judicata the proceedings known as Eldoret Elc No. 499 Of 2012 And Eldoret Court Of Appeal No. 111 Of 2015.

Issue No. 2- Whether Or Not This Court Has Jurisdiction To Hear & Determine The Pending Os?

47. Based on the finding in Issue No. 1, this Court is of the considered view that it lacks jurisdiction to hear and determine the pending OS based on the fact that the issue of ownership of the suit



property between the Estate of the late Chemjor Chesigary Koibelel and the Applicant herein was determined with finality in the proceedings known as Eldoret Court Of Appeal No. 111 OF 2015 on the 28.06.2019.

Issue No. 3- Whether or not the pending OS is an abuse of the court process?

48. The third issue of whether or not the pending OS is an abuse of the Court process.
49. It is settled law that the Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The *Black's Law Dictionary* defines abuse of process as: -

“The improper and tortious use of legitimately issued court process to obtain a result that is either unlawful or beyond the process scope.”
50. The Court of Appeal in *Meme vs Republic & Another* (2004) eKLR discussed abuse of the court process thus:-

“An abuse of the court's process would, in general, arise where the court is being used for improper purpose, as a means of vexation and oppression, or for ulterior purposes, that is to say, court process is being misused.”
51. The abuse of process may lie in either proper or improper use of the judicial process in litigation, or the employment of judicial process to the irritation and annoyance of their opponents.
52. The Respondents in the present PO filed the pending OS about 5 years after the pronouncement of the Judgement in the proceedings known as Eldoret Court Of Appeal Civil Appeal No. 111 Of 2015.
53. There is no doubt in the mind of this Court that the Respondents herein prior to filing of the pending OS were fully away of the decision pronounced by the Court of Appeal and the rights of both the Applicant in the present PO as well as those of the Estate of the Late Chemor Chesigary Koibelel as regards the suit property.
54. The Court further takes note that Four (4) Days before the Respondents in the present PO filed the pending OS, there was a Ruling that had been pronounced on the 26.09.2024 seeking to review and set-aside the Judgement pronounced on the 25.09.2014.
55. In the Ruling pronounced on the 26.09.2024, the Court confirmed that it had become functus officio and could not interfere with its Judgement pronounced on the 25.09.2014 based on the Judgement pronounced by the Court of Appeal on the 28.06.2019.
56. Looking at the above two scenarios, it is clear that the Respondents in the present PO who are Applicants in the pending OS are simply trying to abuse the Court process by filing numerous applications and causes of action to circumvent the Judgement of the Court of Appeal dated 28.06.2019 which in this Court's view amount to abuse of the Court process.

Issue No. 4- Is The Present Po Merited?

57. Based on the findings in Issue No. 1, 2 and 3, this Court is of the Considered view and finding that the present PO is merited.

Issue No. 5- Who Bears The Costs Of The Present Po & Pending Os?

58. Costs usually follow the event and in the present PO and the pending OS, the Respondents herein are condemned to pay the costs.



Conclusion

59. In conclusion, the Court hereby issues the following Orders in determination of the Preliminary Objection dated 19.03.2025; -
- A. The preliminary objection dated 19.03.2025 is merited.
 - B. The originating summons dated 30.09.2024 is res judicata the proceedings known as Eldoret elc no. 499 of 2012 & Court Of Appeal Civil Appeal no. 111 of 2015.
 - C. The originating summons dated 30.09.2024 be and is hereby dismissed forthwith.
 - D. The respondents in the preliminary objection dated 19.03.2025 & applicants in the originating summons dated 30.09.2024 are condemned to pay costs of both the preliminary objection & the originating summons to the applicant and respondent respectively.

DATED, SIGNED & DELIVERED VIRTUALLY AT Eldoret ELC THIS 24TH DAY OF JUNE 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Brian

Plaintiff: Mr. Cheptarus for the Applicant/Respondent – (N/A)

Defendant: Mr. Korir for the Respondent/Applicant

