



**Bor (Suing as legal representative of the Estate of Michael Kiptonui Kurgat) v
Ruto (Being sued as legal representative of the Estate of Laurent Nyokosei A Soi)
(Land Case E023 of 2025) [2025] KEELC 7096 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
LAND CASE E023 OF 2025
LA OMOLLO, J
OCTOBER 16, 2025**

BETWEEN

**JOHN CHERUIYOT BOR (SUING AS LEGAL REPRESENTATIVE OF THE
ESTATE OF MICHAEL KIPTONUI KURGAT) PLAINTIFF**

AND

**DENNIS KIPRONO RUTO (BEING SUED AS LEGAL REPRESENTATIVE OF
THE ESTATE OF LAURENT NYOKOSEI A SOI) DEFENDANT**

RULING

Introduction.

1. This ruling is in respect of the Defendant's Preliminary Objection dated 18th April, 2025. It is on the following grounds;
 - a. That this suit is time barred as it offends the expressed provisions of Section 7 of *Limitation of Actions Act* Cap 22 Laws of Kenya.
 - b. That this suit is incompetent, premature and an abuse of Court's process as it is Sub Judice; Sotik PMC E.L.C Suit No. 9 OF 2019 Michael Kiptonui Kurgat Versus Dennis Kiprono Ruto (Being sued as legal Representative of the estate of Laurent Nyokosei A. Soi) which involved the same subject matter thus contravening Section 6 of the *Civil Procedure Act*.
 - c. That this Honourable Court lacks jurisdiction to entertain this matter given that it is time barred as held in the case Bosire Ongero Versus Royal Media Services (2015) eKLR (sic).

Factual background.

2. The Plaintiff commenced the present proceedings vide the Complaint dated 1st April, 2025 and he seeks the following prayers;



- a. An order for cancellation of the title deeds to LR Kericho/Cheplelwa/131-136 excised from LR No. Kericho/Cheplelwa Plot 50 (sic) and the original title being Kericho/Cheplelwa plot 50 (sic) be re-instated.
 - b. A declaration that the estate of the late Michael Kiptonui Kurgat is entitled to 28.5 acres of land in LR No. Kericho/Cheplelwa plot 50 (sic).
 - c. An order compelling Director Land Adjudication to sub divide and transfer 28.5 acres in LR No. Kericho/Cheplelwa Plot 50 (sic) to the estate of Michael Kiptonui Kurgat.
 - d. An order of permanent injunction be issued restraining the Defendant, his family, employees and/or agents from illegally entering, occupying, transferring, selling, assigning, subdividing and/or interfering in anyway with 28.5 acres being the estate of Michael K. Kurgat proprietary interest in the suit land (sic).
 - e. General damages.
 - f. Cost and interest of the suit.
3. As at the time of writing of this ruling, the Defendant has not filed his statement of defence.
 4. On 2nd July, 2025 the Court issued directions that the Preliminary Objection be heard by way of written submissions.
 5. On 18th September, 2025, the Preliminary Objection was mentioned for submissions and then reserved for ruling.

Plaintiff's Response to the Preliminary Objection

6. In response to the Preliminary Objection, the Plaintiff filed Grounds of Opposition dated 11th August, 2025. They are as follows;
 - a. That the Defendant's prayers are fundamentally incurably defective, bad in law and an abuse of the Court process.
 - b. That the Defendant/Applicant's (sic) Notice of Preliminary objection does not raise a pure point of law.
 - c. That section (sic) 9,13, and 18 of the Limitations of Actions Act excludes the claimants who have been in possession and/or occupation of the land from the operation of Section 7 of the Limitation of Action Act. (sic)
 - d. That the Plaintiff's father and his family members have been in possession of the suit property uninterrupted since 1963 until his demise and upon his demise, his family members continued the said possession to date.
 - e. That the cause actions (sic) accrued from subdivision of the parcel of land and intended evictions of the (sic) Plaintiff and his family members in January, 2025.
 - f. That the suit parcel is registered twice one (sic) in the Department of Land Adjudication Settlement in the name of the Plaintiff (sic) father and second (sic) in the Land Registry of Bomet in the name of the father of the Defendant.



- g. That despite being registered in the name of the Defendant's father, there was no discharge of the said property by the Settlement Trustee Fund (sic) and there was no subdivision of the suit property on the ground and that both parties are still living in their respective share (sic).
- h. That the cause of action is for the fraudulent discharge, fraudulent (sic) subdivision and fraudulent transfer of the suit property and not for the recovery and or contract (sic) on the suit property.
- i. That Section 26 of the *Limitation of Actions Act* allows extension of the limitation period where fraud is pleaded. Section 26 of the *Limitation of Actions Act* provide as follows;
 - “Where in the case of an action for which a period of limitation is prescribed, either-
 - (a) The action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent; or
 - (b) The right of action is concealed by the fraud of any such person as aforesaid; or
 - (c) The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”
- j. That indeed the father of the Plaintiff Michael Kiptonui Kurgat (Deceased) filed Sotik PMC ELC. Suit No. 9 of 2019 but the Plaintiff's father died before the said matter was set for hearing. Consequently the same was not prosecuted and was dismissed for want of prosecutions(sic).

Issues for determination.

- 7. The Defendant filed his submissions on 21st July, 2025 while the Plaintiff filed his submissions on 14th August, 2025.
- 8. The Defendant submits that the at paragraph 3 of the Plaint, the Plaintiff avers that his (Plaintiff's) father Michael Kiptonui Kurgat (deceased) purchased land parcel No. Kericho/Cheplelwa Plot 50 (sic) from his (Defendant) father in the year 1963.
- 9. The Defendant also submits that at paragraph 7 of the Plaint, the Plaintiff avers that in the year 1981 the said parcel of land was transferred to his (Plaintiff) father's name. However, at paragraphs 10 and 11 of the Plaint, the Plaintiff avers that the transfer could not be effected because of a loan that had not been paid.
- 10. The Defendant relies on Section 7 of the *Limitation of Actions Act*, the judicial decisions of Bosire Ongero versus Royal Media Service [2015] eKLR, Alba Petroleum Limited versus Royal Media Services [2015] eKLR and submits that no action for recovery of land should be brought upon the expiry of twelve years. He therefore urges the Court to dismiss the Plaintiff's suit.
- 11. It is the Defendant's submissions that a case was filed before the tribunal by his (Defendant) deceased father in the year 2006.
- 12. It is also the Defendant's submissions that the tribunal decided that the suit parcel be subdivided equally between the Plaintiff's deceased father and his (Defendant) deceased father.
- 13. It is further the Defendant's submissions that his (Defendant) deceased father filed Kericho Judicial Review Case No. 1 of 2018 where the award of the tribunal was set aside for lack of jurisdiction.



14. The Defendant submits that Plaintiff's father one Michael Kiptonui Kurgat (deceased) filed Sotik PM ELC Case No. 9 of 2019 against him (Defendant) in the year 2019.
15. The Defendant also submits that he has attached copies of the pleadings filed in Sotik PM ELC Case No. 9 of 2019 to his Preliminary Objection.
16. It is the Defendant's submissions that the present matter is incompetent as two suits cannot proceed at the same time as there is a possibility of the Courts issuing two conflicting decisions.
17. It is also the Defendant's submissions that the Plaintiff should prosecute Sotik PM ELC Case No. 9 of 2019 to its logical conclusion and approach this Court by way of appeal if need be.
18. It is further the Defendant's submissions that the Plaintiff failed to disclose to the Court the existence of the matter at Sotik Law Courts.
19. The Defendant relies on Section 6 of the *Civil Procedure Act* and submits that Sotik PM ELC Case No. 9 of 2019 was filed in a Court with competent jurisdiction.
20. The Defendant also submits that the subject matter in the said suit and the present suit are the same and the prayers sought are also the same.
21. The Defendant relies on the judicial decisions of Republic versus Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya [2020] eKLR, Leonard Omullo versus National Land Commission [2021] eKLR and submits that where two or more cases are filed between the same parties and over the same subject matter, the suit filed later should be stayed in order to wait the determination of the earlier suit.
22. The Defendant also submits that the suit parcel is located in Bomet County and Sotik PM ELC Case No. 9 of 2019 is pending in Sotik Law Courts which is within Bomet County.
23. The Defendant concludes his submissions by urging the Court to dismiss the Plaintiff's suit as it is statute barred and sub judice.
24. The Plaintiff submits on the following issues;
 - a. Whether the Defendant/Applicant's Notice of Preliminary Objection raises pure points of law.
 - b. Whether Section 7 of the Limitations of Action Act applies to suits based on fraudulent actions and Claimants (sic) who are in possession and/or occupation of the suit property.
 - c. Whether Sotik PMC ELC Suit No. 9 of 2019 is still active and/or pending determination of the Court thus sub judice (sic).
25. On the first issue, the Plaintiff relies on the judicial decisions of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, Lemitei Ole Koros & another v Attorney General & 3 Others [2016] eKLR and submits that the issues raised in the present suit are on fraudulent discharge and subdivision of land.
26. The Plaintiff submits that his deceased father purchased the suit parcel from the Defendant's father who is also deceased. His (Plaintiff) deceased father took possession, paid the loan (sic) and had the land registered in his name at the Department of Land Adjudication Settlement.
27. The Plaintiff also submits that the Defendant's deceased father fraudulently discharged the suit parcel and subdivided it on paper (sic) without subdividing it on the ground.



28. The Plaintiff further submits that he occupies the suit parcel together with his family members.
29. It is the Plaintiff's submissions that the issue of whether or not the suit parcel was discharged and/or subdivided can only be determined at the hearing of the suit upon the tendering of evidence. It is therefore an issue of fact and not of law.
30. It is also the Plaintiff's submissions that an issue that requires to be proved by way of evidence is not a point of law but a point of fact.
31. It is further the Plaintiff's submissions that the issue of whether or not Sotik PMC ELC Case No. 9 of 2019 is pending before Sotik Law Courts is an issue of fact and not of law and it does not therefore meet the threshold of a preliminary objection.
32. With regard to the second issue, the Plaintiff submits that Sections 9, 13 and 18 of the Limitation of Actions Act excludes claimants (sic) who have been in possession and/or occupation of land from the operation of Section 7 of the Limitation of Actions Act.
33. The Plaintiff submits that his deceased father purchased the suit parcel in the year 1963. He reiterates that his deceased father took possession upon payment of the full purchase price and registered the land in his name at the Land Trustee Settlement (sic).
34. The Plaintiff also submits that the Defendant's deceased father was registered as the owner of the suit property at the Bomet Land Registry which registration was done without a discharge letter from the Land Adjudicator stating that he had cleared the loan.
35. The Plaintiff further submits that the suit is not for recovery of land as it raises issues of fraudulent subdivision and/or transfer of the suit property.
36. It is the Plaintiff's submissions that they only became aware of the said issues in January, 2025 when the Defendant threatened to evict them.
37. On the third issue, the Plaintiff relies on the judicial decision of Kenya National Commission on Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 Others [2020] eKLR and admits that his deceased father filed Sotik PM ELC Case No. 9 of 2019.
38. The Plaintiff also submits that after his father passed away, the suit filed in Sotik was dismissed for want of prosecution.
39. The Plaintiff further submits that the Court in Sotik also held that the said suit had been filed in a Court that lacked jurisdiction.
40. The Plaintiff concludes his submissions by relying on Section 27 (1) of the Civil Procedure Act and urges the Court to dismiss the Defendant's Preliminary Objection with costs.

Analysis and Determination.

41. I have considered the Defendant's Preliminary Objection and the rival submissions.
42. It is my view that the following issues arise for determination;
 - a. Whether the Plaintiff's suit is statute barred.
 - b. Whether the Plaintiff's suit is sub judice.
 - c. Who should bear costs.



A. Whether the Plaintiff's suit is statute barred.

43. The judicial decision of *Ushago Diani Investment Limited v Abdulwahab* (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) cited with approval *Oraro v Mbaja* [2005] eKLR 141 where the Court held as follows on the nature of preliminary objections;

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

(Emphasis mine)

44. It is, therefore, evident that a preliminary objection must raise a pure point of law and it is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained.
45. The Defendant submits that the Plaintiff avers at paragraph 3 of the Plaint that his (Plaintiff) deceased father purchased the suit parcel from his (Defendant) deceased father in the year 1963.
46. The Defendant also submits that the Plaintiff avers at Paragraph 7 of the Plaint that in the year 1981 the suit parcel was transferred to his (Plaintiff) deceased father's name.
47. The Defendant further submits that however, at paragraphs 10 and 11 of the Plaint, the Plaintiff avers that the transfer could not be effected because of a loan that had not been repaid.
48. The Defendant therefore contends that based of the averments by the Plaintiff, the suit is statute barred.
49. The Plaintiff on the other hand submits that his (Plaintiff) deceased father purchased the suit parcel in the year 1963.
50. The Plaintiff also submits that his deceased father paid the purchase price in full, took possession of the land and was registered as the owner at the Land Trustee Settlement (sic).
51. The Plaintiff further submits that however, at the Bomet Land Registry, the suit parcel was registered in the name of the Defendant's deceased father.
52. It is the Plaintiff's submissions that the present suit is not for recovery of land as it challenges the fraudulent subdivision and/or transfer of the suit parcel.
53. It is also the Plaintiff's submissions that the issue came to fore in January, 2025 when the Defendant allegedly threatened to evict the Plaintiff.
54. It is further the Plaintiff's submissions that Sections 9, 13 and 18 of the *Limitation of Actions Act* exempts persons who have been in possession of land from the operation of Section 7 of the *Limitation of Actions Act*.



55. Section 7 of the *Limitation of Actions Act* provides as follows;
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”
56. Upon perusal of the Plaintiff, it is evident that the Plaintiff avers at paragraph 3 that his deceased father one Michael Kiptonui Kurgat purchased land parcel No. Kericho/Cheplelwa Plot 50 (sic) from the Defendant’s deceased father.
57. The Plaintiff avers at paragraphs 5 to 7 of the Plaintiff, that in the year 1981, the Plaintiff’s deceased father allowed the Defendant’s deceased father to occupy a portion of the suit parcel together with his (Defendant’s father) second wife.
58. The Plaintiff also avers that transfer documents were executed in the year 1981 and the land registered in the name of the Plaintiff’s deceased father.
59. The Plaintiff avers at paragraphs 8 and 9 of the Plaintiff that at the time his (Plaintiff) deceased father was purchasing the suit parcel; the Defendant’s deceased father had not cleared the loan (sic) and therefore his (Plaintiff) deceased father repaid the loan until he cleared it.
60. The Plaintiff avers at paragraphs 10 to 13 of the Plaintiff that upon completion of the repayment of the loan, his (Plaintiff) deceased father commenced the discharge process at the Land Settlement Trustee offices.
61. The Plaintiff also avers that the Land Settlement Trustees requested that the original allottee who was the Defendant’s deceased father, visits their offices and sign some documents in order to complete the transfer.
62. The Plaintiff further avers that the Defendant’s deceased father refused to visit the said offices and sign the documents.
63. It is the Plaintiff’s averment that the said dispute was taken to the tribunal where an award was given that the suit parcel be divided equally between the Plaintiff’s deceased father and the Defendant’s deceased father and adds that the decision of the tribunal was set aside in Kericho JR Case No. 1 of 2018.
64. At paragraph 17 of the Plaintiff, the Plaintiff avers that on a date not known to him, the Defendant’s deceased father fraudulently registered the suit parcel in his name and later subdivided it into land parcel No’s Kericho/Cheplelwa 131, 132, 133, 134, 135 and 136.
65. The Plaintiff then sets out particulars of fraud.
66. The Plaintiff submits that his claim is anchored on fraud and that he does not seek recovery of land.
67. In the judicial decision of Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi [2019] KEHC 2521 (KLR) the Court held as follows;

“ 13. The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The Court should formulate limitation as one of the issues for determination and decide it on evidence



adduced at the trial. On this see the case of Oruta & Another vs. Nyamato [1998] KLR 590, where the Court held that limitation of action:-

”... could only be queried at the trial but not by... a preliminary objection... The appellant could raise the objection at the trial and the trial Judge would have to deal with the matter on the evidence to be adduced at the trial” (Emphasis mine)

68. As was held in the above cited judicial decision, the defence of limitation of time can only be determined at the trial and cannot be dealt with as a preliminary objection. This is because the determination of the issue of limitation of time requires the Court to ascertain facts which can only be done by interrogating evidence. This is especially important in instances where the question as to when the cause of action arose cannot be determined from the pleadings. It is equally important where there are disputed facts as to when the cause of action arose.
69. In the present case, the Plaintiff's claim is anchored on allegations of fraudulent transfer of the suit parcel and it is not evident from the pleadings when this alleged fraudulent transfer might have taken place. This is best addressed at the hearing.

B. Whether the Plaintiff's suit is sub judice.

70. The Defendant submits that the Plaintiff's deceased father instituted a suit i.e. Sotik PM ELC Case No. 9 of 2019 against him.
71. The Defendant also submits that the cause of action and the prayers sought in the said suit are similar to the cause of action and the prayers sought in the present suit.
72. The Defendant further submits that where two or more cases are filed over the same subject matter before Courts of competent jurisdiction, the latter suits ought to be stayed in order to await the determination of the earlier suit.
73. The Plaintiff admits that his deceased father filed Sotik PM ELC Case No. 9 of 2019.
74. The Plaintiff submits that the said suit was dismissed for want of prosecution after the death of his father and that the Court also held that the suit was filed in a Court that lacked jurisdiction.
75. Section 6 of the Civil Procedure Act provides as follows;

“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.”

76. In the judicial decision of Cyrus Mucebiu Irungu v Martha Wanjiru Irungu & another [2022] KEELC 810 (KLR) the Court held as follows;

“...I agree with the submission by counsel for the Plaintiff that the issue of sub-judice does require the ascertaining of facts or probing of evidence in the two earlier suits mentioned by the 1st defendant which this honourable Court is not privy to. It therefore follows that the issue of sub-judice is not a pure point of law capable of being considered as a preliminary



objection properly raised and does not meet the litmus test of what in law amounts to a preliminary objection.”(Emphasis mine)

77. In the judicial decision of Margaret Wachu Karuri v John Waweru Ribiro [2021] KEELC 2793 (KLR) the Court 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 be (sic) ascertaining whether the issues raised in the instant suit are the same as the once (sic) in the Appeal aforesaid and further interrogate the prayers sought whether they are the same and or 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 that what has been raised by Defendant/Objector does not amount to a Preliminary Objection, and thus the Preliminary Objection is not merited.” (Emphasis mine)

78. It is clear from the above cited judicial decisions, that the question of sub judice requires the Court to ascertain facts and probe evidence and it is therefore not a pure point of law and cannot be raised by way of a preliminary objection.

C. Who should bear costs.

79. The general rule is that costs shall follow the event in accordance with the Provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

80. Taking the foregoing into consideration, I find that the Defendant’s Preliminary Objection dated 18th April, 2025 lacks merit and it is hereby dismissed with costs.

81. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 16TH DAY OF OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Parties. Absent.

Court Assistant; Mr. Joseph Makori.

