



REPUBLIC OF KENYA



**Too & another v Langat & 2 others (Environmental and Land Originating Summons E003 of 2025) [2025] KEELC 8332 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8332 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2025  
LA OMOLLO, J  
NOVEMBER 27, 2025**

**BETWEEN**

**WILLIAM KIPRONO TOO ..... 1<sup>ST</sup> APPLICANT**

**DANIEL KIPYEGON RONO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOSHUA KIPROP LANGAT ..... 1<sup>ST</sup> RESPONDENT**

**DICKSON CHERUIYOT LANGAT ..... 2<sup>ND</sup> RESPONDENT**

**SIMEON KIMUTAI LANGAT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction.**

1. This ruling is in respect of the Respondents' preliminary objection dated 25<sup>th</sup> February, 2025. It is on the following grounds;
  - a. That this suit is res judicata since its cause of action had been substantially and conclusively adjudicated by the same parties and a decision given in Kericho HCC No. 51 of 2003.
  - b. That the Applicants herein have failed to prove the principles of adverse possession with reasons that the suit lands which they allege, they are occupying, its title deeds were issued on 28<sup>th</sup> February, 2024 and 13<sup>th</sup> February, 2024 hence cannot sustain the threshold of the principle of adverse possession thereof. (sic)
  - c. That this Originating Summons and instant application herein is fatally defective, inept and abuse (sic) of Court process and the same be struck out and/or dismissed with costs.



## **Factual Background.**

2. The Applicants commenced the present proceedings vide the Originating Summons dated 8<sup>th</sup> January, 2025 where they seek the following orders;
  - a. That the Applicants have acquired title to one and a half (1.5) acres of land comprised within land parcel number Kericho/Kapsuser/1772 which has been unlawfully subdivided into seven portions that is Kericho/Kapsuser/8052, 8053, 8054, 8055, 8056, 8057 & 8058. The Applicant's one and half (1.5) acres wherein they have acquired title through adverse possession lies within land parcel numbers Kericho/Kapsuser/8055 & 8056. The same is fully developed with tea plantation (sic) and a farm house.
  - b. That an order for permanent injunction do issue restraining the Respondent or their siblings, either on their own or through their servants, agents or those claiming under them from entering, trespassing, or in any other manner dealing with the suit property i.e. the one and half (1.5) acres comprised within land parcel numbers Kericho/Kapsuser/8055 & 8056.
3. The Respondents filed a Replying Affidavit sworn by Simeon Kimutai Langat, the 3<sup>rd</sup> Respondent, on 8<sup>th</sup> May, 2025 in response to the Originating Summons.
4. On 19<sup>th</sup> March, 2025 the Court issued directions that the Preliminary Objection be heard by way of written submissions.
5. The matter was mentioned severally to confirm filing of submissions and on 15<sup>th</sup> July, 2025 it was reserved for ruling

## **Issues for Determination.**

6. The Respondents filed their submissions on 9<sup>th</sup> May, 2025 while the Applicants filed their submissions on 11<sup>th</sup> July, 2025.
7. The Respondents submit that Kericho HC P & A Case No. 149 of 2001 was filed and the Court issued a grant that gave the mode of distribution of land parcel No. Kericho/Kapsuser/1772.
8. The Respondents also submit that before the grant was issued, land parcel No. Kericho/Kapsuser/1772 was subdivided and title deeds issued. One of the resultant subdivisions was land parcel No. Kericho/Kapsuser/4048 which was registered in the name of the 3<sup>rd</sup> Respondent.
9. The Respondents further submit that after the said title deed was issued, the 1<sup>st</sup> Applicant filed Kericho HC Case No. 51 of 2003 against the 3<sup>rd</sup> Respondent and sought orders of adverse possession. The said orders were with respect to a portion of land parcel No. Kericho/Kapsuser/4048 measuring 1.5 acres.
10. It is the Respondents submissions that on 3<sup>rd</sup> November, 2006 judgement was entered in favour of the 3<sup>rd</sup> Respondent and the Court ordered that the 1<sup>st</sup> Applicant be refunded the purchase price of Kshs. 11, 500/= together with interest.
11. It is also the Respondents submissions that the 3<sup>rd</sup> Respondent refunded the 1<sup>st</sup> Applicant a sum of Kshs. 51,750/= inclusive of interest on 30<sup>th</sup> January, 2007 by depositing the said amount in Court. The said sum of money was later given to the 1<sup>st</sup> Applicant.
12. It is further the Respondents submissions that the 1<sup>st</sup> Applicant subsequently filed two applications seeking for leave to appeal out of time which applications were dismissed.



13. The Respondents therefore submit that the present suit is res judicata as the Court already pronounced itself on the Applicants claim of 1.5 acres.
14. The Respondents also submit that the title deed for land parcel No. Kericho/Kapsuser/4048 was later nullified because it was obtained irregularly.
15. The Respondents further submit that even though the said title deed was nullified, the judgement of the Court on the 1<sup>st</sup> Applicant's claim still stands as the same was not set aside.
16. The Respondents rely on Section 7 of the Civil Procedure Act, the judicial decisions of Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017]eKLR, Lal Chand vs Radha Kishan, AIR 1977 SC 789 and submit that the present suit raises similar issues to the issues raised in Kericho HCC No. 51 of 2003.
17. On the second issue, the Respondents submit that land parcel No. Kericho/Kapsuser/1772 was initially registered in the name of Kiplangat Keter (deceased).
18. The Respondents also submit that succession proceedings with respect to the estate of Kiplangat Keter (deceased) were commenced and a Certificate of Confirmation of Grant issued on 29<sup>th</sup> January, 2021 and rectified on 15<sup>th</sup> March, 2023.
19. The Respondents further submit that the Applicants herein filed a protest in the said succession cause which protest was dismissed on 29<sup>th</sup> January, 2021.
20. The Respondents submit that the Court held that the Applicants were neither creditors nor beneficiaries of the estate of Kiplangat Keter (deceased).
21. It is the Respondents submissions that the Applicants cannot therefore claim that they have acquired the resultant subdivisions of the said parcel of land by way of adverse possession.
22. The Respondents also submit that the Applicants are intermeddlers and they rely on Section 45 of the Law of Succession Act in support of their submissions.
23. It is the Respondents submissions that after the grant was confirmed, land parcel No. Kericho/Kapsuser/1772 was subdivided into land parcel No's Kericho/Kapsuser/8052, 8053, 8054, 8055, 8056, 8057 and 8058.
24. It is also the Respondents submissions that the 1<sup>st</sup> Applicant has attached Certificates of Official Search for land parcel No's Kericho/Kapsuser/8055 and 8056 which show that the said parcels of land were registered in their names on 13<sup>th</sup> February, 2024 and 28<sup>th</sup> February, 2024.
25. It is further the Respondents submissions that the period of twelve years has not lapsed since the said registration and therefore the Applicants cannot invoke the doctrine of adverse possession as a means of acquiring the said parcels of land.
26. The Respondents rely on Section 7 of the Limitation of Actions Act and submit that the contract of purchase of land between the 1<sup>st</sup> Applicant and the 3<sup>rd</sup> Respondent was terminated by the judgement of the Court delivered in Kericho HCC No. 51 of 2003 when the Court ordered that the 1<sup>st</sup> Applicant be refunded the purchase price.
27. The Respondents rely on the judicial decisions of Wambugu vs Njuguna [1983] KLR 172 and Mtana Lewa v Kahindi Ngala Mwandu [2015] eKLR as cited in Njeri Kimani (Suing in her capacity as the Administrator of the estate of Nasser Kimani Njoroge (deceased) v Edwin Onesmus Wanjau (suing



- in her capacity as Administrator of the estate of Kimingi Warier (deceased) and of Mwangi Kimingi (Deceased) [2022] eKLR in support of their submissions.
28. The Respondents submit that the Applicants cannot claim adverse possession over land that initially belonged to a deceased person who did not sell it to them.
  29. The Respondents also submit that the Applicants are not in occupation of the said parcels of land and that they (Applicants) are attempting to regain entry.
  30. The Respondents conclude their submissions by contending that this suit is res judicata and that the Applicants have failed to demonstrate that they have met the threshold of adverse possession.
  31. The Applicants submit on the following issues;
    - a. Whether the grounds raised meet the threshold set/necessary to qualify for a preliminary objection on points of law.
    - b. Whether the Originating Summons are defective, inept and an abuse of the Court process.
    - c. Whether the application and suit are res judicata.
    - d. Whether the principles and standards set for one to bring a suit on Originating Summons in Court have been met even in a case where the subject land has changed title as alleged. (sic)
  32. On the first issue, the Applicants rely on the judicial decision of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd. [1969] EA 696 and submit that for the Court to determine whether this suit is res judicata it will have to examine evidence.
  33. The Applicants also rely on George Kamau Kimani & 4 others vs County Government of Trans Nzoia and another [2014]eKLR and submit that the Respondents' preliminary objection does not therefore meet the threshold of a preliminary objection.
  34. The Applicants did not submit on the second issue.
  35. On the third issue, the Applicants rely on Civil Appeal No. 9 of 2021 (sic) and submit that the present suit is not res judicata because in the previous proceedings, the Respondents did not have capacity to litigate.
  36. It is the Applicants submissions that the Respondents' failed to inform the Court that there is Kericho CM ELC Case No. E083 of 2024 that is pending before the Magistrate's Court.
  37. It is also the Applicants submissions that in the said matter, the Respondents' are seeking orders of eviction against the Applicants.
  38. The Applicants refer to the Plaint filed in Kericho CM ELC Case No. E083 of 2024 and submit that the Respondents' aver in the said Plaint, that there were no previous proceedings between the said parties over the same subject matter.
  39. It is further the Applicants submissions that the Respondents' have therefore committed the offence of perjury.
  40. The Applicants submit that if at all there was a matter that was decided in the year 2003, it beats logic why the Respondents' are seeking for eviction orders twenty-two years later.
  41. On the fourth issue, the Applicants submit that their claim in the Originating Summons is that they have acquired a portion of land parcel No. Kericho/Kapsuser/1772 by way of adverse possession.



42. The Applicants also submit that land parcel No. Kericho/Kapsuser/1772 has been allegedly unlawfully subdivided into land parcel No's Kericho/Kapsuser/8052, 8053, 8054, 8055, 8056, 8057 and 8058.
43. The Applicants further submit that the subdivision of the said parcel of land does not interfere with their claim of adverse possession.
44. The Applicants rely on Court of Appeal at Nairobi Civil Appeal No. 24 of 1979 (sic) and Court of Appeal at Nyeri Civil Appeal No. 65 of 2016 (sic) in support of their submissions.
45. The Applicants submit that ground (2) of the Respondents' preliminary objection raises issues of fact which cannot be determined in a preliminary objection.
46. The Applicants also submit that a claim of change in title cannot be heard through a preliminary objection as it is an issue of fact and requires production of documentary evidence.
47. The Applicants also submit that the Respondents' have convoluted issues and it is not clear whether they are arguing the application dated 24<sup>th</sup> January, 2025 or whether they are challenging the Originating Summons.
48. The Applicants conclude their submissions by urging the Court to dismiss the Respondents' preliminary objection.

#### **Analysis and Determination.**

49. I have considered the Respondents' Preliminary Objection dated 25<sup>th</sup> February, 2025 and the rival submissions. The preliminary objection has three grounds. I have framed the following issues for determination:
  - a. Whether the Applicants suit is res judicata.
  - b. Whether the Applicants have failed to prove the principles of adverse possession.
  - c. Who should bear costs of the preliminary objection.

#### **A. Whether the Applicants suit is res judicata.**

50. 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)

51. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained.



Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.

52. The Respondents at ground (1) of their Preliminary objection contend that the Applicants suit is res judicata.
53. The Respondents submit that the 1<sup>st</sup> Applicant filed Kericho HCC Case No. 51 of 2003 against the 3<sup>rd</sup> Respondent where he sought orders of adverse possession over land parcel No. Kericho/Kapsuser/4048.
54. The Respondents also submit that land parcel No. Kericho/Kapsuser/4048 is one of the resultant subdivisions of land parcel No. Kericho/Kapsuser/1772.
55. The Respondents further submit the Court, in the said suit, delivered its judgement on 3<sup>rd</sup> November, 2006 wherein the 3<sup>rd</sup> Respondent ordered was to refund the 1<sup>st</sup> Applicant the purchase price that he paid together with interest.
56. It is the Respondents submissions that the 1<sup>st</sup> Applicant was duly refunded and therefore the present suit is res judicata.
57. The Applicants on the other hand submit that for a Court to determine whether a matter is res judicata it has to examine evidence which is beyond the scope of a preliminary objection.
58. In the judicial decision of Henry Wanyama Khaemba Vs Standard Chartered Bank Ltd & Another [2014] eKLR the Court held as follows;

“That re-statement of the limited scope of a Preliminary Objection brings me to the point where I hold that the Preliminary Objection by the 1<sup>st</sup> Defendant is not a true Preliminary Objection in the sense of the law. The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1<sup>st</sup> Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of the jurisdiction on preliminary objection. Court of laws have always had a well-founded quarrel with parties who resort to raising preliminary objections improperly”. (Emphasis mine)

59. The Court in George Kamau Kimani & 4 others v County Government of Trans-Nzoia & another [2014] eKLR also held as follows;

“I have considered the points raised by the first defendant. All those points can be argued in the normal manner. They do not qualify to be raised as Preliminary Points. One cannot raise a ground of res judicata by way of preliminary objection. The best way to raise a ground of res judicata is by way of notice of motion where pleadings are annexed to enable the Court to determine whether the current suit is res judicata. Professor Sifuna did not raise the issue of res judicata by way of notice of motion. Professor Sifuna only annexed a ruling in respect of a case which was struck out. This is not a proper way of raising the issue of res judicata. The other points raised in the preliminary objection are issues which require ascertainment of facts by way of evidence. They cannot be brought by way of preliminary objection.” (Emphasis mine)

60. Taking into consideration the above cited judicial decisions, this Court is inclined to agree with the Applicants submissions that the issue of res judicata cannot be raised by way of a preliminary objection as it requires interrogation of pleadings in the former suit.



61. Ground one of the Respondents preliminary objection therefore fails.

**B. Whether the Applicants have failed to prove the principles of adverse possession.**

62. Ground (2) of the Preliminary Objection is that the Applicants are seeking orders of adverse possession over parcels of land whose title deeds were issued on 28<sup>th</sup> February, 2024 and 13<sup>th</sup> February, 2024.

63. The Respondents rely on Section 7 of the *Limitation of Actions Act* and submit that they (Respondents) were registered as owners of the said parcels of land in the year 2024 and therefore, the Applicants claim of adverse possession does not meet the requirement of twelve years.

64. The Applicants submit that ground (2) of the Respondents preliminary objection raises issues of fact which cannot be determined in a preliminary objection.

65. 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.”

66. In the judicial decision of Joseph Kibaara M’Icuga V M’Chabari Kinoro [2020] eKLR the Court held as follows;

“7. In the facts and circumstances of this case, two issues arise. The 1st one is if or if not the applicant has achieved the threshold for the period of occupation of the suit land for a declaration that adverse possession has accrued. Obviously, this issue invites arguments which can only be resolved at the hearing of the suit...” (Emphasis mine)

67. In the above cited judicial decision, the Respondent filed a Preliminary Objection on the ground that the Applicant’s claim of adverse possession was premature as twelve years had not lapsed since he (Respondent) was registered as the owner. The Court held that the said issue could only be resolved at the hearing.

68. The Respondents contend that a period of twelve years has not lapsed since they were registered as owners of the suit parcels and therefore the Applicants cannot seek for orders of adverse possession.

69. Taking the foregoing into consideration, I agree with the Applicants submissions that the question whether or not the period of twelve years has lapsed since the Respondents were registered as owners of the suit parcels is a factual issue and it is therefore beyond the scope of a preliminary objection. It can only be determined at the hearing of the suit.

**C. Who should bear costs of the preliminary objection.**

70. The general rule is that costs shall follow the event. This is 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.**

71. Taking the foregoing into consideration, I find that the Respondents preliminary objection dated 25<sup>th</sup> February, 2025 lacks merit and it is hereby dismissed with costs.



72. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Sigira for the Applicants.

Mr. Koske for the Respondents - Absent

Court Assistant; Mr. Joseph Makori.

