Muchemi ((Suing as the Administrator of the Estate of Stanley Muchemi Waithaka)) v Mwangi (Enviromental and Land Originating Summons E002 of 2025) [2025] KEELC 18460 (KLR) (Environment and Land) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18460 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ENVIRONMENT AND LAND

ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2025

MC OUNDO, J

DECEMBER 18, 2025

BETWEEN

JOSEPH WAITHAKA MUCHEMI ..... PLAINTIFF

(SUING AS THE ADMINISTRATOR OF THE ESTATE OF STANLEY MUCHEMI WAITHAKA)

AND

CATHERINE WAIRIMU MWANGI ..... DEFENDANT

RULING

1. What is before me for determination is the Defendant/Applicant's Notice of Motion Application dated 19th September 2025 brought under the Provisions of Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling statutes in which the Defendant/Applicant seeks for the following orders:

    i. The Honourable Court be pleased to order that the subject matter herein and the suit in totality is res judicata pursuant to the ruling of Naivasha Chief Magistrate Court dated 21st August 1990 in Case Number 58 of 1984.

    ii. The Honourable Court be pleased to order that it lacks jurisdiction to hear and/or entertain the instant suit pursuant to the order of 21st August 1990 pronounced by a competent court which made a determination on the subject matter of the instant suit.

    iii. The Honourable Court cannot carry out a retrial of the issues in the present suit nor can it sit to determine the matter on appeal as the same would be illegal and procedural (sic).

iv. The Honourable Court be pleased to strike out the instant suit in its entirety with costs to the Applicant.

v. The cost of this application be borne by the Respondent.

2. The said Application is premised on the grounds therein and the Supporting Affidavit of even sworn by the Applicant, Catherine Wairimu Mwangi who deponed that she had purchased the property known as Parcel Number Naivasha/ Mairagushu Block 4/1344 (hereinafter referred to as 'the suit property') from one Daniel Rugano Gachugo and that she was currently the duly registered owner thereof. That after she had purchased the property, she had been informed that the said Daniel Rugano Gachugo had been purporting to sell the same property again to Stanley Muchemi Waithaka (deceased) wherein she had then filed Naivasha Civil Suit Number 58 of 1984.

3. That before the determination of the said matter and in the pendency of interim orders of injunction, Daniel Rugano Gachugo had secretly, fraudulently and illegally transferred the property to Stanley Muchemi Waithaka (Deceased) who had then been issued with a fraudulent title deed. That the Court had eventually delivered its decision on 21st August 1990 in her favour wherein it (court) was to execute the Transfer Forms in her favour effectively cancelling the title that had been held by the Respondent. She explained that the effect of the said order had been a declaration that she was the bona fide purchaser of the suit property hence she had the right to be registered as such.

4. That indeed, the Honourable Court had executed the Transfer Forms dated 14th November 1990, a Land Control Board letter of consent to transfer dated 22nd November 1990 had been issued to her ratifying the transfer of the property into her name. Vide a letter dated 23rd November 1990, the Naivasha District Officer had written to the District Land Registrar Nakuru notifying him of the ratification of their records to read herself (Applicant) as the legal owner of the suit property pursuant to the aforementioned court order. That neither the Plaintiff herein nor Daniel Rugano Gachugu had taken any action to quash the decision of the court, apply for review and/or appeal against the said order which remains in force to date.

5. That when Stanley Muchemi Waithaka (deceased), in cahoots with Daniel Rugano Gachugu declined to surrender the fraudulent title deed for cancellation, the District Lands Registrar published Gazette Notice dated 22nd March1991 and upon the lapse of time stipulated therein, she had been issued with a title deed and had been in possession and occupation of the suit property since then.

6. That however, Stanley Muchemi Waithaka (Deceased) together with his family members would illegally trespass on her property time and again, which acts of trespass she had reported to the local authorities.

7. She thus deponed that the issue on ownership of the property having been ventilated and determined before a court of competent jurisdiction which determination had not been set aside or quashed, the said decision thus the matter remains res judicata the current suit.

8. That the Plaintioff/Respondent had previously filed Naivasha ELC No. E069 of 2024 claiming a purchaser's interest, but hurriedly withdrew the suit in its entirety after she filed her Preliminary Objection, and before a ruling could be delivered. That he had now brought the instant suit in a fishing expedition seeking favorable orders.

9. That since the issue of ownership of the suit property had already been determined, the court has no jurisdiction to try the same matter as it would amount to an illegal and unprocedural re-trial and/or appeal. That subsequently, having proved that the subject matter herein is res judicata, the court should

proceed to strike out the instant suit with costs to herself. That it was thus just and equitable that the Application herein be granted as prayed.

10. In response and in opposition to the Defendant/Applicant's Application, the Plaintiff/Respondent through his Replying Affidavit sworn on the 14th October, 2025 deponed that the instant Application is inept, incompetent, misconceived, mala fides and an abuse of the court process and should be dismissed with costs. That on the face of it, the Application had neither been signed by the Applicant and/or her Advocate.

11. That the instant suit was not res judicata because the subject of the ruling in the previous matter had been between the Applicant and one David Rugano Gachugu. That their father was not a party to the suit. That further, the issue of adverse possession was not a subject matter because it had not crystallized. That for a suit to be res judicata as per the provisions of Section 7 of the *Civil Procedure Act*, the cause of action must have been alleged by one party and the determined issue to had been substantially raised in the previous case, which was not the case in the present suit. That in any case, a claim for adverse possession could only arise after the lapse of 12 years as per the Limitation of Action Act hence the Applicant could not purport that the same claim had been advanced in the former suit when it had not crystallized as per the law.

12. That the allegation that the court would be conducting a retrial was misplaced since he was just pursuing the interest upon the suit parcel of land against the Respondent on behalf of his father's estate wherein as a family, they had been in occupation of the suit parcel of land for over 30 years after his father took possession of the same.

13. That as could be evidenced from the record by the Applicant, their father's title deed had been fraudulently cancelled in the year 1991 wherein the Applicant had been registered as the owner of the suit parcel of land. That he had only learnt of the cancellation sometimes in the year 2021 when he had been summoned by the chief on allegation that the Applicant was claiming ownership of the suit parcel of land. That the cause of action in the instant matter had crystallized after the lapse of 12 years from the date of registration of the parcel of land, where they had been in continuous uninterrupted use, possession and occupation.

14. That it was not in dispute that from the time the Applicant was registered as the owner of the suit parcel of land, she had neither set foot on the suit parcel of land nor instituted any suit claiming ownership of the same against them as the occupants and/or trespasser as she had purported to allege.

15. He admitted having previously instituted Naivasha CMELC E069 of 2024 claiming interest over the suit parcel of land wherein upon being served with the Preliminary Objection, he and his advocate had learnt of the existence of a previous suit between the Applicant and one David Rugano Gachugu, and which suit had cancelled his father's title without his father's participation. That subsequently, the time within which to file review and/or set aside the proceeding having lapsed, the only plausible cause of action to claim his father's interest was through the instant claim for adverse possession.

16. That the honorable court was clothed with the requisite jurisdiction to determine the issues before hand for which the instant Application should be dismissed with costs.

17. In a rejoinder, the Applicant, through her Further Affidavit sworn on the 28th October, 2025 deponed that her application was signed by her advocate and that in any event, it was trite law that no application could be dismissed on grounds of formalities but the same ought to be dealt with on merit. She maintained that the suit herein was res judicata since the subject matter in case number 58 of 1984 was the same property in dispute herein. She deponed that at the time, David Rugano Gachugu purported to sell the same property to Stanley Muchemi Waithaka, she had filed suit based on a contract of sale

between herself and Rugano. That contrary to the Respondent's claims, Stanley Muchemi Waithaka had been aware of the existence of the suit whereupon its conclusion, he had been advised to go back to David Rugano Gachugu and claim the property he had purportedly purchased from him.

18. That as the record shows, Stanley Muchemi Waithaka, who was alive at the time, had declined to surrender the title deed wherein the court had proceeded to execute the necessary documents to transfer the property to her leading to the cancellation of the title deed held by Stanley Muchemi Waithaka. That the notice of cancellation of the said title deed was published in the Kenya gazette and Stanley was aware of the same. That nothing was done in secret and that no fraud was committed as purported.

19. She thus maintained that the instant matter was res judicata case number 58 of 1984. That the actions by the Honorable Court, the Land Control Board and the District Land Registrar could not be extinguished by the Respondent's claim herein on adverse possession. That further, a purchaser could not legally claim adverse possession as the two proprietary rights were distinct, conflicting and different. That in any event, the claim of adverse possession could not succeed where there was a determination that had cancelled the Respondent's title.

20. She maintained that she has been in occupation and possession of the suit property and validly so as the registered owner thereof. That whereas the Respondent had been trespassing on her property, it was a blatant lie that he has been on the property for 30 years. That it was absurd for the Respondent to claim that she had not been to the property or that she had no knowledge of its location when she had been in its possession since inception and before the said land had been issued with its individual title.

21. She thus maintained that the court lacks jurisdiction to hear the instant matter as it would be a grave injustice to herself having been declared the owner thereof as against David Rugano and Stanley Muchemi.

22. The Application was disposed of by way of Written Submissions.

Defendant/Applicant's Submissions

23. The Defendant/Applicant vide her submissions dated 10th November 2025 summarized the factual background of the matter in details before framing one issue for determination to wit; whether our preliminary objection has merit. She placed reliance in the decided cases of Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd (1969) EA 696 and Abdul Kassim Hassanah Gulamhussein Khala vs Southern Credit Banking Corporation Ltd, Mombasa HCCC No.270 of 2005 to submit that the issue of res judicata was a pure point of law that could be mounted as a Preliminary Objection.

24. That res judicata challenges the competent of the suit and the jurisdiction of the court to entertain it since it was a legal issue raising a point of law and therefore bars multiplicity of suits and guarantees finality to litigation.

25. That her Preliminary Objection had been to the effect that the current suit was res judicata Naivasha case No. 58 of 1984, the issues herein having had been canvassed in the previous suit hence the court lacked jurisdiction to try the issue afresh through the instant suit as it would essentially be illegally, unconstitutionally and un-procedurally sitting on an appeal against a decision of a competent court.

26. That in the previous suit, the court had made a determination on the legal owner of the suit property wherein it had gone ahead to execute the Transfer Form in her favour and a title deed issued in her name. That neither Daniel Rugano Gachugu nor Stanley Muchemi Waithaka had obtained a subsequent order to quash or review the said decision. That the court was being asked once again to illegally and

un=procedurally try the same issues on ownership of the suit property despite the existence of a valid court order to that effect.

27. That accordingly, the court has no jurisdiction to entertain the instant matter whatsoever hence the suit is bad in law, an abuse of the court process and a waste of judicial time.

28. That it is obvious that Daniel Rugano Gachugu was the mastermind behind the instant suit having lost in suit No. 58 of 1984. That subsequently, the court is estopped from retrying the same issues that involved the three parties. That the change of the claim from enforcing a purchaser's rights to adverse possession was only meant to arm twist the court into giving the Plaintiff favourable orders as the Plaintiff could not sustain suit No. E069 of 2024 since the Defendant's evidence was overwhelming.

29. That subsequently, hearing the instant matter would amount to an unlawful retrial that infringed on the rights of the Applicant/Defendant who had gone through a full trial and lawfully obtained orders in her favour. Reliance was placed in the decided case of Ngugi v Kinyajui & Others (1989) KLR 146 to submit that in the instant era of backlog in the judiciary, it would be wasteful to further proceed with the instant matter yet the same had been fully determined through a previous suit over 30 years ago.

30. In conclusion, she submitted that she had justified the upholding of the Preliminary Objection dated 19th September 2025 and urged that the same be upheld and the court proceeds to dismiss the suit herein with costs.

Plaintiff/Respondent's Submissions.

31. The Plaintiff/Respondent vide his submissions dated 10th November 2025 summarized the factual background of the matter before framing his issues for determination as follows:

    i. Whether the current suit is res judicata by dint of orders issued on 21st August 1990 in case number Naivasha SRM civil Suit No.5 of 1984-CatherineWairimu Mwangi vs Daniel Rugano Gachugu.

    ii. Whether the honorable court has jurisdiction to hear this matter

32. On the first issue for determination, he placed reliance on the definition and test application of res judicata under the provisions of Section 7 of the *Civil Procedure Act* and the decided case of In re Estate of Riungu Mukiri (deceased) [2021] eKLR. He also placed reliance in the decided case of IEBC vs Maina Kiai & 5 Others [2017] eKLR where the Supreme Court while considering the provisions of Section 7 of the *Civil Procedure Act* held that all the elements outlined thereto must be satisfied conjunctively for the doctrine to be revoked. That accordingly, applying the above threshold to the fact in the instant case; the Applicant needed to establish that the application met the settled principles for granting the orders of res judicata.

33. He argued that in Naivasha SRM Civil Suit No.58 of 1984, the parties involved were the Applicant and one Daniel Rugano which matter had sought to enforce a land sale transaction. That the current suit however was on the issue of adverse possession and although the suit parcel of land was the same in both suits, the cause of action and parties were different and distinct.

34. He placed reliance on the provisions of Sections 7, 13 and 37 of the Limitation of Action Act to submit that it was evident that the cause of action could not have been a subject for determination in Naivasha SRM Civil suit No. 58 of 1984- Catherine Wairimu Mwangi vs Daniel Rugano Gachugu since the cause of action had not crystallized and that the Respondent herein was not a party in the said suit.

35. He hinged his reliance in the decided case of Kariuki v Mica (Civil Appeal 196 of 2018) [2025] KECA 31 (KLR) (17 January 2025) (Judgment) where the court had cited the case of Mtana Lewa

v Kahindi Mwagandi [2015] eKLR, to submit that the instant matter could not have been a subject of determination in the previous suit and neither could the cause of action have arisen prior to the registration of the Applicant as the owner. He thus submitted that the matter before the honorable court is not res judicata and urged the Court to so find.

36. On the second issue for determination as to whether the honorable court has jurisdiction to hear the instant matter, he placed reliance on the provisions of Article 162 (2) (b) of *the Constitution* and Section 38 (1) of the *Limitation of Actions Act* to submit that the instant matter is properly before the honorable court and prayed that the court so find.

Determination.

37. I have considered the application herein, the Replying affidavits in opposition, the applicable law and the authorities cited by the parties herein. Pursuant to the filling of the suit where the Plaintiff/ Respondent sought for a declaration that he was entitled to be registered as the indefeasible owner of all that parcel of land known as Naivasha/ Mairagushu Block 4/1344 registered in the name of the Defendant/Applicant by virtue of adverse possession on account of his continued and uninterrupted use, possession and occupation for a period exceeding 12 years, the Defendant/Applicant opposed the hearing and determination of the suit through her Preliminary objection to the effect that the court lacked jurisdiction to entertain the same as it was res judicata Naivasha Civil Suit Number 58 of 1984, wherein the matter had been heard and the Court had pronounced itself in its decision of 27th July 1990.

38. The Defendant/Applicant's argument was that the core issue in the suit filed in Naivasha Civil Suit Number 58 of 1984 was the determination of who held the legal right to the title of parcel No. Naivasha/Mairagushu Block 4/1344. That since the ruling of 27th July 1990 specifically cancelled the Plaintiff/Respondent's father's title, the ownership question had been settled after the court found the original seller (Daniel Gachugu) had illegally tried to sell the land twice—first to her and then to Stanley Waithaka (the Plaintiff's deceased father).

39. That even if the Plaintiff's father was not party to the previous suit, yet he had been privy to the suit because his interest in the land was the specific thing the court litigated and eventually extinguished via the Gazette Notice Notice dated 22nd March 1991.

40. That the Courts generally disliked "litigation by installments." That the Plaintiff/Respondent had simply re-packaged an old ownership dispute as an "adverse possession" claim to circumvent the decision in the previous case in Naivasha Civil Suit Number 58 of 1984. She argued that the court has no power to "re-try" the case or act as an appeals court in a 30-year-old decision. She claims the Plaintiff is simply "fishing" for a new result after withdrawing a previous similar suit in Case No. E069 of 2024.

41. She countered that a purchaser of land cannot legally claim "adverse possession" as the two legal concepts were conflicting. She maintained that she has been in possession and that the Plaintiff's family are simply recurring trespassers.

42. The Plaintiff/ Respondent's argument on the other hand is that the current suit is legally distinct from the previous suit and was therefore not res judicata because it was based on Adverse Possession, his family having occupied the land continuously and uninterrupted for over 30 years even after the title was registered to the Defendant/Applicant.

43. He contends that his father was not a party to the previous suit of 1984 and that the issue of adverse possession had not "crystallized" at that time as it required 12 years of occupation after the Defendant's registration.

44. That he had only discovered the 1991 title cancellation in 2021 and argues that even if the Defendant was declared the owner in 1990, since she never physically took possession or evicted them, they had earned the right to the land through long-term occupation.

45. I thus find the issue arising for my determination being one; Whether the Defendants' Preliminary Objection has merit.

46. The Supreme Court of Kenya in Dina Management Limited vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment) held as follows:

> "The doctrine of res judicata was founded on public policy and was aimed at achieving two objectives namely, that there must be finality to litigation and that the individual should not be harassed twice with the same account of litigation. The doctrine of res judicata may be pleaded by way of estoppel so that where a judgment had been delivered, subsequent proceedings were estopped. Where res judicata was pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounted to an allegation that all the legal rights and obligations of the parties were concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of fact, that was a form of action estoppel. Res judicata, was embodied in section 7 of the *Civil Procedure Act*.
>
> The elements to be proven before a court could arrive at the conclusion that a matter was res judicata were to be conjunctive rather than disjunctive before a suit or an issue was to be deemed res judicata on account of a former suit. It must be demonstrated that there was a former judgment which was final, it was on merit and by a court having jurisdiction and had identical parties, subject and cause of action."

47. It must be noted therefore that the doctrine of res judicata is not a mere technicality that can be cured by invoking Article 159 (1)(d) of *the Constitution* but is a matter of substantive law and jurisdiction. It is a pillar of the judicial system that serves the greater public interest in finality and the efficient use of judicial resources.

48. The all-important case decided by the Court of Appeal in the case of Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors Limited (1969) EA. 696 was clear as to the effect of raising an improper Preliminary Objection in that the court had held thus: -

> "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."

49. In order therefore to decide as to whether the Plaintiff's current case is res judicata Naivasha SRM Civil suit No. 58 of 1984- Catherine Wairimu Mwangi vs Daniel Rugano Gachugu, the court of law as is trite of me, should always look at the decision claimed to have been settled, the issues in question and the entire pleadings of the previous case and the instant case to ascertain;

    i. What issues were really determined in the previous case;

    ii. Whether they are the same in the subsequent case and were covered by the decision of the earlier case.

iii. Whether the parties are the same or are litigating under the same title and that the previous case was determined by a court of competent jurisdiction.

50. In order to so determine, the Applicants herein in their Notice of Motion only annexed a certified true copy of the Ruling certified on the 21st August 1990 wherein the court had directed that pursuant to an application filed in court on the 3rd March 1989, that it would execute all the transfer documents to the suit land in her favour. She also annexed a Gazette Notice of 22nd March 1991 compelling Stanley Muchemi Waithaka to produce the title deed to the suit land within 30 days and in default the same shall be deemed cancelled and the land registered to the Respondent. The none compliance with the Notice subsequently resulted into registration of the Land to the Respondent on the 5th September 1991 as per the title deed herein annexed.

51. Suffice to say, the Respondent neither annexed the pleadings nor the judgement in respect of the previous suit so as to show clearly what the decision of the court was and whether that the suit fell on all fours on the doctrine of res judicata.

52. The burden of proving that a matter is res judicata lay squarely on the party asserting it (the Defendant). To succeed, she ought to have provided the court with the actual "record of the court" to allow the court to compare the two cases. Without the actual Plaint, Defense, and Judgment from Naivasha Case No. 58 of 1984, the court cannot verify if the issues and parties were truly identical.

53. Section 107 and 109 of the *Evidence Act*, stipulate that "he who alleges must prove." By merely mentioning a case number and date without providing the certified copies of the pleadings, the court cannot determine what was pleaded in the previous case. Needles to say that a Preliminary Objection must be based on pure points of law and if the court has to "search" for facts or look for files that aren't provided, to ascertain which parties were present in the previous suit, verify the Defendant's claim that Stanley Muchemi Waithaka (the Deceased) was aware of or participated in those proceedings, if he wasn't a party, the Preliminary Objection ceases to be a pure point of law.

54. Further, a factual dispute where the Defendant says she has been in possession and the Plaintiff's say they have been in possession for 30 years, is a disputed fact and therefore cannot be a Preliminary Objection. Res judicata can only be determined as a preliminary point if the facts are clear and admitted.

55. The East African Court of Appeal in Gurbachan Singh Kalsi v Yowani Ekori [1958] EA 450 had held as follows;

> " The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time."

56. This notwithstanding, the court of Appeal in Lewa v Mwagandi [2015] KECA 532 (KLR) had held as follows:

> " As it can readily be seen most countries do maintain the doctrine of adverse possession and courts continue to recognise the public policy value of extinguishing title to registered property after a certain period. Limitation of actions mechanisms such as adverse possession play an important role in the enforcement of one of the fundamental legal principles of the judicial system, which is that at some point, litigation must come to an end. It is in the public interest and indeed in the interest of justice that an absentee landlord should not be allowed

to hang the sword of Damocles over the heads of landless squatters in such times when the commodity is so scarce. Limitation of time for land claims as with claims of any other nature exist for three main reasons which are:

i. A plaintiff with a good cause of action ought to pursue it with reasonable diligence (equity does not aid the indolent);

i. A defendant might have lost evidence over time to disprove a stale claim; and

i. Long dormant claims have more cruelty than justice in them (Halsbury's Laws of England, 4th Edition.)''

57. The above holding, affirmed that adverse possession is constitutional and a valid way to lose land rights through "laches" and therefore supports the Plaintiff's right to bring the suit even if the Defendant has a valid title. Adverse possession requires 12 years of continuous, uninterrupted occupation. Even if the 1990 ruling vested ownership in the Defendant, it had been alleged that the Plaintiff's family remained in occupation and therefore a new "limitation clock" started in 1991. By 2003, 12 years later, the Plaintiff had acquired a prescriptive right to the land which right could not have been a "matter in issue" in 1984 because the time had not yet lapsed.

58. In the case of Kariuki v. Mica [2025] KECA 31, the court of Appeal had held as follows:

> "From the foregoing authorities, it matters not when the appellant became the registered owner. Of importance is whether the respondent was in possession of the suit property and her rights as an adverse possessor had crystallized as at the time the appellant acquired the title. Going by the appellant's own testimony, the respondent was in occupation of the suit property in 1971 when he bought the land. As such, the acquisition of the title to him in 2001 was subject to the respondent's overriding interest protected by Section 30(f) of the Registered *Land Act* (now repealed)."

59. In this holding, the court clarified that a claim for adverse possession cannot arise before the owner is registered. The Plaintiff is using this holding to argue that their claim only "crystallized" after 1991, making it a new issue.

60. For all the above reasons, I find that the court having previously allegedly (there having been no decision annexed) ruled in 1990 that the Defendant was the owner, that judgment settled the rights as they existed at that time. Such that there had been a Post-Judgment Neglect, if the Defendant, after procuring the alleged decision in her favour in 1990, failed to physically evict the Plaintiff and allowed them to stay for more that 12 continuous years, a new legal right was born.

61. I find that the Defendants' Preliminary Objection lacks merit, the Plaintiff's suit I find is not Res judicata Naivasha Civil Case No. 58 of 1984, but a fresh claim seeking to recognize a proprietary interest acquired through the Defendant's long-term inaction (laches). The suit raises triable issues of fact that cannot be disposed of by a Preliminary Objection. The Preliminary Objection raised in the Application dated the 19th September 2025 is herein dismissed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 18TH DAY OF DECEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE