



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ELC LC NO. E036 OF 2024**

**SARAH CHEPKEMOI NGENO.....1<sup>ST</sup>**

**PLAINTIFF/APPLICANT**

**JOSEPH KIMELI KIRUI..... 2<sup>ND</sup>**

**PLAINTIFF/APPLICANT**

**SAMUEL BARUSEI NGENO..... 3<sup>RD</sup>**

**PLAINTIFF/APPLICANT**

**MUTAI SIMION OLE KIPNGENO.....4<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**SAMMY MUTAI..... 5<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**KIPLIMO KIRUI..... 6<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**STANLEY NGETICH..... 7<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**ELZABETH KIPAS..... 8<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**DANIEL BARUSEI..... 9<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**VERONICA CHELANGAT..... 10<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**PAUL KIPNGETICH KOECH.....11<sup>TH</sup>**

**PLAINTIFF/APPLICANT**

**VERSUS**

**NEPATAO KEIWA..... 1<sup>ST</sup>**

**DEFENDANT/RESPONDENT**

**DOPOI KEIWA ..... 2<sup>ND</sup>**

**DEFENDANT/RESPONDENT**

**EDWIN TIMA..... 3<sup>RD</sup>**

**DEFENDANT/RESPONDENT**

**RULING**

1. The matter for determination herein is a **Notice of Preliminary Objection** dated **15<sup>th</sup> September 2025** filed by the Plaintiffs/Applicants, which Preliminary Objection challenges the Defence and Counterclaim dated **12<sup>th</sup> May 2025** filed by the Defendants/Respondents. The Preliminary Objection is premised on grounds that;-

- i. The Defendants lack the requisite Locus standi to prosecute and/or maintain the Counterclaim herein. The Defendants have instituted a Counterclaim seeking a declaration that they are the legal owners of the suit property as legal heirs of the “alleged” registered proprietors. However, they lack the requisite locus standi to institute and/or maintain any claim on behalf of the deceased’s estate because they have not obtained a grant of letters of administration ad litem contrary to the mandatory provisions of Section 82(a) of the Law of Succession Act (Cap 160).***

**ii. The Defendants' Counterclaim is statute-barred pursuant to the provisions of Section 7 of the Limitation of Actions Act (Cap 22). The cause of action relates to the ownership of land and has been brought more than twelve (12) years after the right to sue occurred.**

**iii. The Defendants' Counterclaim is incompetent, null and void, fatally defective and a clear abuse of the court process.**

2. The Notice of Preliminary Objection was canvassed by way of written submissions.

3. The Plaintiffs/ Objectors filed their written submissions undated through **Kadet & Co Advocates** wherein they submitted that they instituted the suit by an Originating Summons dated **12<sup>th</sup> December 2024** claiming legal ownership of **Narok Cis-Mara Ilmotiok/385**, as beneficiaries of their late father who was a purchaser. However, the Defendants, in a Statement of Defence and Counterclaim dated **12<sup>th</sup> May 2025**, claimed interest as heirs of alleged registered proprietors including **Misia Ole Keiwua**, now deceased, without holding a limited Grant **ad litem**.

4. The Plaintiffs/ Objectors raised these issues for determination; -

**i) Whether the Defendants have the requisite locus standi to maintain the**

**counterclaim in the absence of a limited grant ad litem.**

**ii) Whether the Defendants' counterclaim dated 12<sup>th</sup> May 2025 is time barred pursuant to the provisions the Limitation of Actions Act (Cap 22 Laws of Kenya).**

5. On the issue of **Locus Standi** of the Defendants, the Plaintiffs/Objectors relied on **Sections 82(a)** and **3** of the **Law of Succession Act, Section 2** and **Order 24 Rule 4** of the **Civil Procedure Rules**, and submitted that only duly appointed personal representatives may litigate on behalf of a deceased's estate. Authorities cited included **Alfred Njau v City Council of Nairobi(1982)KAR 229, Kihanya & Others v Gichuri & another Civil Appeal 15 of 2019[2024]KECA 852[KLR], Virginia Edith Wambui Ochieng v Joash Ochieng Ougo & Another [1982-881]1 KAR 1049, Trouistik Union International v Jane Mbeyu & Another [1993] KECA 89 (KLR), and Wasike & another v Eldoret Express Limited & 13 others [2025]KEELC 5948(KLR)** — which authorities affirmed that absence of **locus standi** renders a suit null and **void ab initio** and incapable of being cured retrospectively.
6. The Applicants maintained that being heirs does not confer capacity to sue and that none of the Defendants is an administrator or legal representative of the estate of **Misia Ole Keiwua**; hence, the Counterclaim is incompetent.

7. They also submitted that in the Counterclaim, the Defendants described themselves as the legal and rightful heirs of the suit property which they alleged that is registered in the names of **Misia Ole Keiwua, Koiyiaki ole Keiwua and Ngeriwuat Keiwua**.
8. However, it was their submissions that one of the registered proprietors, **Misia ole Keiwua** has since passed on, and the Defendants herein have not presented a **Grant ad litem** for his estate for purposes of this suit.
9. On whether the Counterclaim is statute-barred, the Plaintiffs/Objectors relied on **Section 7** of the **Limitation of Actions Act**, arguing that the Defendants' claim for recovery of land is based on a cause of action arising around **2001**, nearly **twenty-six (26) years** prior to filing of the said Counter-claim and therefore it is hopelessly time-barred.
10. The Plaintiffs/ Objectors further stated that the Counterclaim does not plead fraud or concealment of material facts to invoke **Section 26** of the Act. Citing cases such as **Edward Moonge Lengusuranga v James Lanaiyara & another [2019] KEHC 6758 (KLR)**, **Damaris Kondoro v Gachanja Gitere & another [2005] KEHC 3105(KLR)**, and **Njeri v Ndirangu & Another [2025] KEELC 4217(KLR)**, the Plaintiffs submitted that limitation goes to jurisdiction, and a court must down its tools where a claim is statute-barred.

11. Ultimately, the Plaintiffs /Objectors submitted that the Defendants' Counterclaim is a ***sham, incompetent, null and void, fatally defective*** and **an abuse of the court process**, and they urged the court to uphold the Preliminary Objection dated **16<sup>th</sup> September 2025** and proceed to strike out the Counterclaim with costs.
  
12. The Defendants filed their written submissions dated **11<sup>th</sup> November 2025** in opposition to the Counter-claim and raised these issues for determination;
  - i. Whether the defendants have locus standi to defend the suit***
  - ii. Whether the defendants counterclaim is time barred***
  - iii. Whether the Plaintiff's application is merited***
  - iv. Who bears the resulting cost?***
  
13. It was the defendants' submissions that they have ***locus standi*** as the legal and registered owners of ***NAROK/CIS-MARA/ILMOTIOK/385***, which they inherited through joint tenancy, which includes the principle of survivorship as provided under **Section 49** of the **Land Act 2012**.
  
14. Further, the Defendants submitted that the alleged deceased owner does not appear anywhere on the title since the ownership of the parcel of land long passed to the current owners, and his name only appeared on the previous certificate of title that long ceased to exist immediately after the issuance of the current title in the name of the defendants.

15. The Defendants further submitted that by virtue of joint ownership on the property by the previous owners, the property rightfully and legally passed to the current registered owners. They relied on **Section 2** of the **Land Act 2012** on joint tenancy. They further argued that the Plaintiffs' preliminary objection on **locus standi** was misinformed, and it lacked merit.
16. Regarding the Counterclaim, the Defendants submitted that the same was not time-barred as the plaintiffs' claim of adverse possession was invalid due to their entry into the land being based on **a sale agreement**, which constitutes **permission** and does not meet the criteria for adverse possession.
17. The Defendants relied on various decided cases being; **Jandu v Kilpal [1975] EA 225, Sisto Wambugu v Kamau Njuguna (1982-88) 1 KAR 217, Wambugu v Njuguna (2004) 2 KLR 309, and Samuel Miki Waweru v Jane Njeri Richu Civil Appeal No. 122 of 2001 (UR)** to support their argument that possession under permission or a sale agreement cannot constitute adverse possession.
18. Further, the defendants highlighted inconsistencies in the plaintiffs' claims, asserting that the plaintiffs cannot simultaneously claim **adverse possession** and purchaser's interest at the same time. Reliance was sought in the case of Mukisa **Biscuit Manufacturing Co.**

***Ltd v West End Distributors Ltd (1969) EA 696 and Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] ekr***, to argue that the plaintiffs' Preliminary Objection was improper, misinterpreted the law, and failed to disclose a reasonable cause for disposing of the suit.

19. The Defendant concluded their submissions by urging the court to dismiss the plaintiffs' Preliminary Objection with costs.
20. The above are the argument in support of the ***Preliminary Objection*** and in opposition to the same. From the court record, it is evident that the Plaintiffs herein filed an Originating Motion dated ***12<sup>th</sup> December 2024***, wherein they sought to be registered as the proprietors of the suit property ***Narok/Cis Mara/ Ilmotiok/385***, measuring ***20.5 ha*** by way of adverse possession.
21. However, the Defendants contested the said Originating Summons through their Statement of Defence and Counter-claim wherein they averred that they are the legal and rightful heirs of the suit property Narok/Cis Mara/Ilmotiok/385, which was initially registered in the names of ***Misia Ole Keiwua, koyaki ole Keiwua and Ngerwua Keiwua***, who were the absolute registered owners and fathers to the Defendants herein, which fact is well captured in the green card.
22. The Defendants also filed and sought for various prayers among them a declaration that the Plaintiffs(Defendants)

are the legal heirs of the suit property, which was registered in the names of their fathers, and for an order of eviction directed to the Defendants (Plaintiffs to the OS) among other prayers.

23. It is on the above background that the Plaintiffs/ Objectors raised the instant Preliminary Objection. It is trite that a preliminary objection is a legal challenge raised at the start of a case, focusing on a pure point of law or procedure challenging **jurisdiction** and or **admissibility** of the case, on which if the same is upheld, could bring the case to an end without the need to examine the main facts. Thus the court is asked to throw out the case preliminarily based on a fundamental flaw, arguing that the case should not proceed at all or should not be heard by that court, often saving time and resources. See the case of **Quick Enterprises Ltd v Kenya Railways Corporation, Kisumu High Court Civil Case No 22 of 1999**.
24. The characteristics of Preliminary Objection are; it is based on a pure point of Law, thus a Preliminary Objection is based on legal principles, but not disputed facts. Further, no factual evidence is needed, and it is assumed the opponent's pleaded facts are true for argument's sake, and, it is capable of disposing of the entire matter preliminarily if successful, thus making further proceedings unnecessary.
25. The purposes of **Preliminary Objection** is primarily to "nip the matter in the bud" and save the court's time by

resolving a fundamental legal defect before expensive litigation begins, such as where the court has no jurisdiction or the parties suing have locus standi.

26. The case of ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969]***, which is a *locus classicus* one on the definition of a Preliminary Objection establishes that a preliminary objection must be on a pure point of law based on the assumption that the other side's pleaded facts are true. It is not valid if it requires factual investigation or judicial discretion.

27. Preliminary objection should be raised when it very necessary as stated in the ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] E.A. 696***, where Law JA, made this pertinent observation:

***“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way preliminary objection. The improper raising of points of preliminary objection does nothing but unnecessarily increases costs and, on occasion, confuses issues. This improper practice should stop”.***

28. Having laid the background of the case and the basic of a preliminary objection, does the Notice of Preliminary

Objection raised herein meets the above qualification or description of a Preliminary Objection?

29. The Plaintiffs/Objectors have averred that the Defendants have no requisite ***Locus standi*** to maintain the Counter-claim, since they have not taken out letters of administration in respect of the estates of their deceased estate, and that the Counter-claim is ***statute barred***, and offends the provisions of ***Section 7*** of the ***Limitation of Actions Act***.
  
30. It is evident that ***locus standi*** gives one standing to institute a case, and any challenges regarding ***locus stand***, being the legal capacity to bring a lawsuit and limitation of actions under statute of limitations are considered pure points of law, because if the court is to uphold any of them, then it is capable of bringing a matter to a close. See the case of ***Mukisa Biscuits Manufacturers Ltd v West End Distributors Ltd (1969) EA696***.
  
31. It is trite that ***Locus Standi***, is a threshold issue that concerns the legal right of a party to be heard by the court. It involves an assessment of the facts as pleaded in the case against the established legal principles of standing. If a party lacks a sufficient interest or legal capacity to sue, the court cannot assume jurisdiction to entertain the matter.

32. Further, Limitation of Actions refers to the statutory time limits within which a legal action must be initiated. Once this period has lapsed, the claim becomes "**statute-barred**," and the court is generally barred from hearing it, regardless of the merits of the case. The determination often involves interpreting the relevant statute, being the **Limitation of Actions Act Cap 22, Laws of Kenya**, and the date the cause of action accrued, which is primarily a legal determination.
33. Therefore, it is clear that the issues raised in the preliminary objection being **Locus standi** and **limitation of actions** are pure points of law, and thus the **Preliminary Objection** meets the threshold of what amount to a preliminary objection as held in the case of **Mukisa Biscuits Case(Supra)**.
34. Having founds that the two issues raised are pure points of law, is the Preliminary Objection merited?
35. On **locus standi**, the Plaintiffs submitted that the Defendants in the counter-claim alleged that they were the legal owners and heirs of the alleged registered proprietors, but they lack the requisite **locus standi** to institute the suit on behalf of the deceased's estate since they had not taken letters of Administration, since one of the registered proprietor **Misia Ole Keiwua**, has since passed on, and the defendants have not taken grant of representation.

36. For that reason, the Defendants or plaintiffs to counter-claim lacks ***locus standi*** to maintain the counter-claim. However, the Defendants submitted that the previous certificate of title was on joint ownership, and when one of the joint owner died, the title reverted to the existing living owners. It was their claim that the current title does not bear the title of the previous deceased owner. The Defendants attached a copy of the current title, which was issued **5<sup>th</sup> August 2024**.

37. As submitted by the Defendants, **Section 2** of the **Land Act 2012** defines joint tenancy as follows;

***“joint tenancy” means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners.”***

38. Further **Section 49** of the said Act provides that transmission upon death of joint proprietors is that if one or more joint proprietors of any land dies, the Registrar shall delete the name of the deceased proprietor, since joint tenancy carries with it right to survivorship, and the property passes automatically to the existing joint owner.

39. This court is bound by the Court of Appeal decision in the case of ***Mburu Echaria vs Priscilla Njeri Echaria ( 2007) eklr***, where the court held;

***“The first statement of the law by Gachuhi JA, that in a joint tenancy each party owns***

***an undivided equal share therein is not, with respect, entirely correct. It is in a tenancy in common in equal shares where each tenant owns an undivided equal share in the property. On the contrary, one characteristic of a joint tenancy is that the joint tenants have a unity of interest, that is to say, that, although they have separate rights, the interest of each joint tenant is the same in extent and duration and in reality, they are in the position of a single owner. A second characteristic of a joint tenancy is a right of survivorship. On the death of one joint tenant his interest accrues to the other joint tenant(s) by right of survivorship (jus accrescendi).”***

40. Therefore, if the deceased person was a joint tenant, then upon his death, the interest vested in the surviving joint tenant, and the Defendants did not need to take out letters of administration over the estate of the deceased joint tenant.
41. Consequently, this point of preliminary objection does not stand.
42. The next issue is that the counter-claim is time barred having been brought out 12 years after the cause of action accrued.

43. The Plaintiffs /Objectors submitted that the cause of action arose in **2001**, and the action is for recovery of land, which has been brought **26 years** after the cause of action. The Plaintiffs relied on the case of **Edward Moonge Lengusuranga vs James Lanaiyara & Another [2019]KEHC 6758 (KLR)** where the court held;

***“The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the Limitation of Actions Act. It follows therefore that by the time the Plaintiff filed this suit, the claim was statute barred.***

***In the case of Bosire Ongero vs Royal Media Services [2015]eklr the court held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.***

***....clearly, this court lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further step. The Preliminary Objection herein succeeds in its entirety with the result that the Plaintiff’s suit is herein struck out with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.”***

44. They also submitted that the question of limitation goes to the jurisdiction of the court, an relied on the case of **Njeri vs Ndirangu & antoher ELC e224 of 2023)KEELC 4217 (KLR)(29 May 2025)**, where the court held;

***“There is no doubt that questions of Limitation of Action goes to the jurisdiction of the Court. Where a suit is time barred, the Court has no jurisdiction to hear it. See the case of Bosire vs Royal Media Services [2015]eklr where the court stated; - The issue of limitation goes to the jurisdiction of the Court to entertain claims and therefore if a matter is statute barred the Court has no jurisdiction to entertain the same.”***

45. On their part, the Defendants submitted that they have been on and off the suit land because of the rampant tribal clashes in the said area. That the Plaintiffs always enter the suit land, when the Defendants are away, and leave whenever the Defendants are back. The exact date of when they entered is not ascertained. Further, the Defendants have a title deed to the suit property, and are claiming recovery of the land from the Plaintiffs because the Plaintiffs occupation on the suit land is based on permission.
46. Given that the Defendants have alleged that being nomads, they are always away for green pasture, and they return after the rains, this court cannot ascertain the exact date when the cause of action arose. The Plaintiffs case is on adverse possession, and the court finds that they will have to prove that the Defendants ownership has been

extinguished by virtue of limitation of time, by calling evidence, but not through a preliminary objection.

47. Consequently, the court finds and holds that the counter-claim is not barred by the limitation of time, and the Preliminary Objection on this point is not merited.

48. The Plaintiffs also alleged that the Defendants' counter-claim is defective, incompetent, null and void and an abuse of the court process. However, the above assertion was based on the fact that the Plaintiffs had averred that the suit is time barred and the Defendants have no ***Locus standi***, which the court has found in the negative.

49. For the above reasons, this court finds and holds that the Preliminary Objection dated ***15<sup>th</sup> September 2025***, as filed by the Plaintiffs/Objectors is ***not merited***, and the same is ***dismissed entirely*** with costs to the Defendants.

50. Let the suit proceed for hearing and the same be determined on merit.

***It is so ordered.***

***Dated, signed and delivered virtually at Narok this 18<sup>th</sup> day of December 2025.***

***L. Gacheru***  
***Judge***

***Delivered online in the presence of***

***Elijah Meyoki -Court Assistant***

***Mr. Langat holding brief for Mr. Kadet for the Plaintiff/Objector***

***Ms Lepore holding brief for Ms Nchoe for the Defendants***

**L. Gacheru**  
**Judge**