

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC OS NO. E006 OF 2025

**IN THE MATTER OF: SECTION 7,37 & 38 OF THE LIMITATION
OF ACTIONS ACT CAP 22**

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**IN THE MATTER OF: ORDER 37 RULE 7 (1),(2) AND 3 OF
THE CIVIL PROEDURE RULES, 2010**

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**IN THE MATTER FOR: AN ORDER THAT THE PLAINTIFF HAS
ACQUIRED TITLE UNDER THE PROVISIONS OF THE
LIMITATIONS OF ACTIONS ACT, CAP 22 OF THE LAWS OF
KENYA BY WAY OF ADVERSE POSSESSION AND SHOULD BE
REGISTERED AS SUCH**

-BETWEEN-

JULIOUS KIPROP

LAGAT.....APPLICANT/RESPONDENT

-VERSUS-

MORRICE

BERERWE

SICHANGI...

1STRESPONDENT/APPLICANT

TAISWA

SICHANGI

MANYARA....2NDRESPONDENT/RESPONDENT

MANYARO

ABRAHAM

LENGARIE...3RDRESPONDENT/APPLICANT

R U L I N G

1. The 1st and 3rd Respondents in the main Originating Summons dated 31.01.2025 (hereinafter referred as **“the Applicants”**) have filed a Notice of Motion dated 22.07.2025 (hereinafter referred to as **“the present Application”**) seeking the following Orders against the Applicant in the main Originating Summons (hereinafter referred to as **“the Respondent”**); -

**a) THAT the Honourable Court be pleased to restrain
MR. CHRISTOPHER MITEI, ADVOCATE and the firm of**

M/S ARAP MITEI & COMPANY, ADVOCATES from further representing the Plaintiff in the suit herein.

b) THAT the Costs of this Application be provided for.

2. The grounds in support of the prayers above are contained in the body of the present Application as well as the Supporting Affidavit sworn by 1st Applicant on the 22.07.2025 and can be summarised as follows; -
 - i) A number of documents relied by the Respondent were prepared and witnessed by MR. CHRISTOPHER MITEI, ADVOCATE who is also the advocate acting on behalf of the Applicant.
 - ii) In the Response filed by the 1st Applicant, some of the documents being relied by the Respondent are disputed and in particular the Specific Power of Attorney in respect to the property known as LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135.
 - iii) Consequently, the maker of the said documents including the Specific Power of Attorney in respect to the property known as LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 who is MR. CHRISTOPHER MITEI, ADVOCATE will most be likely called to testify and cross-examined on the same.
 - iv) As such, MR. CHRISTOPHER MITEI, ADVOCATE who is the legal Counsel of the Respondent in this Application should be disqualified from acting in this matter as he is a potential witness.
 - v) The Applicants are further of the view that the involvement of MR. CHRSTOPHER MITEI, ADVOCATE as an Advocate of the Respondent and a potential witness is in contravention of Paragraph 8 of the Advocates (Practice) Rules Legal Notice No. 19 of 1967.

3. The present Application was duly served on the Respondent who did oppose the same by filing a Replying Affidavit dated 06.08.2025.
4. In the Replying Affidavit dated 06.08.2025, the Respondent did state the following in opposition of the present Application; -
 - i) The Respondent did not deny that indeed the Land Transfer Form and the Specific Power of Attorney in relation to the property known as LR.NO.SOY/KAPSANG BLOCK 2 (NYALILBEI)/135 were attested by MR. CHRISTOPHER MITEI, ADVOCATE.
 - ii) However, the exercise of attesting of the Land Transfer Form and the Specific Power of Attorney by MR. CHRISTOPHER MITEI, ADVOCATE did not in any way prejudice the Applicant's case before the Court.
 - iii) The Respondent did further point out that the use of the Land Transfer Form and Specific Power of Attorney was to demonstrate the intentions of the parties during the transaction.
 - iv) Consequently, the person who attested the Land Transfer Form and Specific Power of Attorney did not in any way affect the intentions of the parties therein.
 - v) In any event, the Respondent pointed out that the most important document in this proceeding is the Agreement For Sale and not the Land Transfer Form and the Specific Power of Attorney.
 - vi) As such, the Respondent did plead that the presence of MR. CHRISTOPHER MITEI, ADVOCATE as his Counsel would not in any way prejudice the Applicants case.

- vii) In conclusion, the Respondent sought to have the present Application dismissed with costs.
5. The Replying Affidavit dated 06.08.2025 was duly served on the Applicants.
6. The Applicants did file a Supplementary Affidavit dated 08.10.2025 in response to the Replying Affidavit dated 06.8.2025 in which the following facts were reiterated; -
- i) The Applicants were of the view that the Respondent had admitted to the fact that indeed the two documents namely the Land Transfer Form and the Specific Power of Attorney were attested by MR. CHRISTOPHER MITEI, ADVOCATE.
 - ii) Keeping in mind that the two documents played a crucial role in the occupation and use of the property known as LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135, then there is a high likelihood that MR. CHRISTOPHER MITEI, ADVOCATE who attested the same will be called to give evidence on the circumstances or legality of the said documents.
 - iii) As such, both the firm of M/S ARAP MITEI & COMPANY, ADVOCATES and MR. CHRISTOPHER MITEI, ADVOCATE should be barred from acting for the Respondent herein as it would be in contravention of Paragraph 8 of the Advocates (Practice) Rules, Legal Notice No. 19 of 1967.
7. After the Supplementary Affidavit dated 08.10.2025 was served on the Applicants, the Court did direct that the present Application would be heard by way of written submissions.
8. In compliance thereof, the Applicants did file their submissions dated 08.10.2025 while the Respondent did file his submissions dated 14.11.2025.

9. The Court has indeed perused the present Application, the Replying Affidavit thereof, the Supplementary Affidavit as well as both submissions and identifies the following issues for determination; -

**ISSUE NO.1- WHO IS THE MAKER OF THE DOCUMENTS
NAMELY THE LAND TRANSFER FORM & THE
SPECIFIC POWER OF ATTORNEY?**

**ISSUE NO.2- WHO IS THE ADVOCATE THAT ATTESTED
TO THE SIGNATURES THEREOF?**

**ISSUE NO.3-IS THERE ANY PREJUDICE IF MR.
CHRISTOPHER MITEI, ADVOCATE OR THE FIRM
OF ARAP MITEI & COMPANY, ADVOCATES
ACTS FOR THE RESPONDENT?**

**ISSUE NO.4- IS THE PRESENT APPLICATION MERITED
OR NOT?**

**ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT
APPLICATION?**

10. The Court having identified the above-mentioned issues for determination, the same will now be discussed below.

**ISSUE NO.1- WHO IS THE MAKER OF THE DOCUMENTS
NAMELY THE LAND TRANSFER FORM & THE
SPECIFIC POWER OF ATTORNEY?**

11. The first issue for determination is the source of the two documents which are in dispute.
12. According to the Applicants, the two documents which are in dispute and would require the evidence of MR. CHRISTOPHER MITEI, ADVOCATE are the Land Transfer Form and the Specific Power of Attorney.
13. Indeed, the Respondent did include the Land Transfer Form of the property known as LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 in its List of Documents dated 31.01.2025.
14. The second document which is the Specific Power of Attorney was produced by the Respondent in the Supplementary Affidavit dated 21.03.2025.
15. The Court having carefully perused both the Land Transfer Form and the Specific Power of Attorney which are the documents in dispute confirms the following; -
 - a) The Land Transfer Form dated 10.03.2023 between the Applicant and the 1st Respondent was not drawn by the firm of M/S ARAP MITEI & COMPANY, ADVOCATES or MR. CHRISTOPHER MITEI, ADVOCATE.
 - b) The Specific Power of Attorney dated 10.03.2023 by the Respondent was drawn by the firm of MS. ARAP MITEI & COMPANY ADVOCATES.

16. In essence, this Court is of the finding that the Land Transfer Form dated 10.03.2023 is not a document that was prepared by the firm of M/S ARAP MITEI & COMPANY, ADVOCATES or MR. CHRISTOPHER MITEI, ADVOCATE.
17. On the other hand, the Specific Power of Attorney dated 10.03.2023 by the Respondent is found by this Court to have been drawn and prepared by the firm of M/S ARAP MITEI & COMPANY, ADVOCATES which is operated by MR. CHRISTOPHER MITEI, ADVOCATE.

**ISSUE NO.2- WHO IS THE ADVOCATE THAT ATTESTED
TO THE SIGNATURES THEREOF?**

18. The second issue is who attested or witnessed the signatures of the parties in the two documents namely the Land Transfer Form and the Specific Power of Attorney.
19. A perusal by the Court on the documents in issue confirms that the Land Transfer Form 10.03.2023 and the Specific Power of Attorney dated 10.03.2023 were all witnessed by MR. CHRISTOPHER MITEI, ADVOCATE.
20. In conclusion, this Court hereby makes a finding that both the Land Transfer Form dated 10.03.2023 and the Specific Power of Attorney dated 10.03.2023 were indeed attested and/or witnessed by MR. CHRISTOPHER MITEI, ADVOCATE.

**ISSUE NO.3-IS THERE ANY PREJUDICE IF MR.
CHRISTOPHER MITEI, ADVOCATE OR THE FIRM
OF ARAP MITEI & COMPANY, ADVOCATES
ACTS FOR THE RESPONDENT?**

21. The third issue for determination is whether the Applicants would suffer any prejudice if the firm of M/S ARAP MITEI & COMPANY, ADVOCATES or MR. CHRISTOPHER MITEI, ADVOCATE would act for the Respondent.
22. The Applicants did plead and submit that MR. CHRISTOPHER MITEI, ADVOCATE who also is the proprietor of M/S ARAP MITEI & COMPANY, ADVOCATES is a potential witness at the hearing in view of the fact that the Land Transfer Form and the Specific Power of Attorney both dated 10.03.2023 were in contention.
23. The Respondent on the other hand was of the view that the two documents namely the Land Transfer Form and the Specific Power of Attorney both dated 10.03.2023 were not the important documents in the claim before the Court.
24. According to the Respondent, the main document in support of his claim against the Applicants is the Agreement For Sale dated 13.12.1997 prepared by Birech & Company, Advocates.
25. Looking at the two conflicting views, the Court needs to appreciate the facts of the suit filed by the Respondent against the Applicants and evaluate whether there is a possibility of MR. CHRISTOPHER MITEI, ADVOCATE being called as a witness during the trial of the pending Originating Summons.
26. According to the Amended Originating Summons dated 03.04.2025, the Respondent herein is seeking to be declared the lawful owner of the property known as LR.NO.SOY/KAPSANG BLOCK 8(NYALILBEY)/135 based on an Agreement For Sale dated 13.12.1997.
27. In support of this fact, the Respondent did file a List of Documents dated 31.01.2025 which contains the Agreement For Sale dated 13.12.1997 and the Land Transfer Form of LR.NO. SOY/KAPSANG BLOCK 8 (NYALILBEY)/135.

28. In addition to the above, the Respondent also did seek to rely on the Specific Power of Attorney dated 10.03.2023 which was contained in the Supplementary Affidavit sworn on 21.03.2025.
29. It is crucial to note that the recipient of the Specific Power of Attorney dated 10.03.2023 was MR. CHRISTOPHER MITEI, ADVOCATE.
30. Due to the fact that the Respondent seeks to rely on the Agreement For Sale dated 13.12.1997, the Land Transfer Form of LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 and the Specific Power of Attorney dated 10.03.2023 in favour of MR. CHRISTOPHER MITEI, ADVOCATE, then it is inevitable that all these documents will be subjected to cross-examination by the Applicants.
31. In cross-examination, the Applicants have the right to call the makers of the documents and ask questions as regards the authenticity and veracity of both the documents and/or their contents therein.
32. While MR. CHRISTOPHER MITEI, ADVOCATE might have only witnessed and/or attested the Land Transfer Form for the property known as LR.NO.SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 and therefore might not have much to testify on the same, he is on the other hand the maker of the Specific Power of Attorney dated 10.03.2023 and the recipient of the same as well.
33. Consequently, there is a high possibility that MR. CHRISTOPHER MITEI, ADVOCATE will be called during the Trial to produce the Specific Power of Attorney dated 10.03.2023.
34. Similarly, MR. CHRISTOPHER MITEI, ADVOCATE being the recipient of the Specific Power of Attorney dated 10.03.2023, he will be required to give evidence of the circumstances in which he was to execute the delegated powers in execution of

both the Agreement For Sale dated 13.12.1997 and the Land Transfer Form in relation to the property known as LR.NO. SOY/KAPSANG BLOCK 8 (NYALILBEY)/135.

35. Having established these facts hereinabove, the next question would be whether the attendance of MR. CHRISTOPHER MITEI, ADVOCATE during the trial would prejudice the Applicant's case in any way.
36. In the Court's view, the answer is to the positive.
37. The reason is that the basic document that is alleged to have created a relationship or contract between the Applicants and the Respondents is the Agreement for Sale dated 13.12.1997 prepared by BIRECH & COMPANY, ADVOCATES.
38. As already stated, the Land Transfer Form in relation to the property known as SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 was never drawn by MR. CHRISTOPHER MITEI, ADVOCATE save for witnessing the signatures thereof.
39. The fact that the Land Transfer Form in relation to the property known as LR.NO. SOY/KAPSANG BLOCK 8 (NYALILBEY)/135 was never drawn by MR. CHRISTOPHER MITEI, ADVOCATE or his firm M/S ARAP MITEI, ADVOCATES speak to the fact that he never dealt from the Applicants herein in the said transaction that began with the Agreement For Sale dated 13.12.1997 prepared by the firm of BIRECH & COMPANY, ADVOCATES.
40. The only document that MR. CHRISTOPHER MITEI, ADVOCATE or the firm of M/S ARAP MITEI & COMPANY, ADVOCATES were instructed to prepare was the Specific Power of Attorney dated 10.03.2023.
41. According to the Specific Power of Attorney dated 10.03.2023, MR. CHRISTOPHER MITEI, ADVOCATE or the firm of M.S ARAP MITEI & COMPANY, ADVOCATES is alleged to have received

instructions from the 1st Applicant appointing MR.CHRISTOPHER MITEI,ADVOCATE as his Attorney.

42. Clearly therefore, MR. CHRISTOPHER MITEI, ADVOCATE and/or the firm of ARAP MITEI & COMPANY, ADVOCATE were the Advocates of the 1st Applicant allegedly authorised to undertake the process of obtaining various consents relating to the property known as LR.NO. SOY/KAPSANG BLOCK 8 (NYALILBEY)/135.
43. This being the scenario, there is no doubt in the mind of this Court that MR. CHRISTOPHER MITEI, ADVOCATE and/or the firm of M/S ARAP MITEI & COMPANY, ADVOCATES did act for the 1st Applicant and now is acting for the Respondent.
44. This state of affair creates a conflict of interest for MR. CHRISTOPHER MITEI, ADVOCATE and/or the firm of M/S ARAP MITEI & COMPANY, ADVOCATES for the obvious reason that he has conflicting instructions from both the 1st Applicant and the Respondent herein.
45. In essence, this Court hereby makes a finding that the Applicants herein stand to suffer prejudice if MR. CHRISTOPHER MITEI, ADVOCATE and/or the firm of M/S ARAP MITEI & COMPANY, ADVOCATES continue to act for the Respondent herein.

ISSUE NO.4- IS THE PRESENT APPLICATION MERITED OR NOT?

46. Based on the finding of the Court in Issue No. 3 that MR. CHRISTOPHER MITEI, ADVOCATE and/or the firm of M/S ARAP MITEI & COMPANY, ADVOCATES is conflicted in this matter and there is a prejudice that will be visited on the Applicants if he continues to represent the Respondent herein, then it is this Court's finding that the present Application is merited.

ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

47. On costs, the Applicants have indeed prosecuted the present Application against the Respondent.
48. Consequently, the Respondent is condemned to pay costs to the Applicants.

CONCLUSION

49. In conclusion thereof, this Court hereby makes the following Orders in determination of the present Application; -

A.THE NOTICE OF MOTION DATED 22.07.2025 IS MERITED.

B.THE FIRM OF M/S ARAP MITEI & COMPANY, ADVOCATES AND/OR MR. CHRISTOPHER MITEI, ADVOCATE BE AND IS HEREBY BARRED FROM ACTING FOR THE RESPONDENT HEREIN JULIOUS KIPROP LAGAT IN THE PROCEEDING KNOWN AS ELDORET ENVIRONMENT & LAND COURT ORIGINATING SUMMONS NO. E006 OF 2025 HENCEFORTH.

C.THE RESPONDENT HEREIN IS CONDEMNED TO PAY COSTS OF THIS APPLICATION TO THE APPLICANTS HEREIN.

DATED, SIGNED and DELIVERED in ELDORET this 21ST DAY OF JANUARY, 2026.

EMMANUEL.M. WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Plaintiff: Mr. Mitei for the Plaintiff/Respondent

Defendant: Mr. Mua for the 1st and 3rd Defendant/Applicant
Mr. Nyandoro for the 2nd Defendant