

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET

ELC APPEAL No. E055 OF 2024

STEPHEN CHERONO alias SAEED SAEED
.....**APPELLANT**

VERSUS

DANIEL LADAMA RUTO
.....**RESPONDENT**

RULING:

1. This Ruling is with respect to the Respondent/Applicant's Notice of Motion dated 14th July, 2025 and the Notice of Preliminary Objection dated 25th August, 2025.

Notice of Motion dated 14th July, 2025;

2. In the Notice of Motion, the Respondent/Applicant seeks the following orders:-
 - (1) THAT this Appeal be struck out.
 - (2) THAT the Appellant/Respondent STEPHEN CHERONO alias SAEED SAEED CHERONO be declared bereft of capacity to prosecute this appeal having been declared bankrupt in Kisumu Bankruptcy Case No. 5 of 2015.
 - (3) THAT this appeal be declared incompetent and improperly before the Court.
 - (4) THAT the Appellant be declared to be in breach of Section 9 of the Bankruptcy Act, Cap 53 Laws of Kenya and be jailed forthwith.

(5) THAT the Appellant/Respondent be compelled to pay the costs of this Appeal and the assessed costs in Eldoret Chief Magistrates Court Land Case No. E078 of 2023.

3. The grounds pleaded in support of the Motion are set out in the Applicant's Supporting Affidavit sworn on the same date. The Applicant deponed that he is the registered owner of Sergoit/Sergoit Block 3(Tugen)/220 measuring 4.779 Ha (hereinafter the suit property). He deponed that after he filed suit against the Appellant/Respondent in the Magistrates Court, the Respondent then filed a Defence and Counterclaim despite knowing that he was incapacitated to file pleadings having been declared bankrupt. That the Respondent further filed a Memorandum of Appeal among other pleadings even though he knew he was committing illegalities under the Bankruptcy Act, CAP 53 Laws of Kenya.
4. The Applicant averred that a receiving order was made against the Appellant in Kisumu Bankruptcy Case No. 5 of 2015. He explained that the person named in the Bankruptcy proceedings, one Shaheen Saif Saeed, is the same person named Stephen Cheruiyot Cherono as per Passport No. 00894946 being a Citizen of Qatar and holder of a Kenya ID No. 22820927. The Applicant averred that the proceedings before this court were filed by a person with no capacity to do so and should thus be struck out with costs for being tainted with illegalities, and being in breach of the Bankruptcy Act as well as the procedures of this court.

Notice of Preliminary Objection dated 25th August, 2025;

5. Further to the Motion, the Respondent/Applicant filed a Notice of Preliminary Objection (PO) dated 25th August, 2025 stating that:-

“TAKE NOTICE that at hearing of this suit on 7.10.2025, the Respondent shall raise a preliminary objection to the effect that the Appellant is an undischarged bankrupt and has no right to prosecute any suit in any Court or swear any documents before court.”

6. In reply to both the Motion and the PO, the Respondent filed a Replying Affidavit dated 6th October, 2025. He termed the Application and the PO misconceived and malicious, and denied the allegation that the Applicant was the registered owner of the suit land. The Respondent claimed that he was a stranger to the bankruptcy proceedings filed against him, and that he was never a party in Bankruptcy Case No. 05 of 2015. The Respondent further averred that his name is Stephen Cheron, not Saif Saeed Shaheen as alleged, and added that he was also a stranger to the Passport annexed by the Applicant. The Respondent added that the Applicant filed Eldoret Chief Magistrate Court Land Case No. E078 of 2023 against him, and if he knew that he was bankrupt, he ought to have sued the receiver of his estate.
7. He accused the Applicant of mischief in obtaining an ex-parte judgment against him and now using dubious means to deny

him the right to Appeal. He further accused the Applicant of raising the issue of lack of locus standi after judgment was entered in his favour, yet the alleged bankruptcy order was issued way back in 2015 before the Applicant filed suit against him. He alleged that having proceeded with the suit all through to judgment, the Applicant had waived any objection of whatever nature and should be estopped from raising objections at the Appeal stage. He claimed to have a legitimate interest in the outcome of the Appeal as judgment was entered against him in the Trial Court. He asked the court to dismiss both the Application and the PO with costs.

8. The Applicant then filed a Supplementary Affidavit sworn on 13th October, 2025 accusing the Respondent of lying in his Affidavit. He claimed that the Respondent had admitted his Identity card number was 22820927 but changed his address to differ from the one in the bankruptcy proceedings. He pointed out that the Respondent had not denied the fact that his ID Card was attached to the bankruptcy document in Bankruptcy Case No. 5 of 2015. He further claimed that the Respondent had not denied the names Saeed Saeed and had even identified himself as such in the Memorandum of Appeal.
9. The Applicant also claimed that the Respondent had continuously referred to himself as Saeed Saeed, Saeed Saeed Cherono and Shaheen Saif Saeed in various Affidavits confirming that he is the person referred to. The Applicant explained that he became aware of the details of the

Respondent's bankruptcy in Eldoret ELC Case No. 366 of 2015, where the Respondent is the Plaintiff. That in the case, the court confirmed the Respondent was a dual citizen of Kenya and Qatar where he is known as Stephen Cheruiyot Cherono and Shaheen Saif Saeed respectively in the two jurisdictions.

10. The Applicant asserted that the Respondent is the same Stephen Cheruiyot Cherono in the ID No. 22820927 referred to in the bankruptcy proceedings, and was also identified in Eldoret Children's Case No. 85 of 2015. Further, that the Official Receiver has also confirmed that the Applicant herein is also known as Shaheen Saif Saeed. He averred that under Order 24 Rules 6(1), 6(2) and 9, the stage of proceedings does not matter when an application for striking out has been lodged. He accused the Respondent of perjury, and claimed that the Appeal is for striking out for lack of capacity due to bankruptcy.

Submissions:

11. In line with directions issued by this Court, the Application and the PO were canvassed by way of written submissions. Both the Applicant and the Respondent filed their written submissions on the Application and the PO.

The Applicant's Submissions;

12. The Applicant's submissions in support of the Motion and the PO are dated 10th November, 2025. In those submissions, Counsel submitted that the Respondent herein has been involved in other cases before. He cited ***Eldoret ELC Case No. 366 of***

2015, Stephen Cheruiyot Cherono vs Kenneth Kiptum Kandie, where the court upheld a PO on grounds that Stephen Cheruiyot Cherono was the same person known as Shaheen Saif Saeed referred to in the bankruptcy proceedings.

13. Counsel also cited **Eldoret Chief Magistrates Children's Case No. 85 of 2015** where the court found that the Respondent was the same person referred to as Shaheen Saif Saeed and ordered him to pay maintenance. Counsel for the Applicant further submitted that they had made inquiries to the Office of the Official Receiver, who had confirmed through the letter marked as annexure "DLR 4" that the Respondent is the same person referred to as Stephen Cheruiyot Cherono of ID No. 22820927.
14. Counsel submitted that under Section 9 of the Bankruptcy Act, once a receiving order is made, the Official Receiver is constituted the receiver of the property of the debtor, and is the person by law entitled to sue for and on his behalf. Counsel argued that the Respondent should be jailed for contempt as he had perjured himself. Counsel further submitted that under Order 24 Rules 6 & 9, in the absence of the Official Receiver in proceedings of this nature, the Appeal is rendered incompetent. He asked that the Appeal be struck out with costs.

The Respondent's Submissions;

15. On the part of the Respondent, Counsel submitted that Section 9 of the Bankruptcy Act only discusses the implication of a receiving order, in particular prevents creditors from initiating suits against bankrupt individuals, but does not bar a bankrupt

from initiating proceedings. Counsel cited the case of **Wambulwa vs Pius (2022) eKLR**. Counsel therefore contended that the Respondent was not barred by Section 9(1) from filing this Appeal. Counsel argued that conversely, if the Respondent is indeed Shaheen Saif Saeed, then it is the Applicant herein who was barred from instituting Eldoret CM ELC No. E078 of 2023.

16. Counsel submitted that the Applicant lacked capacity to commence the suit against the Respondent, thus the proceedings in CM ELC No. E078 of 2023 ought to be declared null and void to avoid a miscarriage of justice. Counsel argued that a debtor retains the right to initiate legal action, thus the Applicant had capacity to initiate the instant Appeal. Counsel submitted that the repealed Bankruptcy Act does not criminalise or prohibit an undischarged bankrupt from prosecuting his own case.
17. Counsel contended that the Applicant sued the Respondent improperly, and having obtained a favourable judgment, now seeks to curtail the Respondent's right to Appeal. He argued that the Applicant's actions were not only an afterthought, but were also malicious and scandalous. He asked the court to grant the Respondent a chance to be heard on his appeal or declare the trial court decision in CM ELC E078 of 2023 null and void. Counsel relied on the case of **Surjit Singh Hunjan & Another vs The Deposit Protection Fund Board (2012) eKLR**.
18. Counsel also submitted that the Applicant was aggrieved by the decision of the lower court, and the appeal ought to be allowed

to proceed as a matter of right. Counsel argued that the Applicant is a proper party in this case as his rights and obligations to the suit land have been affected by the judgment of the lower court. In conclusion, Counsel claimed that this Motion and the lower court case were brought improperly, thus the Applicant ought to pay the costs of both.

Analysis and Determination:

19. I have perused the Applicant's Notice of Motion and preliminary objection, the Affidavit filed in Reply to both, as well as the submissions filed by the parties herein. The following issues arise for deliberation:-

- (i) Whether Stephen Cheruiyot Cherono, the Respondent herein is the same person referred to as Shaheen Saif Saeed;*
- (ii) Whether the Respondent has the requisite locus standi to institute and maintain the instant Appeal*
- (iii) Who shall bear the costs of this Application and the PO?*

(a) Whether Stephen Cheruiyot Cherono, the Respondent herein is the same person referred to as Shaheen Saif Saeed;

20. This Appeal arose out of a decision in Chief Magistrate's ELC Case No. E078 of 2023 where the Applicant herein sued the Respondent as Stephen Cheruiyot Cherono alias Saeed Saeed Cherono. The Respondent filed a Statement of Defence and Counterclaim in that suit, and the same was successfully prosecuted by the Applicant until delivery of judgment, which is the subject of this Appeal.

21. The Applicant, now Respondent in the Appeal, has however moved the court to strike out the Appeal. His application is on grounds that the Respondent is an undischarged bankrupt pursuant to a receiving order issued in Kisumu Bankruptcy Cause No. 5 of 2015, pursuant to which he claims the Respondent has no locus standi. The Respondent has denied knowledge of the Bankruptcy suit, claiming that the person referred to in the bankruptcy proceedings is a stranger to him.
22. To start off, there is need to first determine whether the Respondent herein, Stephen Cheruiyot Cherono is the same person known as Shaheen Saif Saeed named in the proceeding known as Kisumu High Court Bankruptcy Cause No. 5 of 2015. I have seen the receiving order made on 25th February, 2015 in Kisumu Bankruptcy Cause No. 5 of 2015 constituting the Official Receiver as receiver of his property. The Debtor/Applicant in the said suit is one Shaheen Saif Saeed. The receiving order was published in the Kenya Gazette vide Gazette Notice No. 3004 on 30th April, 2015 also in the name of Shaheen Saif Saeed.
23. I must point out that the Respondent does not appear to have raised any issue in the trial court with regard to the name Saeed Saeed being used as his alias. He even went ahead and filed the Memorandum of Appeal herein as Stephen Cheruiyot Cherono alias Saeed Saeed. The Applicant has referred this court to the decision of Justice Anthony Omwayo in **E & L Case No. 366 of 2015, Stephen Cheruiyot Cherono vs Kenneth**

Kiptum Kandie (2016) KEELC 679 (KLR), where it was held that:-

“I have looked at the replying affidavit of Kenneth Kiptum Kandie sworn and filed on the 17th December 2015 paragraphs 28 to 35 on the allegation of the plaintiff's dual citizenship of Kenya where he is known as Stephen Cheruiyot Cheron and Qatar where he is known as Shaheen Saif Saeed which is not controverted and that the official receiver has constituted a manager of the properties of the plaintiff. It is clearly evident that on 25th February 2015 the High court at Kisumu issued a receiving order against Shaheen Saif Saeed who is the plaintiff herein which order was issued on his own petition in the matter of Shaheen Saif Saeed bankruptcy cause no 05 of 2015. I am satisfied that the plaintiff herein is the person referred to as Shaheen Saif Saeed referred to in the Kenya Gazette of 30th April 2015 at page 1047 in Gazette notice no 3004 of 17th March 2015 as one against whom a receiving order had been made. I have not seen an order granted to the plaintiff allowing him to commence this suit as required by law aforesaid. The upshot of the above is that the Preliminary Objection is upheld and the suit herein is struck out with costs.”

24. This court was also pointed towards the proceedings known as ***Eldoret Children's Case No. 85 of 2015*** where the

Respondent is referred to as Stephen Cheruiyot Cherono aka Saif Saeed Shaheen. I have seen a copy of the judgment in this suit, and note that the Respondent entered appearance and filed a Defence. In this suit, the question whether Stephen Cheruiyot Cherono is the same person as Saif Saeed Shaheen was framed as one of the issues for determination. In determining this issue, the court referred to ELC Case No. 366 of 2015 (supra) and the held that Stephen Cheruiyot Cherono and Saif Saeed Shaheen were one and the same person.

25. But most importantly, the Applicant through his Advocate on record in this Appeal, wrote to the Official Receiver vide letter dated 7th October, 2025. They sought a confirmation on whether the person named Shaheen Saif Saeed in Kisumu High Court Bankruptcy Cause No. 5 of 2015, holder of Qatari Passport No. 00894646 was the same person as Stephen Cheruiyot Cherono, holder of Kenyan ID No. 22820927. Attached to the letter were copies of the passport, Kenyan ID Card and the Gazette Notice.
26. The Office of the Official Receiver wrote back on 9th October, 2025 indicating that according to their records, Stephen Cheruiyot Cherono of Kenyan ID No. 22820927 is the same person as Shaheen Saif Saeed of Qatari Passport No. 00894646. The letter further clarified that the said Shaheen Saif Saeed is the Petitioner in Kisumu High Court Bankruptcy Cause No. 5 of 2015.

27. Having received confirmation from court records and the Official Receiver, I have no doubt in my mind that the Respondent herein is the same person as the individual known as Shaheen Saif Saeed. He is the subject of Kisumu Bankruptcy Cause No. 5 of 2015 in which the receiving order was issued.

(b) Whether the Respondent has the requisite locus standi to institute and maintain the instant Appeal;

28. The next issue for determination is whether the Respondent has the necessary legal standing to initiate and pursue this Appeal. The Applicant herein claims that pursuant to the Receiving Order made on 25th February, 2015 in Kisumu High Court Bankruptcy Cause No. 5 of 2015, the Respondent has no locus standi to institute and maintain the instant Appeal. The applicants contend that this order is indicative of the Respondent being declared bankrupt, and that under Section 9 of the repealed Bankruptcy Act, he has no locus standi to institute and/or maintain the present Appeal.

29. The said Section 9 of the repealed Bankruptcy Act provided that:-

9. Effect of receiving order

(1) On the making of a receiving order the official receiver shall be thereby the constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence

any action or other legal proceedings, except with the leave of the court and on such terms as the court may impose.

(2) This section shall not affect the power of a secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

30. I have read the above provision and I agree with the decision of A. M. Mabeya J. in **Surjit Singh Hunjan & Another vs The Deposit Protection Fund Board (Sued as The Liquidator of The Prudential Building Society) (2012) KEHC 4558 (KLR)**, where he held that:-

“My reading of that section is quite clear. The person barred from commencing or continuing with any proceeding after a receiving order has been made is a creditor and not a debtor. In the case before me, the person who commenced the proceedings was a debtor. Obviously, she had locus standi to bring this suit. She was never barred by any provision of law.”

31. In the more recent case of **Wambulwa vs Pius (Insolvency Cause E001 of 2021) (2022) KEHC 14878 (KLR)**, W.M. Musyoka J. held as follows:-

“I have read and re-read section 9(1) of the Bankruptcy Act, and my understanding of it is that, it is the filing of other actions or initiation of other legal

proceedings, that is targeted by the provision. That is to say initiation of other suits against the debtor over any other debt, it does not prevent interlocutory applications being filed in the cause where the bankruptcy order is made. Secondly, section 9(1) applies only to creditors. It only talks about creditors commencing action against the debtor or other legal proceedings. It does not target debtors. The decisions cited in support of this objection are not relevant, except for that in Surjit Singh Hunjan & another vs. The Deposit Protection Fund Board (sued as the liquidator of the Prudential Building Society [2012] eKLR (Mabeya, J), where the court stated that section 9(1) only barred creditors and not debtors from continuing or commencing actions after the making of a receiving order.”

32. However, the Bankruptcy Act was repealed by the Insolvency Act of 2015 and Section 9 cited by the Applicant is of little to no use in this instance. In its place is Section 48(1) of the Insolvency Act, which provides that:-

48. What happens or is to happen on and after bankruptcy commences

(1) When a bankruptcy order commences—

(a) all proceedings to recover the bankrupt's debts are stayed; and

(b) the property of the bankrupt (whether in or outside Kenya), and the powers that the bankrupt could have

exercised in respect of that property for the bankrupt's own benefit, vest in the Official Receiver.

33. This new statute came into effect in the year 2015, whereas the proceedings in the lower court known as CM ELC No. E078 of 2023 were commenced in the year 2023. Notably also, this Appeal was lodged in the year 2024, way after the Insolvency Act came into effect. It goes without saying, therefore, that the repealed Bankruptcy Act cannot apply to the present Appeal.
34. What is applicable is the Insolvency Act, CAP 53 laws of Kenya, which does not in any way bar a person adjudged bankrupt from initiating a suit, or in this case, an Appeal. This was noted by Justice Musyoka in ***Wambulwa vs Pius (Supra)*** where he explained as follows:-

“The wording of section 48(1) of the Insolvency Act, in my view, does not restrain the debtor from moving the court in the same cause to challenge the process of the making of the order, for it merely stays all proceedings by other creditors to recover debts of the debtor, and vests the property of the debtor in the Official Receiver.”

35. Based on the foregoing, it is my considered view that the Respondent herein possesses the requisite locus standi to institute and prosecute this Appeal. In conclusion, I find that although the Applicant has established that the Respondent herein, Stephen Cheruiyot Cheron, is the same person referred to in Kisumu High Court Bankruptcy Cause No. 5 of 2015, he

has failed to demonstrate that the Respondent lacks locus standi to institute and maintain this instant Appeal.

(c) **Who shall bear the costs of this Application and the P.O?**

36. The law remains that costs follow the events, and that it is the successful party that is entitled to costs. The power to award costs is discretionary and is donated to this Court by Section 27, of the Civil Procedure Act, which provides that:-

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

37. It is trite that such discretion must be exercised judiciously. In exercise of its discretion, a court may decline to award costs to the successful party where there exists justifiable reasons for doing so. In this instance, the Court has noted that although the Applicant’s Motion and PO failed, the Respondent did not come

to this court with clean hands. It has become very evident that the Respondent knowingly lied to this court on the issue of his identity, and denied being the Petitioner/Applicant in Kisumu High Court Bankruptcy Cause No. 5 of 2015.

38. This court is appalled at the ease with which the Respondent took to lying and feeding this court with falsehoods with regards to his identity while under oath, and this practice must be frowned upon. I decline to grant him the costs of this Application and the PO on account of his dishonesty in his dealings with this court as is evident in his Replying Affidavit.

Orders:-

39. In conclusion, I do find that the Applicant's Notice of Motion dated 14th July, 2025 and the Notice of Preliminary Objection dated 25th August, 2025 both lack merit and are dismissed with no orders as to costs.
40. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **29TH** day of **JANUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Ms. Tum holding brief for Dr. Chebii for Respondent.

Ms. Luseria for Appellant.

Court Assistant - Laban.