



Korir (Suing as the legal representative of the Estate of Wesley Kimunai Chumo - Deceased) ((Suing As The Legal Representative Of The Estate Of Wesley Kimunai Chumo - Deceased)) v Baliach (Environment and Land Case E018 of 2025) [2026] KEELC 351 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 351 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E018 OF 2025**

**LA OMOLLO, J
JANUARY 29, 2026**

BETWEEN

**PAUL KIPKOECH KORIR PLAINTIFF
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WESLEY
KIMUNAI CHUMO - DECEASED)**

AND

RICHARD TOGOM BALIACH DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Defendant/Applicant's Notice of Motion application dated 22nd April, 2025. The application is expressed to be brought under Sections 7 & 3A of the [Civil Procedure Act](#) and Order 2 Rule 15 of the Civil Procedure Rules.
2. The application seeks the following prayers;
 1. That the Plaintiff's suit be struck out with costs as;
 - a. It is res-judicata and;
 - b. It is not only vexatious but also constitutes an utter abuse of the Court process.
3. The application is based on the grounds on its face and the supporting affidavit of Richard Togom Baliach sworn on 22nd April, 2025.



Factual Background.

4. The Plaintiff/Respondent commenced the present proceedings vide the Plaint dated 17th March, 2025 where he seeks the following prayers;
 - a. An order of permanent injunction restraining the Defendant by themselves, agents, employees, servants (sic) or otherwise from trespassing onto, erecting there on a fence, occupying, alienating, assigning, selling, interfering with and or evicting the Plaintiff from Kericho/Kipsonoi/855 or doing any other act which is prejudicial to the Plaintiff's quiet occupation of the subject property.
 - b. A declaration that the Plaintiff's (sic) is the sole legally registered owner of the all (sic) portion of land Kericho/Kipsonoi/855.
 - c. An order for the land registrar to amend the records, by cancelling and rectifying the register to read the names of Wesley Kimunai Chumo.
 - d. A declaration that the Plaintiff/Applicant (sic) be registered as the proprietor of 5.2 Ha of the said portion of land Kericho/Kipsonoi/855 by virtue of adverse possession.
 - e. Cost of the suit.
 - f. Any other relief the Court may deem fit and just to grant.
5. The Defendant/Applicant filed his Statement of Defence dated 22nd April, 2025 wherein he prays that that the Plaintiff/Respondent's suit be dismissed with costs.
6. The application under consideration came up for hearing on 16th July, 2025 when the Defendant/Applicant was granted leave to file a supplementary affidavit.
7. The Court also issued directions that the application be canvassed by way of written submissions.
8. On 30th July, 2025 it was mentioned to confirm filing of submissions and then reserved for ruling.

The Defendant/Applicant's contention.

9. The Defendant/Applicant contends that he is the registered owner of land parcel No. Kericho/Kipsonoi/855.
10. The Defendant/Applicant also contends that the said parcel of land is the subject matter of this suit and has been the subject of litigation in suits filed in Sotik Magistrates Court and Kericho Environment and Land Court.
11. The Defendant/Applicant further contends that the Plaintiff/Respondent's brother one David Kipsiele Korir filed Sotik PM ELC Case No. 1 of 2018 as a personal representative of the estate of Wesley Kimunai Chumo.
12. It is his contention that he (Defendant/Applicant) was sued as the 2nd Defendant in the said suit which sought orders of permanent injunction.
13. It is also his contention that in response, they filed a counterclaim and sought among other orders a declaration that their deceased father Kiptogom A. Baliach was the registered owner of land parcel No. Kericho/Kipsonoi/855.



14. It is further his contention that Sotik PM ELC Case No. 1 of 2018 was heard and determined in their favour and the Court in the judgement delivered on 31st July, 2019 issued among other orders an injunction restraining the Plaintiff in the said suit from trespassing on the suit parcel of land.
15. He contends that he presented the decree issued in Sotik PM ELC Case No. 1 of 2018 before the Bomet Land Registry and his deceased father was registered as the owner of the suit parcel of land. He goes on to state that he later filed Bomet HC Succession Cause No. 7 of 2022 and the land was subsequently registered in his (Defendant/Applicant) name.
16. He also contends that David Kipsiele Korir being dissatisfied with the judgement of the trial Court filed an appeal at Bomet High Court which appeal was transferred to the Environment and Land Court, Kericho. The said appeal was Kericho ELC Appeal No. 8 of 2022.
17. He further contends that since the appeal was initially filed before a Court that did not have jurisdiction, he (Defendant/Applicant) filed a Preliminary Objection which was allowed and the appeal struck out in the ruling delivered on 23rd November, 2023.
18. It is his contention that after Kericho ELC Appeal No. 8 of 2022 was struck out, David Kipsiele Korir filed Kericho ELC Misc Application No. E001 of 2024 seeking leave to file an appeal out of time. The said miscellaneous application was dismissed on 3rd October, 2024.
19. It is further his contention that David Kipsiele Korir, the Plaintiff/Respondent herein and their family members are in occupation of the suit parcel of land.
20. He contends that he filed an application in Sotik PM ELC Case No. 1 of 2018 seeking for orders of eviction which orders were issued on 24th February, 2025.
21. He also contends that the Plaintiff/Respondent has now commenced the present suit on behalf of the estate of Wesley Kimunai Chumo (deceased).
22. He further contends that the issues raised in the present suit were addressed in Sotik PM ELC Case No. 1 of 2018, Kericho ELC Appeal No. 8 of 2022 and Kericho ELC Misc Application No. E001 of 2024.
23. It is his contention that the present suit therefore offends the doctrine of res judicata. He goes on to state that the said suits determined the issue of ownership of land parcel No. Kericho/Kipsonoi/855.
24. It is also his contention that the Plaintiff/Respondent has always been aware of the said suits and he is therefore wasting the Court's precious judicial time.
25. It is further his contention that David Kipsiele Korir unsuccessfully filed three matters and the Plaintiff/Respondent has now commenced litigation after obtaining a grant of Letters of Administration Ad Litem for the estate of Wesley Kimunai Chumo.
26. He reiterates that the issue of ownership of land parcel No. Kericho/Kipsonoi/855 has already been decided by Courts of competent jurisdiction.
27. He contends that the Plaintiff/Respondent's suit is an abuse of the Court process. He goes on to state that the previous decisions were final.
28. He also contends that litigation must come to an end and successful parties allowed to enjoy the fruits of their judgement.
29. He further contends that it is trite law that he who comes to equity must come with clean hands.



30. It is his contention that he has been impeded from enjoying the fruits of his judgement by the dependents of the estate of Wesley Kimunai Chumo who have opted to file multiple suits which do not seem to be coming to an end.
31. It is also his contention that the Court should always be vigilant as litigants intending to evade the doctrine of res judicata introduce new causes of action in order to seek the same remedy before the Court.
32. It is further his contention that the Plaintiff/Respondent has not demonstrated empirical and/or documentary evidence to show that he will suffer substantial loss.
33. He ends his deposition by stating that his right to property has been infringed by the Plaintiff/Respondent and his siblings who should not benefit from an order of injunction.

The Plaintiff/Respondent's Response

34. In response to the Defendant/Applicant's application, the Plaintiff/Respondent filed a Relying Affidavit sworn on 5th June, 2025.
35. He deposes that he was not the Plaintiff in Sotik PM ELC Case No. 1 of 2018. He goes on to state that he has been in occupation of the suit parcel of land since the year 1974.
36. He also deposes that Sotik PM ELC Case No. 1 of 2018 proceeded for hearing in the absence of the Plaintiff therein. He goes on to state that the said Court heard the Counterclaim instead of dismissing the suit for want of prosecution since the Plaintiff was absent.
37. He further deposes that Kericho ELC Appeal No. 8 of 2022 was not heard and determined on its merits as it was struck out.
38. It is his deposition that even though the suit parcel of land is the same, the parties and the prayers sought are different. He goes on to state that David Kipsiele Korir who was the Plaintiff in Sotik PM ELC Case No. 1 of 2018 has never lived on the suit parcel of land.
39. It is also his deposition that the dispute over the suit parcel of land is now being addressed by the persons in occupation of it.
40. It is further his deposition that his late siblings and parents are buried on the suit parcel of land and that any issue of eviction should address how those bodies should be dealt with. (sic)
41. He deposes that the Defendant/Applicant was registered as the owner of the suit parcel of land fraudulently. He reiterates that he and his siblings have been living on the land since the year 1974.
42. He also deposes that the dispute herein has not been determined conclusively.
43. He further deposes that David Kipsiele Korir never informed and/or involved them in the alleged suits and they only found out about them when they were given notice of the intended eviction.
44. It is his deposition that the Defendant/Applicant commenced the succession proceedings while the appeal was pending. He goes on to state that since the appeal was filed before a Court that lacked jurisdiction, the issues in dispute have not been addressed conclusively.
45. It is also his deposition that he will suffer substantial injury if the Defendant/Applicant's application is allowed.



46. He ends his deposition by stating that it is in the interest of justice that this suit be heard so that his right to property and his right to heard under the Constitution is protected.

Issues for Determination.

47. The Plaintiff/Respondent filed his submissions on 20th June, 2025 while the Defendant/Applicant did not file any submissions.

48. The Plaintiff/Respondent relies on the judicial decision of Mukisa Biscuits Manufacturing Ltd vs Westend Distributors (1969) EA 696 and submits that beneficial interest is a component of constructive trust which is an overriding interest on land under Section 28(b) of the Land Registration Act.

49. The Plaintiff/Respondent relies on Section 38(2) of the Land Act and submits that the suit parcel of land was illegally transferred which issue this Court should address.

50. The Plaintiff/Respondent relies on Section 7 of the Civil Procedure Act, the judicial decision of Independent Electoral and Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR and submits that in Sotik PM ELC Case No. 1 of 2018, David Kipsiele Korir sought the following prayers;

a. A permanent injunction restraining the Defendants, agents from trespassing, encroaching, falsely lodging claims for land, instituting malicious, false and criminal allegations, tempering with the boundary or boundary features by cutting live fence, uprooting posts, felling trees, claiming trees, causing destructions and/or doing other activities detrimental to the Plaintiff's interest in the land parcel No. Kericho/Kipsonoi/855. (sic)

b. Cost of the suit.

51. The Plaintiff/Respondent reiterates that he was not the Plaintiff in Sotik PM ELC Case No. 1 of 2018.

52. The Plaintiff/Respondent further submits that he seeks the following prayers in the present suit;

a. An order of permanent injunction restraining the Defendant by themselves, agents, employees, servants (sic) or otherwise from trespassing onto, erecting there on a fence, occupying, alienating, assigning, selling, interfering with and or evicting the Plaintiff from Kericho/Kipsonoi/855 or doing any other act which is prejudicial to the Plaintiff's quiet occupation of the subject property.

b. A declaration that the Plaintiff's (sic) is the sole legally registered owner of the all (sic) portion of land Kericho/Kipsonoi/855.

c. An order for the land registrar to amend the records, by cancelling and rectifying the register to read the names of Wesley Kimunai Chumo.

d. A declaration that the Plaintiff/Applicant (sic) be registered as the proprietor of 5.2 Ha of the said portion of land Kericho/Kipsonoi/855 by virtue of adverse possession.

e. Cost of the suit.

f. Any other relief the Court may deem fit and just to grant.

53. It is the Plaintiff/Respondent's submissions that the issues raised in both suits are different and reiterates that they have not been resolved.



54. It is also the Plaintiff/Respondent's submissions that in Sotik PM ELC Case No. 1 of 2018 the parties were David Kipsiele Korir versus Samwel Kipkoske Chepkwony & Richard Kiprono Togom (Baliach).
55. It is further the Plaintiff/Respondent's submissions that in the present suit the parties are Paul Kipkoech Korir (Suing as the legal representative of the estate of Wesley Kimunai Chumo) versus Richard Togom Baliach.
56. The Plaintiff/Respondent reiterates his averments in his Replying Affidavit and submits that in the year 1986, their deceased father Wesley Kimunai Chumo was registered as the owner of the suit parcel of land.
57. The Plaintiff/Respondent also submits that he has a green card that shows the said registration.
58. The Plaintiff/Respondent further submits that in the year 1989, under unclear circumstances, there was a change in ownership.
59. It is the Plaintiff/Respondent's submissions that thereafter, Kericho PM Case No. 576 of 1991 was filed. The Plaintiff in the said suit was Wesley Kimunai Chumo (his deceased father) while the Defendant was Kiptogom A. Baliach (the Defendant/Applicant's deceased father).
60. It is also the Plaintiff/Respondent's submissions that judgement in the said matter was delivered in his (Plaintiff/Respondent) father's favour.
61. It is further the Plaintiff/Respondent's submissions that the parties in Sotik PM ELC Case No. 1 of 2018 and Kericho PM Case No. 576 of 1991 are distinct and different.
62. The Plaintiff/Respondent submits that both suits proceeded ex parte and were therefore not determined on merit.
63. The Plaintiff/Respondent also submits that the judgements delivered in the said suits are conflicting. In Kericho PM Case No. 576 of 1991 his (Plaintiff/Respondent) father was declared the owner of land parcel No. Kericho/Kipsonoi/855 while in Sotik PM ELC Case No. 1 of 2018, the Defendant/Applicant's father was declared as the owner of the same parcel of land.
64. The Plaintiff/Respondent further submits that ELCA 8 of 2022 and Kericho ELC Misc. Application No. E001 of 2024 were ancillary matters that tried to bring the dispute before a competent Court.
65. It is the Plaintiff/Respondent's submissions that the value of the suit parcel of land is Kshs. 64,220,000/= and therefore the Magistrate's Court did not have jurisdiction to hear and determine Sotik PM ELC Case No. 1 of 2018.
66. The Plaintiff/Respondent concludes his submissions by urging the Court to dismiss the Defendant/Applicant's preliminary objection(sic).

Analysis and Determination.

67. I have considered the Defendant/Applicant's application, the response thereto and the Plaintiff/Respondent's submissions.
68. It is my view that the following issues arise for determination;
 - a. Whether the Plaintiff/Respondent's suit is res judicata.
 - b. Who should bear costs of the application.



69. Before I delve into these issues for determination, I need to state that I have only had the benefit of perusing the judgment by the Sotik Magistrates' Court.
70. I also need to make bare certain facts as averred by the parties and state that these facts have not been controverted.
71. There are two Judgments that have been delivered in respect of the suit parcel.i.e. Kericho/ Kipsonoi/855
 - i. The first judgment was by the Principal Magistrate's Court sitting in Kericho Case no 576 of 1991. The suit parcel was declared as belonging to Wesley Kimunai Chumo (The deceased father of the Plaintiff herein). The defendant in this suit was Kiptogong Baliachi.
 - ii. The Second Judgment was delivered by the Sotik Principal Magistrates court in Case No 1 of 2018. A declaration was made that Kiptogong Baliachi (The deceased father of the defendant herein) is the Registered owner of the suit parcel. The suit was filed by David Kipsiele Korir who was suing as the personal representative of the Estate of Wesley Kimunai Chumo. He was seeking orders of permanent injunction against the Defendants (Samuel Kipkoske Chepkwony and Richard Kiprono togong Baliachi). The Defendants filed a counterclaim wherein they sought a declaration that Kiptogong Baliachi is the registered owner of the suit parcel and Judgment was entered in their favour.
72. Subsequently, an Appeal was filed before the High Court in Bomet against the judgment by Sotik Principal Magistrates' Court. The file was then transferred to the Environment and Land Court in Kericho which Court struck out the appeal on grounds that it was initially filed in a court without jurisdiction.
73. As things remain, there are two judgments; both by subordinate Courts, declaring two different parties and by extension those who claim through them as owners of the suit parcel.

A. Whether the Plaintiff/Respondent's suit is res judicata.

74. The Defendant/Applicant contends that one David Kipsiele Korir filed Sotik PM ELC Case No. 1 of 2018 on behalf of the estate of Wesley Kimunai Chumo against him (Defendant/Applicant) and one other person.
75. The Defendant/Applicant further contends that the said suit was filed over land parcel No. Kericho/ Kipsonoi/855.
76. It is the Defendant/Applicant's contention that judgement in the said matter was delivered on 31st July, 2019 in his (Defendant/Applicant) favour.
77. It is also the Defendant/Applicant's contention that in the present matter, the Plaintiff/Respondent has filed this suit on behalf of the estate of Wesley Kimunai Chumo and the dispute is over land parcel No. Kericho/Kipsonoi/855.
78. The Defendant/Applicant's contention that the present suit is res judicata is based on the judgment in Sotik PM ELC Case No. 1 of 2018
79. In response, the Plaintiff/Respondent contends that they were not aware that David Kipsiele Korir had filed Sotik PM ELC Case No. 1 of 2018 on behalf of the estate of Wesley Kimunai Chumo.
80. The Plaintiff/Respondent also contends that Sotik PM ELC Case No. 1 of 2018 was heard ex parte and therefore the issues raised therein have not been conclusively determined.



81. The Plaintiff/Respondent further contends that he is in possession of the suit parcel of land.

82. Section 7 of the *Civil Procedure Act* provides:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

83. Explanation (4) of section 7 of the *Civil Procedure Act* provides that any matter which ought to have been made a ground of defence in the former suit shall be deemed to have been a matter substantially in issue in the said suit.

84. The Plaintiff/Respondent contended that his deceased father instituted Kericho PM Case No. 576 of 1991. He also contended that judgement in the said matter was delivered in favour of his deceased father and he was declared the owner of the suit parcel of land. He further contended that the Defendants in the said suit were interfering with his possession and he therefore sought for an order of permanent injunction.

85. I have had the opportunity to peruse the judgments in Sotik PM ELC Case No. 1 of 2018. I have also perused the Judgment in Kericho Principal Magistrates Court Case No.576 of 1992 delivered on 27th November,1991 (It is not 576 of 1991 as described by the Respondent) which is attached to the Plaintiff/Respondents submissions.

86. David Kipsiele Korir filed Sotik PM ELC Case No. 1 of 2018 on behalf of the estate of Wesley Kimunai Chumo. (The same estate on whose behalf the current suit is filed). He was seeking orders of permanent injunction against the Defendants (Samuel Kipkoske Chepkwony and Richard Kiprono togong Baliachi). The defendants filed a statement of defence and counterclaim.

87. At paragraphs 3 and 4 of page 2 of the judgement delivered in Sotik PM ELC Case No. 1 of 2018 the Court held as follows;

“This matter was set down for hearing after the parties had complied with the directions of the Court. The case appears to have false starts, owing to one or another reason which was beyond this Court’s control. However, on the 19th June, 2019, the matter came up for hearing, (sic) the date was taken by consent of both parties. The Plaintiff and the Defendant never showed up. (sic) The Defendant’s counsel moved the Court to dismiss the Plaintiff’s matter for want of prosecution. The Court agreed with the Counsel (sic) for there was no sufficient cause given and/or brought to the attention of the Court as to why the Plaintiff was not in Court or the Plaintiff’s Counsel. Having verified that the date was taken by consent and that this matter was brought to Court by way of Certificate of Urgency and that the matter had since been pending in Court for about one and a half years.

The Defendant/Plaintiff (sic) was therefrom allowed to proceed with his counterclaim. In the process, the Defendant/Plaintiff (sic) adduced evidence in Court...”

88. It is evident that the Plaintiff in Sotik PM ELC Case No. 1 of 2018 did not attend Court when the suit came up for hearing and the Court therefore proceeded to hear the Counterclaim.



89. In the Counterclaim before the Sotik Magistrates' Court, the Defendants therein sought, among other orders, a declaration that their deceased father was the owner of the suit parcel of land and Judgment was entered in their favour.
90. It is my view that the Plaintiff/Respondent herein cannot and should not have filed this suit in light of the Judgment in Kericho PM Case No. 576 of 1992, wherein his deceased father was declared as owner of the suit parcel.
91. In the judicial decision of Christopher Kenyariri vs Salama Beach [2017] eKLR the Court stated as follows on the ingredients to be satisfied when determining *res judicata*;
- “...the following elements must be satisfied...in conjunctive terms;
- a) The suit or issue was directly and substantially in issue in the former suit.
 - b) Former suit between same parties or parties under whom they or any of them claim.
 - c) Those parties are litigating under the same title.
 - d) The issue was heard and finally determined.
 - e) The Court was competent to try the subsequent suit in which the suit is raised.”
92. The Defendant/Applicant has attached a copy of the Plaintiff filed in Sotik PM ELC Case No. 1 of 2018 to his affidavit in support of the application.
93. The parties are;
- “David Kipsiele Korir (Suing as the personal representative of the estate of Wesley Kimunai Chumo) versus Samwel Kipkoske Chepkwony & Richard Kiprono Togom (Baliach).”
94. The parties in the present suit are;
- “Paul Kipkoech Korir (Suing as the legal representative of the estate of Wesley Kimunai Chumo) versus Richard Togom Baliach.”
95. It is evident that the Plaintiff/Respondent in the present suit and the Plaintiff in Sotik PM ELC Case No. 1 of 2018 are both suing as legal representatives of the estate of Wesley Kimunai Chumo.
96. It is also evident that the Defendant/Applicant in the present suit was the 2nd Defendant in Sotik PM ELC Case No. 1 of 2018.
97. In Sotik PM ELC Case No. 1 of 2018, the Plaintiff therein sought the following prayers;
- a. A permanent injunction against the Defendants jointly and or severally their agents or servants from trespassing, encroaching, falsely lodging claims for land, instituting malicious, false and criminal allegations, tempering with the boundary or boundary features by cutting live fence uprooting posts, felling trees, claiming trees, causing disturbance and or doing any other activity detrimental to the Plaintiff's interest in the land parcel No. Kericho/Kipsonoi/855. (sic)
 - b. Costs.



- c. Any other relief deem fit to grant by the Court. (sic)
98. The Defendant/Applicant has attached to his affidavit in support of the application a copy of the decree issued on 15th October, 2019 in Sotik PM ELC Case No. 1 of 2018.
99. It states that the Defendants therein filed a Counterclaim where they sought the following prayers;
- a. A declaration that the 2nd Defendant's late father Kiptogom A. Baliach is the registered owner of all that parcel of land known as Kericho/Kipsonoi/855.
 - b. A permanent injunction restraining all the Plaintiff (sic) now the Defendant from trespassing and/or encroaching unto (sic) Kericho/Kipsonoi/855.
 - c. Costs of the suit and counterclaim.
100. The Court then issued the following orders;
- a. That a declaration that the 2nd Defendant/Plaintiff (sic) in the counterclaim's late father Kiptogom A. Baliach is the registered owner of parcel No. Kericho/Kipsonoi/855.
 - b. That a permanent injunction is hereby issued restraining all the Plaintiff (sic) now the Defendant in the Counterclaim from trespassing and/or encroaching unto Kericho/Kipsonoi/855.
 - c. That costs of the suit and the counterclaim be provided for by the Plaintiff/Defendant (sic) in the Counterclaim.
101. The prayers sought in the present suit have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;
- a. An order of permanent injunction restraining the Defendant by themselves, agents, employees, servants (sic) or otherwise from trespassing onto, erecting there on a fence, occupying, alienating, assigning, selling, interfering with and or evicting the Plaintiff from Kericho/Kipsonoi/855 or doing any other act which is prejudicial to the Plaintiff's quiet occupation of the subject property.
 - b. A declaration that the Plaintiff's (sic) is the sole legally registered owner of the all (sic) portion of land Kericho/Kipsonoi/855.
 - c. An order for the land registrar to amend the records, by cancelling and rectifying the register to read the names of Wesley Kimunai Chumo.
 - d. A declaration that the Plaintiff/Applicant (sic) be registered as the proprietor of 5.2 Ha of the said portion of land Kericho/Kipsonoi/855 by virtue of adverse possession.
 - e. Cost of the suit.
 - f. Any other relief the Court may deem fit and just to grant.
102. It is important to note that in the present suit, the Plaintiff/Respondent has sought among other prayers, orders of adverse possession.
103. The defence of adverse possession was available to the estate of Wesley Kimunai Chumo in the counterclaim filed in the former suit i.e. Sotik PM ELC Case No. 1 of 2018. The fact that the Plaintiff in the present suit (Suing as an administrator of the estate of Wesley Kimunai Chumo) was not aware



of the said suit having been filed and/or that it proceeded ex-parte is immaterial for purposes of this application. The judgment delivered is a regular judgment.

104. It is my view that the issues raised in present suit ought to have been made a ground of defence in the former suit and I shall deem them as matters substantially in issue in the said suit. this is in accordance with Explanation (4) of Section 7 of the *Civil Procedure Act*. This suit is therefore res judicata.

B. Whether this suit is an abuse of the court process and should therefore be struck out.

105. The Defendant/Applicant also contends that the Plaintiff/Respondent has filed numerous suits over the same subject matter and therefore the present suit is an abuse of the Court process.

106. The Plaintiff/Respondent did not address this issue in his response and submissions.

107. Order 2 Rule 15 (1) (a), (b), (c) and (d) of the Civil Procedure Rules provides as follows:

“At any stage of the proceedings the Court may order to be struck out or amended any pleadings on the ground that-

- a. it discloses no reasonable cause of action or defence in law; or
- b. it is scandalous, frivolous or vexatious; or
- c. it may prejudice, embarrass or delay the fair trial of the action; or
- d. It is otherwise an abuse of the process of the Court.”

108. In John Mugambi t/a Mugambi & Company Advocates & another v Showcase Properties Limited [2021] KEHC 4770 (KLR) the Court held as follows;

“9. Are the Defendant’s applications vexatious and an abuse of the court process? In answering this question, I hold that each application filed by the Defendant has been argued and determined on its own merits. The Court in Republic v Chief Magistrate’s Court at Milimani Law Courts; Director of Public Prosecutions & 2 others (Interested Parties); Ex-parte Applicant: Pravin Galot NRB HC JR Misc. Civil App. No. 622 of 2018 [2020] eKLR held that the word “vexatious” means “harassment by the process of law,” “lacking justification” or with “intention to harass” signifies an action not having sufficient grounds, and which therefore, only seeks to annoy the adversary. The hallmark of a vexatious proceeding is that it has no basis in law or at least has no discernible basis and that whatever the intention of the proceeding may be, its only effect is to subject the other party to inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant and that it involves an abuse of process of the Court.”

109. In the present suit, the Defendant/Applicant has based his contention that the Plaintiff/Respondent’s suit is an abuse of the Court process on the allegations that he has filed multiple suits.

110. The said suits are Kericho PM 576 of 1992, Sotik PM ELC Case No. 1 of 2018, Kericho ELCA No. 8 of 2022 and Kericho ELC Misc Application No. E001 of 2024.

111. It is not disputed that apart from one (Kericho PM 576 of 1992) all the other said suits were instituted by administrators of the estate of Wesley Kimunai Chumo.



112. It is also not disputed that in Sotik PM ELC Case No. 1 of 2018, judgement was delivered on 31st July, 2019 while Kericho ELCA No. 8 of 2022 which was an appeal from the said judgement, was struck out.
113. It is further not disputed that Kericho ELC Misc Application No. E001 of 2024 which sought leave to appeal the judgement delivered in Sotik PM ELC Case No. 1 of 2018 out of time was dismissed.
114. The said suits were instituted by David Kipsiele Korir in his capacity as the legal representative of the estate of Wesley Kimunai Chumo which is the same estate the Plaintiff/Respondent herein is a legal representative of.
115. I find that this suit is an abuse of the court process.

C. Who should bear costs of the application?

116. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

117. Taking the foregoing into consideration, I find that the Defendant/Applicant's Notice of Motion application dated 22nd April, 2025 is merited. Consequently, this suit is hereby dismissed for reason that it is res judicata and an abuse of the court process.
118. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 29TH DAY OF JANUARY, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Leteipa for the Defendant/Applicant.

Mr. Ngeno for the Plaintiff/Respondent.

Court Assistant; Mr. Joseph Makori.

