



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELCL CONS. PETITION NO. E007 OF 2024

PARMATANKA OLE KITERE.....1ST

PETITIONER

LERASUNA OLE KITERE.....2ND

PETITIONER

VERSUS

MATIKO OLE SADERA.....1ST

RESPONDENT

RAMAT GROUP LIMITED.....2ND

RESPONDENT

NICHOLAS KONANA SADERA..... 3RD

RESPONDENT

DANIEL CHERUIYOT KEMEI..... 4TH

RESPONDENT

THE NAROK COUNTY SURVEYOR..... 5TH

RESPONDENT

THE NAROK DISTRICT LAND REGISTRAR...6TH

RESPONDENT

THE ATTORNEY GENERAL.....7TH

RESPONDENT

JUDGMENT

1. The Petitioners herein ***Parmatanka Ole Kitere and Lerasuna Ole Kitere*** filed this Constitutional Petition dated **13th July 2024**, against the Respondents herein and

alleged **violations** of various Articles **of the Constitution**, among them Articles **1, 2, 3, 10, 19, 20, 22, 23, 27, 35, 40, 47(1), 48, 50, 60, 163(3)(b) and 159(1)(b)**.

2. The Petitioners alleged that on **18th May 1999**, the 1st Petitioner, without the **knowledge** or **consent** of his family members, entered into an agreement with the 1st Respondent(**Matiko Ole Sadera**), for exchange of their family land, **CIS/MARA/OLELESHWA/795**, which is about **20 acres within Narok Municipality**, with the 1st Respondent's property, **CIS/MARA/KAMURAR/33**, approximately **16 acres outside Narok Municipality**. The 1st Petitioner, a peasant farmer with no formal education, claimed he was tricked and coerced into the said exchange by the 1st Respondent, a politically and financially influential individual.
3. The Petitioners deponed that when the Petitioners' family learnt of the purported exchange without their approval or consent, they strongly opposed the exchange, but the 1st Respondent filed a Civil case, being **Narok SPMCC No. 41 of 2002**, to enforce the said agreement, which matter was heard exparte and concluded in favour of the 1st Respondent.
4. The Petitioners further claimed that the above case having proceeded ex-parte, orders were issued for the Court's Executive Officer to execute documents in place of the 1st Petitioner to transfer the Petitioners' land

Cis/Mara/Oleleshwa/795, to the 1st Respondent without proper **service of summons** to the Petitioners.

5. Nevertheless, the Petitioners averred that the 1st Respondent did not transfer his parcel **Cis/Mara/Kamurar/33**, to the Petitioners, leaving them landless and destitute. The Petitioners further stated that the original parcel of land was subsequently subdivided into multiple smaller parcels that is **Cis/Mara/Oleleshwa/16496, 16497, 16498, 16499, 16500, 16501, 16502, 16503, 16500, 16807, 16808, 17865 and 17866**
6. The Petitioners further averred that land parcels No **Cis/Mara/Oleleshwa/16807**, and **16808** measuring approximately **1.618 and 1.214 Hectares** respectively, were sold to 3rd Respondent and **Cis/Mara/Oleleshwa/16496**, measuring **0.41 Hectares** was sold to 4th Respondent, while others remained registered under the 1st Respondent's name.
7. The Petitioners claimed that the **subdivisions** were done **illegally** and **without their consent**, and the land remains undeveloped. Despite attempts to challenge the court orders, the Petitioners have been denied **a fair hearing**, leaving the 1st Petitioner impoverished and living in a small mud house provided by the 2nd Petitioner. They now seek legal redress to reclaim their family land, and address the alleged violations of their constitutional rights.
8. The Supporting Affidavit in regard to the Petition was sworn by **Lerasuna Ole Kitere**, the 2nd Petitioner, who averred that the land in dispute

Cis/Mara/Oleleshwa/795, is a family land, and that the 1st Respondent took advantage of 1st Petitioner's lack of **knowledge**, **arm-twisted** and **tricked** him into accepting the exchange of their land with his, which land was of lesser in acreage and is in the outskirts of Narok Municipality.

9. On **31st July 2024**, the Petitioners filed a Notice of Motion Application, seeking temporary injunctive orders on the parcel of land and the subdivisions in question. However, the application was dismissed on **2nd October 2024**, for want of prosecution.
10. The Petition is opposed by the Respondents herein through the grounds of opposition and various Replying Affidavits.
11. In opposing the Petition, the **5th, 6th, and 7th Respondents** filed their grounds of opposition dated **16th January 2025**, and argued that the Petition herein contravenes Sections **4(1)(a) and 7** of the **Limitations of Actions Act, Cap 22**, as it seeks to challenge a contract which was entered in **1999**, and a land transfer registered on **21st May 2003**, both of which occurred over two decades ago.
12. They further contended that the matter is **res judicata**, as it was previously adjudicated in **Narok SPMCC No. 41 of 2002**, where a court order validated the registration of the 1st Respondent as the proprietor of the disputed land. They also asserted that the Petition is **misconceived**, **mischievous**, and **an abuse of the court process**, and they urged the court to dismiss the instant Petition with costs.

13. The **2nd Respondent Ramat Group Ltd**, filed its reply to the Petition through the Replying Affidavit of **Lemanken Aramat**, a Director of the 2nd Respondent, and averred that indeed the 2nd Respondent entered into a sale agreement with the 1st Respondent over land parcel No **Cis Mara/ Oleleshwa/ 16505**, on **30th November 2017** of **9 acres**, and the 2nd Respondent was to purchase **3 Acres**. That after carrying out due diligence and confirming that the land belongs to the 1st Respondent, they entered into the said sale agreement.
14. Further, that after all the conditions contained in the sale agreement were met, they received the title deed for **Cis Mara/ Oleleshwa/ 17866**, in the name of the 2nd Respondent, and they paid the full purchase price to the 1st Respondent, as per the acknowledgement dated **23rd January 2023**.
15. He contended that at the time of purchase, there were no restrictions placed on the land by the Petitioners or any other person, and thus they proceeded to purchase the said land as **willing buyers, willing sellers**, and thus the 2nd Respondent is an **innocent purchaser for value**. The 2nd Respondent was therefore not involved in any impropriety at all, and that the court should take judicial Notice that original land parcel No **Cis Mara/Oleleshwa/ 795**, was registered in the name of the 1st Respondent on **21st May 2003**, which is over **22 years** ago.
16. He urged the Court to dismiss the instant Petition as it lacks merit and is an abuse of the court process.

17. 1st and 3rd Respondents through **Kiptoo K. & Co. Advocates**, filed a **Notice of Preliminary Objection** dated **27th January 2025**, opposing the instant Constitutional Petition, and argued that the matter is **res judicata**, having been determined by competent courts in **Narok SRMCC No.41 of 2002, Narok HCCA Misc. Civil App. No. 2 of 2019 and Nakuru Civil Appeal(Application)No. E079 of 2023**.
18. On **26th May 2025**, the Petitioners/Applicants through their advocate filed a Notice of Motion Application seeking for **status quo orders** to preserve the **status** or the substratum of the original suit parcel of land known as **Cis/Mara/Oleleshwa/795**, and all the sub-divisions arising therefrom. The application was heard in court on **24th June 2025**, and by consent of the counsels present it was agreed that status quo be maintained. Status quo has been pending since then.
19. The 1st Respondent **Matiko Ole Sadera** filed a Replying Affidavit, and averred that he instituted a suit against the 1st Petitioner being **Narok SPMCC NO 41 of 2002**, wherein he sought for **specific performance** in respect of a written mutual agreement dated **18th May 1999**, and a Judgment was entered in his favour.
20. Further, that the 1st Petitioner attempted to set aside the said Judgment vide an application dated **25th March 2014**, which application was dismissed with costs. He contended that the Judgment in **SPMCC NO 41 OF 2002**, was regularly entered, and a decree thereon was executed

wherein, the transfer documents were signed by the Executive Officer of this court.

21. He contended that his advocate has advised him that the advocate who dealt with the matter at the lower court passed on, as well as the advocate who drew the sale agreement, and it would be difficult to compile evidence relating to the sale agreement, which evidence has already been adduced at the trial court.
22. It was his contention that the 1st Petitioner has been residing on the land parcel No. **Cis Mara/Kamurar/33**, to date, and he only revisited this case since the value of land has gone up considerably.
23. Further, that the land in issue **Cis Mara/ Oleleshwa/795**, was the subject matter of the application for setting aside which the 1st Petitioner had filed is no longer in existence as the same was subdivided at the time of execution of the judgement, which execution was done **22 years** ago.
24. He also contended that the exchange was a culmination of negotiations between the 1st Petitioner and himself, and there was no coercion by any of the parties. Further, that after the exchange, the parties appeared before the **Narok Land Control Board** on **5th June 1999**, and the necessary Consent was granted, but the 1st Petitioner refused to execute the transfer forms, thus the filing of the **Narok SPMCC NO 41 OF 2002**.
25. Further, the 1st and 3rd Respondents filed Defence to the Petition dated **4th June 2025**, and denied most of the contents of the Petition, save for the fact that the 1st

Respondent did enter into the mutual agreement with the 1st Petitioner, and he duly paid for the agreed consideration amount and exchanged his then parcel of land known as **Cis/Mara/Kamurar/33**, with the 1st Petitioner's then parcel of land known as **Cis/Mara/Oleleshwa/795**.

26. The 1st Respondent also averred that the 1st Petitioner has been living in the land exchanged being **Cis/Mara/Kamurar/33**, to date and the Petitioners are only revisiting this case since the value of land in Narok has gone up.
27. The 1st and 3rd Respondents further averred that even if some sub-division remains in the name, of the 1st Respondent, he is the rightful owner, and it has been **22 years** since the court issued a Judgment in his favour. They further contended that both the 1st Petitioner and himself mutually agreed to exchange their portions of land, and also agreed that the 1st Respondent was to pay the 1st Petitioner a sum of **Ksh.15,000/=** being the monetary value of the difference in acreage between the parcels exchanged. The 1st Petitioner acknowledge receipt and signed the agreement.
28. Further, the 1st and 3rd Respondents averred that the 1st Petitioner and 1st Respondent were present at the **Land Control Board** on the **5th June 1999**, and the necessary consent was granted, but thereafter the 1st Petitioner refused to execute the transfer forms to complete the transaction.

29. On **26th June 2025**, the court directed the parties to canvass both the **main Petition** and the **Notice of Preliminary Objection** together through written submissions.
30. The 1st and 3rd Respondents in support of their Preliminary Objection and opposition to the main Petition filed their written submission dated **15th September 2025**, and urged the court strike out the Petition for being **Res Judicata, time-barred**, and a calculated **abuse of the court process**.
31. The 1st and 3rd Respondents raised the following issues for determination;
- i. Whether the Petition offends the doctrine of res judicata under Section 7 of the Civil Procedure Act.**
 - ii. Whether the Petition is statute-barred under Section 4(1)(a) and 7 of the Limitation of Actions Act.**
 - iii. Whether the Petition amounts to forum shopping and an abuse of the court process.**
32. **On whether the Petition offends the doctrine of res judicata under Section 7 of the Civil Procedure Act**, the 1st and 3rd Respondents submitted that the Petition offends the doctrine of **res judicata** as codified under **Section 7** of the **Civil Procedure Act**, because the dispute relating to the land exchange agreement of **18th May 1999**, and the transfer of **CIS-MARA/OLELESHWA/795**, was directly and

substantially in issue in **Narok SPMCC No. 41 of 2002**, wherein Judgment was entered and executed, and was subsequently challenged and dismissed in **ELC Misc. Application No. 2 of 2019**, and **Court of Appeal Civil Application No. E079 of 2023**.

33. Therefore, the Petitioners cannot **re-litigate** a matter already determined by a court of competent jurisdiction merely by invoking constitutional provisions or introducing new parties, as the mere addition of parties or invocation of **Articles 22, 40 and 47** of the **Constitution** does not sanitize a suit that is otherwise **res judicata**, making the Petition a textbook case of cause of action res judicata and issue estoppel and affirming that litigation must come to an end.
34. **On whether the Petition is statute-barred under Section 4(1)(a) and 7 of the Limitation of Actions Act**, the 1st and 3rd Respondents submitted that the Petition is fatally defective for being time-barred under **Section 4(1)(a)** of the **Limitation of Actions Act**, which provides that actions founded on contract may not be brought after the end of six years from the date the cause of action accrued, the claim arising from a written land exchange agreement dated **18th May 1999**, with Judgment was delivered on **15th April 2003**, and the present Petition filed in **2024**, over twenty years later, without invocation of any statutory exceptions such as **fraud, mistake or disability or leave to file out of time**, and as held in the case of **Divecon Ltd v Samani (1995-1998) 1 EA 48**, where the Court of Appeal held;

limitation statutes go to the jurisdiction of the court, and a court has no power to entertain a time-barred claim.

35. ***On whether the Petition amounts to forum shopping and an abuse of the court process.***, the 1st and 3rd Respondents submitted that at the core of the Petition is a transaction concluded in **1999**, and an executed judgment of **2003**, wherein the 1st Petitioner exchanged his land parcel (**CIS-MARA/OLELESHWA/795**), with that of the 1st Respondent (**CIS-MARA/KAMURAR/33**).
36. It was submitted that the 1st Petitioner has resided on the exchanged land uninterrupted for over two decades. Despite this, and following a failed attempt to set aside the Judgment in **2014**, followed by dismissals in both the **ELC Court (2020) and Court of Appeal (2024)**, the Petitioners now recycle the same subject matter before this court with a fresh title and constitutional claims.
37. The 1st and 3rd Respondents relied in the cases of **Anarita Karimi Njeru v Republic [1979]**, and which was reaffirmed in the case of **Mumo Matemu vs Trusted Society of Human Rights Alliance [2013] eKLR**, which held that constitutional Petitions must not be used to bypass ordinary legal procedures. The addition of new parties does not expand the legal issues, but is a tactical repackaging to mislead the court into entertaining a matter whose core was long extinguished by lawful decree and state-sanctioned transfers.
38. Reliance was also sought in the case of **John Florence Maritime Services Ltd & another v Cabinet Secretary**

for Transport and Infrastructure & 3 others [2024] KEHC 6648 (KLR) (30 May 2024) (OA Sewe, J) where the court held that the Constitution Petitions must not be weaponized to undo final judgments.

39. The 1st and 3rd Respondents also submitted that this Petition is a rehearsed grievance dressed anew, and its re-entry into the court despite a completed suit, dismissed appeals, and a subject land no longer in existence undermines finality, frustrates legitimate titleholders, and promotes anarchy in land transactions. Justice must be pursued with clean hands, not through constitutional repackaging.
40. The Petitioners and the other Respondents did not file their written submissions despite the matter being mentioned in court severally. The court will consider the filed pleadings and the written submissions by the 1st and 3rd Respondent to come up with its determination.
41. Having directed that the Preliminary Objection and the Petition be canvassed together, the court finds the issues for determination are;
- i) Whether the Notice of Preliminary Objection dated 27th January 2025 is merited;***
 - ii) Whether the petition herein is merited;***
 - iii) Who should bear costs of the suit.***
- I). Whether the Notice of Preliminary Objection dated 27th January 2025 is merited,**

42. In their Preliminary Objection, the 1st and 3rd Respondents have averred that the suit is ***res judicata***, having been conclusively determined by competent courts in;
- i) ***Narok SPMCC NO 41 OF 2002;***
 - ii) ***Narok HCCA MISC C.APPL NO 2 OF 2019;***
 - iii) ***Nakuru CA IN CIVIL APPEAL APPL NO E079 OF 2023.***
43. Before delving into the merit or demerit of the Preliminary Objection, the court will first determine whether what has been raised herein meets the threshold of what constitutes a Preliminary Objection.
44. A Preliminary Objection is described as a legal argument raised early in a case, often before a full hearing, which challenges the court's jurisdiction or the suit's fundamental validity. A Preliminary Objection is aimed at disposing of an entire case on a point of law, and such Preliminary Objection can be raised in challenging the court's lack of jurisdiction, *res judicata*, or *sub judice*. See the case of ***Muli vs Mbuli & Another (Civil Case No E135 OF 2024)(2025)KEHC 3745***
45. Courts have variously decided on what amount to a Preliminary Objection. The Supreme Court in the case of ***Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others*** cited the leading decision on Preliminary Objection, ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696***, where the Court held as follows:

“ a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

46. Further, the Supreme Court in the case of ***Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] ekr***, observed as follows in relation to Preliminary Objections:

“...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise

destined to be resolved judicially, and on the merits.”

47. The legal threshold for a Preliminary Objection to succeed or to hold is well settled in various decided cases. In the case of ***Catherine Kawira v Muriungi Kirigia [2016] eKLR***; the court held as follows

“I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of Mukisa Biscuit Manufacturing Company Limited West End Distributors Limited (1969) EA 696 where it was stated as follows: “So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

48. From the above holding of the court, it is evident that a **Preliminary Objection** is raised on a pure point of law, and the court need not ascertain facts; is capable of disposing of the matter at the preliminary stage. Therefore, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.
49. The purpose of preliminary objection is to save time and costs by resolving fundamental flaws early, and also to prevent abuse of court process by frivolous litigation.
50. The Preliminary Objection herein is on the fact that the Petition herein is **res judicata**. So is the objection on **res judicata** a pure point of law? It is evident that an objection on **res judicata** is generally considered a **pure point of law**, which means it can be raised through a Preliminary Objection (PO), if the facts are clear from the pleadings. However, it becomes a mixed question of law and fact and not suitable to be raised as a Preliminary Objection if it requires deeper factual inquiry, such as examining evidence of identity of parties/subject matter. See the case of **Shah v Kenya Canvas Limited & another (Civil Suit E252 of 2022) [2023] KEHC 25428 (KLR) (Commercial and Tax) (17 November 2023) (Ruling)**
51. The objection on **res judicata** becomes pure point of law when the previous judgment and the case in question are clearly identical in parties, subject matter, and cause of action, evident from the pleadings. Further, when no

extensive factual investigation or evidence beyond the pleadings is needed to determine if the matter is the same as before. See the case of **IEBC Vs Maina Kiai & 5 Others (2017)**.

52. In the instant Petition the parties have elaborated on the existence of previous court cases decided by courts of competent jurisdiction, and therefore, the Preliminary Objection herein stems from the pleadings and no facts need to be or have to be ascertained.
53. There is no doubt that there was a Civil Suit filed at **Narok SPM** court being **Narok SPMCC NO 41 Of 2002**, between the 1st Respondent, and the 1st Petitioner, which culminated in the execution of a Judgement, wherein the 1st Respondent was registered as the owner of the suit land **Cis Mara/Oleleshwa /795**.
54. Further, the 1st Respondent filed an application before this Court being **ELC Misc. Appl. No.2 of 2019**, seeking for orders to be allowed to file an Appeal out of time. This Application was dismissed for lack of merit. The 1st Petitioner further filed an Appeal at **Nakuru Court of Appeal**, being **Court of Appeal Civil Application No E079 Of 2023**, which was also dismissed on
55. After the said dismissal, the Petitioners filed the instant Constitutional Petition, over the same suit property, but with additional parties. The Preliminary Objection as raised by the 1st and 3rd Respondents is a pure point of law, and meet the criteria for what constitute a proper **Preliminary**

Objection as described in the **Mukisa Biscuits Case(Supra)**.

56. A doctrine of **res judicata** is anchored on **Section 7** of the **Civil Procedure Act**, which states;

“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.”

57. The Supreme Court of Kenya in the case of **IEBC Vs Maina Kiai & 5 Others(Supra)**, elaborated the principles that are to be established in **res judicata objection**. These principles are; -

“The doctrine will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.**
- ii. That the former suit was between the same party or parties under whom they or any of them claim.**
- iii. That those parties were litigating under the same title**
- iv. That the issue in question was heard and finally determined in the former suit.**

v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and in the subsequent suit.”

58. Further in the case of ***John Florence Maritime Services Limited & Another Vs Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] eKLR*** the Supreme Court of Kenya held for the doctrine of Res-judicata to apply, the following elements had to be demonstrated:

a. There was a former judgment or order which was final;

b. The judgment or order was on merit;

c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and

d. There had to be between the first and the second action identical parties, subject matter and cause of action.

59. If the Preliminary Objection herein meets the above threshold of what really constitutes a Preliminary Objection, is the objection merited? Having pointed out the previous decided cases touching on the suit property, between the 1st Petitioner and 1st Respondent, it is clear that there are in existence decided cases over the suit property herein, involving the same parties, and which have been decided by courts of competent jurisdiction.

60. After the dismissal of the Application before the Court of Appeal, the Petitioners herein opted to file this

Constitutional Petition, raising the same questions that had been determined in **Narok SPMCC No 41 of 2002**.

61. The doctrine of res judicata exists to ensure finality in litigation, judicial efficiency, and public policy, by preventing endless lawsuits, and by stopping parties from re-litigating matters already decided by a competent court, thus conserving court resources and granting conclusive closure to disputes. It is in the public interest that there be an end to litigation and prevents vexatious re-litigation, ensuring judicial integrity and timely resolution. See the case of **Kamunye & others vs Pioneer General Assurance Society Ltd [1971]EA 263**.
62. The doctrine of res judicata therefore prevents a situation where there are **multiplicity of suits**, as it stops endless re-filing of the same claims, which would otherwise clog courts and increase costs. The doctrine also acts as a protection from harassment, by protecting individuals from being repeatedly harassed by the same legal claims.
63. The 1st Petitioner herein having lost his case before **Narok SPM Court, ELC and Court of Appeal** decided to add the 2nd Petitioner to the suit, and other Respondents, but over the same subject matter. Courts have held that they should be vigilant against litigants who add parties to a suit to escape the scrutiny of res judicata. See the case of **Njangu Vs Wambugu and another Nairobi HCCC No. 2340 of 1991**, where the court held;

“if parties were allowed to go on litigating forever over the same issue with the same

opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata.”

64. Indeed, this Constitutional Petition is ***res judicata, Civil suit No 41 of 2002***, and thus the Preliminary Objection is found merited.
65. The 1st and 3rd Respondents also submitted that this Constitutional Petition is time barred as provided by ***Section 4*** of the ***Limitation of Actions Act***. It is evident that the act complained of occurred in ***2003***, when the 1st Respondent was registered as the owner of the suit land.
66. The 1st Petitioner filed an application to set aside the Judgement of the trial court in ***2014***, and after the said application was dismissed, the 1st Petitioner did not file any Appeal. He waited until ***2019***, wherein he filed an Application to be allowed to file an Appeal out of time.
67. It is trite that Constitutional Petitions are not strictly time-barred by the ***Limitation of Actions Act***, but they can be struck out for ***inordinate and unexplained delay***. See the case of ***Peter N. Kariuki vs Attorney General***.
68. While no statutory limitation period applies to the enforcement of fundamental rights, however courts in this country have established clear principles regarding delay

as was held in the case of ***Wamwere & 5 others v Attorney General (Petition 26, 34 & 35 of 2019) [2023] KESC 3 (KLR***

69. Though Constitutional Petitions are in a category different from normal civil suits, a Constitutional Petition cannot be used as a "cloak" to revive a stale civil claim on breach of contract or fraud that is already time-barred by ordinary law. See the case of ***Anarita Karimi Njeru v Republic [1979]KLR.***
70. It is evident that if a court finds a Petition is actually an ordinary civil suit disguised as a constitutional matter, the said Petition will most likely be struck out for being time-barred. See the case of ***Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR.***
71. It is trite that Constitutional Rights Petitions which challenge violations of fundamental rights are often viewed differently, from ordinary civil suits, as they concern immediate justice. However, unreasonable delays are still discouraged, and therefore such Petition can be struck out where there is evidence of unreasonable delay, which has not been explained. See the case of ***Janmohammed (Suing as the Executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi) & another v District Land Registrar Uasin Gishu & 4 others [2024] KESC 39 (KLR) (2 August 2024).***
72. Further, the Courts may apply the doctrine of laches, meaning that undue delay in asserting a right can prevent

relief, even without a specific time limit. The Petitioners herein took inordinate too long to file this Petition or assert their right. The Petition herein is prejudicial to the Respondents, since the 1st Respondent was registered as the owner of the suit land more than **20 years** ago, and has subdivided the said land, and even sold some parcels of land to 3rd parties.

73. It would also be **prejudicial** to the said 3rd parties to revive a matter which was settled more than 20 years ago. Therefore, this court finds and holds that the Petition herein is marred by **unexplained delay**, since the same has been brought to court after such an unreasonable lapse of time, after the alleged cause of action accrued.
74. Having found that the instant Constitutional Petition is **res judicata**, and was brought to court with **unreasonable delay**, then the court upholds the 1st and 3rd Respondents Preliminary Objection dated **27th January 2025**.
75. For the above reasons, the instant Petition cannot stand and it is thus struck out with costs to the **1st, 2nd and 3rd Respondents**.
76. On whether the instant Petition is merited, having struck it out entirely, the court finds no reasons to determine the merit of a struck-out Petition.
77. On costs, the court finds and holds that this Petition is struck out with costs to the **1st, 2nd and 3rd Respondents** who filed objections to the main Petition.
It is so ordered.

***Dated, signed and delivered virtually at Narok this 29th
Day of January 2026.***

***L. Gacheru
Judge***

***Delivered online in the presence of
Elijah Meyoki - Court Assistant***

***N/A for 1st Petitioner
N/A for 2nd Petitioner
Mr Kiptoo for 1st Respondent
Mr Yenke for 2nd Respondent
Mr Kiptoo for 3rd Respondent
N/A for 4th Respondent
N/A for 5th Respondent
N/A for 6th Respondent
N/A for 7th Respondent***

***L. Gacheru
Judge
29/1/2026***