



**Chelimo & 3 others (Suing as the Administrators of the Estate of the Late Joseph Kibiator Chelimo) v Ruto (Sued as the legal Administrator of the Estate of Ruto Rotich Tingos) (Environmental and Land Originating Summons E004 of 2025) [2026] KEELC 644 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 644 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2025**

**CK NZILI, J**

**FEBRUARY 11, 2026**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF L.R. NO. TRANS NZOIA SUWERWA/140**

**BETWEEN**

**FLORA CHELIMO ..... 1<sup>ST</sup> PLAINTIFF  
FRED CHELIMO ..... 2<sup>ND</sup> PLAINTIFF  
SILVESTER CHELIMO ..... 3<sup>RD</sup> PLAINTIFF  
AMBROSE CHELIMO ..... 4<sup>TH</sup> PLAINTIFF  
SUIING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE JOSEPH  
KIBIATOR CHELIMO**

**AND**

**SIMON CHERUIYOT RUTO ..... DEFENDANT  
SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF RUTO  
ROTICH TINGOS**

**RULING**

1. The application before the court under Orders 10 Rule 11, Order 12 Rule 6(1), Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 3A, and Article 159 2 (a), (b), and (c) of the Constitution seeks orders:-

a. Spent...



- b. Varying and or setting aside orders striking out the applicants' suit for noncompliance.
  - c. Reinstatement of the suit for hearing and determination.
  - d. Costs.
2. The rounds are contained on the face of the application dated 27/10/2025 and in the affidavit sworn by the 2<sup>nd</sup> applicant. It is deposed that the suit was filed together with the questionnaires on issues in full compliance with Order 11 of the [Civil Procedure Rules](#).
  3. The applicants depose that on 25/9/2025, parties were directed to comply with Order 11 of the [Civil Procedure Rules](#) as the matter was to proceed by way of viva voce. Further, the applicants depose that upon filing this suit on 12/2/2025, they also filed a list of documents and the witness statements attached as FC-1 and FC-2.
  4. It is deposed that, though the originating summons is in the form of a questionnaire in compliance with Order 11 of the [Civil Procedure Rules](#), a questionnaire was also filed. The applicants also aver that it is in the interest of justice that the orders sought are granted.
  5. The court record shows that on 20/11/1025, counsel for the respondent submitted that they were yet to file a response to the application and sought 14 days within which to apply to cease acting.
  6. The applicants rely on written submissions dated 2/11/2025. They submit that they had presumed that there was no need to file the questionnaire since the originating summons is in the form of a questionnaire. Nevertheless, they depose that they have since filed the same.
  7. Further, the applicants submit that they have met the principles to warrant the orders sought, they have a right to be heard, and the court should not aid a party seeking to delay or obstruct the course of justice. Reliance is placed on [D T Dobie & Company \(Kenya\) Limited -vs- Joseph Mbaria Muchina & another](#) [1982] KLR 1, Article 50(1) of the [Constitution, Agip \(Kenya\) Ltd -vs- Highland Tyres](#) (2001) KLR 630, and [Richard Ncharpi Leiyagu -vs- Independent Electoral Boundaries Commission & 2 others](#) [2013] KECA 282 (KLR).
  8. The issue for determination is whether there are reasonable grounds to reinstate the suit. The court is also to consider the prejudice to be occasioned to both the applicants and the respondents if the dismissal order is not set aside and the suit reinstated. In [Shah -vs- Mbogo & another](#) [1967] EA 1116, the court held that discretion is intended to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.
  9. In a claim for adverse possession, brought by way of originating summons, the court had directed that the originating summons would be deemed as a plaint, and hence the need to comply with pretrial rules.
  10. On this basis, parties were to comply with Order 11 of the [Civil Procedure Rules](#). Counsel for the respondent confirmed compliance, while the applicants had yet to comply. The applicant insisted that the originating summons complied with Order 11 of the [Civil Procedure Rules](#), which was not true at the time of the dismissal for noncompliance.
  11. Under Order 12 Rule 7 of the [Civil Procedure Rules](#), the court may set aside the dismissal order, on such terms as may be just. Reinstatement of a suit calls for the exercise of discretion in line with Articles 50 and 159 of the [Constitution](#), and the oxygen principle under Sections 1, 1A, and 3A of the [Civil Procedure Act](#), Cap 21, Laws of Kenya.



12. In *John Nabashon Mwangi -vs- Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR [2015] KEHC 6789 (KLR), the court held that the fundamental principles of justice are enshrined in Article 159 of the *Constitution*, coupled with Article 50, with respect to the right to be heard, and to serve substantive justice to all. The court underscored that those principles ought to be factored in when considering reinstatement of dismissed suits, bearing in mind that dismissal of suits is draconian.
13. Mistakes of counsel should not be visited on a party to bar them from their constitutional right of access to justice. Nonetheless, procedural rules must be adhered to maintain a sane legal profession.
14. The court notes that the applicants have since complied with the court directions. In the circumstances, it would be fair and just not to drive them from the seat of justice. The application is allowed. The orders of 27/10/2025 are hereby set aside, and the suit is reinstated for hearing on merits.
15. Costs to the respondent.
16. Orders accordingly

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. C. K. NZILI**

**JUDGE**

**ELC, KITALE**

In the presence of:

Court Assistant – Dennis.

Miss Tum for Dr. Chebii for the plaintiffs - present.

Mr. Gemenet for the defendant - present.

