

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELCLOS NO. E015 OF 2025

LAUDIA JEPTANUI MARITIM1ST
APPLICANT
BENJAMIN KIPLETING KETER2ND APPLICANT
-VERSUS-
RUTH JEPKORIR.....RESPONDENT

R U L I N G

1. The Respondent herein did file a Notice of Preliminary Objection dated 23.07.2025 (hereinafter referred to as **“the present PO”**) seeking to strike out the 1st and 2nd Applicants’ Originating Summons dated 24.04.2025 (hereinafter referred as **“the pending OS”**) on the following grounds; -
 - i. The pending OS is fatally defective for failure to comply with mandatory provisions of Order 37 Rule 7(2) of the Civil Procedure Rules, Cap 21 Laws of Kenya.
 - ii. The pending OS offends the provisions of section 13(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya.
 - iii. The 1st and 2nd Applicants Further Affidavit dated 16.07.2025 was filed without seeking leave of the Court as required under Order 7 Rule 17(2) of the Civil Procedure Rules, 2010 and is therefore incompetent, inadmissible and ought to be expunged from the Court’s records.
 - iv. The 1st and 2nd Applicant’s claim is ambiguous and does not demonstrate any legal cause of action against the defendant.

2. The present PO was duly served on the 1st and 2nd Applicants do did seek to oppose the same.
3. The Court then did direct that the present PO be canvassed by way of written submissions.
4. In compliance, the Respondent did file her submissions dated 27.11.2025 while the 1st and 2nd Applicants did file their submissions dated 02.12.2025.
5. The Court has careful gone through the pending OS, the present PO and the submissions by the parties herein and identifies the issues for determination as follows; -

ISSUE NO. 1- DOES THE PENDING OS OFFEND THE PROVISIONS OF ORDER 37 RULE 7(2) OF THE CIVIL PROCEDURE RULES, CAP 21?

ISSUE NO.2- DOES THE PENDING OS OFFEND THE PROVISIONS OF SECTION 13 (1) OF THE LIMITATION OF ACTIONS ACT, CAP 22?

ISSUE NO.3- DID THE 1ST AND 2ND APPLICANTS FURTHER AFFIDAVIT DATED 16.07.2025 OFFEND THE PROVISIONS OF ORDER 7 RULE 17(2) OF THE CIVIL PROCEDURE RULES, 2010?

ISSUE NO.4- IS THE 1ST AND 2ND APPLICANTS CAUSE OF ACTION AMBIGUOUS AND DOES NOT RAISE ANY CAUSE OF ACTION?

ISSUE NO.5- IS THE PRESENT PO MERITED OR NOT?

ISSUE NO.6- WHO BEARS THE COSTS OF THE PRESENT PO?

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

ISSUE NO. 1- DOES THE PENDING OS OFFEND THE PROVISIONS OF ORDER 37 RULE 7(2) OF THE CIVIL PROCEDURE RULES, CAP 21?

7. The first issue for determination in the present PO is whether or not the pending OS offends the provisions of Order 37 Rule 7 (2) of the Civil Procedure Rules, 2010.
8. The provisions of Order 37 Rule 7 (2) of the Civil Procedure Rules, 2010 provides as follows; -

“7 (1) An application under Section 38 of the Limitation of Actions Act shall be made by Originating Summons.

(2) The Summons shall be supported by an affidavit to which a Certified Copy of the extract of the title to the land in question has been annexed.

9. According to the Respondent, the pending OS filed by the 1st and 2nd Applicants is founded on a claim of adverse possession against the owner of the property known as

LAINGUSE/LAINGUSE BLOCK 4(CHEBOROR)/178 (hereinafter referred to as **“the suit property”**).

10. The Respondent pleads that the suit property was registered in her name on the 29.06.2018.
11. According to the Respondent, the 1st and 2nd Respondent were required to annexed a Certified Extract of the title to the suit property in their supporting Affidavit of the pending OS as required under Order 37 Rule 7 (2) of the Civil Procedure Rules, 2010.
12. However, in the 1st and 2nd Applicant’s supporting Affidavit to the pending OS, the Certified Extract of the Title to the suit property was never annexed therein.
13. To be able to resolve this issue, the Court is required to peruse the Supporting Affidavit in support of the pending OS and confirm whether or not the 1st and 2nd Applicants did annex a Certified Extract of the Title to the suit property.
14. The Court has carefully perused by the Supporting Affidavits sworn by the 1st and 2nd Applicants in support of the pending OS and notes that the Certified Extract of the Title of the suit property was never annexed in any of the Supporting Affidavits sworn by the 1st and 2nd Applicants.
15. As such, this Court is of the considered view that the 1st and 2nd Applicants did not comply with the mandatory provisions of Order 37 Rule 7 (2) of the Civil Procedure Rules, 2010.
16. Consequently, the Respondent’s present PO on this ground is merited.

ISSUE NO.2- DOES THE PENDING OS OFFEND THE PROVISIONS OF SECTION 13 (1) OF THE LIMITATION OF ACTIONS ACT, CAP 22?

17. The second issue for determination is whether the pending OS offends the provisions of Section 13 (1) of the Limitation of Actions Act, Cap 22.
18. The provisions of Section 13 (1) of the Limitation of Actions Act, Cap 22 provides as follows; -

“13(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession) and where under Sections 9,10,11 and 12 of this Act, a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.”

19. According to the Respondent, the 1st and 2nd Applicants cause of action is that of adverse possession against him on the suit property registered in her name on the 29.06.2018.
20. The Respondent is of the considered view that the 1st and 2nd Applicant’s computation of the twelve (12) years required prior to institution of a claim of adverse possession can only run after her registration on the 29.06.2018.
21. As such, the Respondent did submit that the 1st and 2nd Applicant’s cause of action relating to adverse possession had not accrued keeping in mind the manner in which time should

be computed under Section 13 (1) of the Limitation of Actions Act, Cap 22.

22. On the other hand, the 1st and 2nd Applicants did plead and submit that their occupation of the suit property did commence way back in the year 1995.
23. Consequently, the claim of adverse possession had crystallized based on the lapse of the prescribed 12 years and therefore the cause of action contained in the pending OS was properly before the Court.
24. To resolve this issue, the Court has gone through the facts contained in the pending OS.
25. To begin with, the 1st and 2nd Applicants plead that they were allocated the suit property but on visiting the ground, it was found that it did not exist.
26. Upon discovery of this fact, the 1st and 2nd Applicants were settled on the property known as LR.NO.LAINGUSE/LAINGUSE BLOCK 4 (CHEBOROR)/177 which they have been in occupation thereof.
27. The 1st and 2nd Applicants did further plead and submit that various ground visits have been undertaken by Government officials and all point to the fact that although the suit property is titled, the portion of land within which it should be located is not in existence.
28. While this might be the case, the 1st and 2nd Applicants in the pending OS are seeking adverse possession against the Respondent's suit property.

29. The assumption of this Court is that prior to institution of the pending OS, the 1st and 2nd Applicants had undertaken due diligence to establish the location of their occupation and/or possession, the correct property number and the registered owner of the said property.
30. Based on this assumption, the dispute as to whether the 1st and 2nd Applicants are on the property known as LR.NO LR.NO.LAINGUSE/LAINGUSE BLOCK 4 (CHEBOROR)/177 or on the suit property cannot be an issue under a claim of adverse possession.
31. In fact, the parties in this pending OS admit the existence of another proceeding before the Chief Magistrate's Court that is undertaking that issue.
32. Consequently, in the present PO, this Court is simply to ascertain when time starts running for purposes of computing the time within the Limitation of Actions Act, Cap 22.
33. According to the Title Deed of the suit property produced, the suit property was recorded in the name of the Respondent on the 29.06.2018.
34. As such, the time of computing the twelve (12) years period required to crystallize a claim of adverse possession under Section 13 (1) of the Limitation of Action Act, Cap 22 legally began on the 29.06.2018 and not the year 1995 as alleged by the 1st and 2nd Applicants herein.
35. In essence, this Court hereby finds the Respondent's present PO is merited on this ground.

**ISSUE NO.3- DID THE 1ST AND 2ND APPLICANTS FURTHER
AFFIDAVIT DATED 16.07.2025 OFFEND THE**

PROVISIONS OF ORDER 7 RULE 17(2) OF THE CIVIL PROCEDURE RULES, 2010?

36. The third issue is whether the 1st and 2nd Applicant's Further Affidavit dated 16.07.2025 offends the provision of Order 7 Rule 17 (2) of the Civil Procedure Rules, 2010.
37. The provisions of Order 7 Rule 17 (2) of the Civil Procedure Rules, 2010 state as follows; -
- “No pleading subsequent to the Reply shall be pleaded without the leave of the Court, and then shall be pleaded only upon such terms as the Court thinks fit.”***
38. According to the Respondent herein, the 1st and 2nd Applicants did file a Further Affidavit dated 16.07.2025 in Reply to their Replying Affidavit without leave of this Court.
39. In essence thereof, the Further Affidavit dated 16.07.2025 ought to be expunged from the Court's record.
40. The 1st and 2nd Applicant did plead on the other hand that the Further Affidavit dated 16.07.2025 was duly filed in accordance with the law and therefore it was properly on record.
41. The Court has considered both arguments by the parties and states that the present PO is dealing with the issue of whether the pending OS should be struck out or not.

42. The fact that a party did file a Further Affidavit without leave of the Court or not one that can contribute much to the pending OS being struck out or not.
43. The legality of the Further Affidavit is an issue that can be handled at an interlocutory stage within the hearing of the pending OS if the present PO is not sustained.
44. Consequently, this Court is of the finding that the Respondent's present PO on this ground is not merited.

ISSUE NO.4- IS THE 1ST AND 2ND APPLICANTS CAUSE OF ACTION AMBIGUOUS AND DOES NOT RAISE ANY CAUSE OF ACTION?

45. The fourth issue for determination is whether the 1st and 2nd Applicant's cause of action in the pending OS is ambiguous and/or does not raise any cause of action against the Respondent at all.
46. To begin with, it is clear that the 1st and 2nd Applicants are seeking for an Order of Adverse possession against the suit property recorded in the name of the Respondent.
47. However, in the body of the Supporting Affidavits sworn in support of the pending OS, the 1st and 2nd Applicants plead that they are in occupation of the property known as LR.NO LR.NO.LAINGUSE/LAINGUSE BLOCK 4 (CHEBOROR)/177.
48. The 1st and 2nd Applicants went further to produce a Survey Report prepared by the Court Survey Office in the proceedings known as ELDOROT CHIEF MAGISTRATE'S COURT ELC CASE NO.207 OF 2023.

49. The Court did go through the Survey Report prepared by the County Survey office in the proceedings known as ELDORET CHIEF MAGISTRATES COURT ELC NO. 207 OF 2023 and takes note that the suit property actually exists on the ground as depicted in the Registered Index Map of the area.
50. As such, this Court is of the considered view that the 1st and 2nd Applicants claim that they could be in occupation of a portion of the suit property is possible.
51. Consequently, this Court's finding is that the 1st and 2nd Applicant's cause of action against the Respondent is not ambiguous as alleged in the present PO.
52. Secondly, the Respondent did plead that the pending OS did not disclose any cause of action her.
53. As earlier stated, the cause of action in the pending OS by the 1st and 2nd Applicant against the Respondent is a claim of adverse possession.
54. According to the Limitation of Actions Act, Cap 22, a cause of action based on the claim of Adverse possession crystallizes after twelve years upon entry of the property.
55. Similarly, the twelve (12) years period required for a claim of adverse possession to crystallize begins to run from the date when the property has been registered and there is an owner against whom time can begin running.
56. In this instance, the Respondent was registered as the owner of the suit property on the 29.06.2018.

57. Consequently, the time for computation of the Limitation of Actions Act, Cap 22 as provided under Section 13 (1) thereof could only run from 29.06.2018.
58. As such, a period of 12 years from 29.06.2018 when the Respondent was registered as the owner of the suit property which the 1st and 2nd Applicants purport to be in occupation has not lapsed.
59. In conclusion, the 1st and 2nd Applicant's cause of action against the Respondent in the pending OS is pre-mature and cannot be held to be a valid cause of action.
60. In essence, the Court is of the considered view and finding that the 1st and 2nd Applicants have no cause of action against the Respondent herein as regards adverse possession before the lapse of the 12 years period prescribed in law.

ISSUE NO.5- IS THE PRESENT PO MERITED OR NOT?

61. Based on the Court's finding in Issues No. 1, 2 and 4 hereinabove, this Court is of the finding that the present PO is merited.

ISSUE NO.6- WHO BEARS THE COSTS OF THE PRESENT PO?

62. Costs are usually awarded to the winning party.
63. The Respondent's present PO having been found merited is entitled to costs.

CONCLUSION

64. In conclusion, this Court hereby makes the following Orders in determination of the present PO; -

- A. THE PRELIMINARY OBJECTION DATED 23.07.2025 IS MERITED.**
- B. THE ORIGINATING SUMMONS DATED 24.04.2025 FILED BY THE 1ST AND 2ND APPLICANTS BE AND IS HEREBY STRUCK OUT.**
- C. THE RESPONDENT IS AWARDED COSTS OF BOTH THE ORIGINATING SUMMONS DATED 24.04.2025 AS WELL AS THE PRELIMINARY OBJECTION DATED 23.07.2025 PAYABLE BY THE 1ST AND 2ND APPLICANTS HEREIN.**

DATED, SIGNED and DELIVERED in ELDORET this 16TH DAY OF FEBRUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for Plaintiff: Mrs. Chumba

Counsel for Defendant: Ms. Rono holding brief for Mr. Tarigo