

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELCL NO. E030 OF 2025 (O.S)**

**JOASH KIBITTOK ANDERSON .....**  
**APPLICANT**

**VERSUS**

**DANIEL LADDAMA RUTO .....**  
**RESPONDENT**

**RULING:**

1. The Respondent herein raised a Notice of Preliminary Objection dated 18<sup>th</sup> November, 2025, seeking to have the applicant's suit struck out and/or dismissed on the following grounds: -
  1. **That SERGOIT/KARUNA BLOCK 3 (TUGEN)/220 was Government of Kenya land upto 15.12.2022 and adverse possession could not run within the meaning of section 41 of the Limitations of Actions Act, Cap 22 Laws of Kenya.**
  2. **That the entire Originating Summons herein is not properly before the court within the meaning of Order 37 Rule 7 of the Civil Procedure Rules.**
2. This court issued directions that the Preliminary Objection be canvassed by way of written submissions. The Respondent filed his submissions dated 20.11.2025 while the Applicant filed his submissions dated 8.12.2025 which I have read, considered and summarized as hereunder.

**Analysis and Determination:**

3. From the foregoing, it is my considered opinion that the following issues are arising for determination: -
  - i. *Whether the Notice of Preliminary Objection dated 18.11.2025 meets the threshold of what amounts to a Preliminary Objection.*
  - ii. *Whether the Preliminary Objection is merited.*
  - iii. *Who shall bear the costs of the P.O.*

**Whether the Notice of Preliminary Objection dated 18<sup>th</sup> November, 2025 meets the threshold of what amounts to a Preliminary Objection;**

4. The instant preliminary objection has been raised on account of sections 41 of the Limitation of Actions Act and Order 37 Rule 7 of the Civil Procedure Rules, 2010.
5. Section 41 of the Limitation of Actions Act provides as follows:-

***41. Exclusion of public land  
This Act does not—***

***(a) enable a person to acquire any title  
to, or any easement over—***

***(i) Government land or land otherwise  
enjoyed by the Government;***

***(ii) .....***

***(iii) .....***

***(iv) .....***

***(v) ..... or***

**(vi) .....**

**(b) affect the right of Government to any rent, principal, interest or other money due under any lease, licence or agreement under the Government Lands Act (Cap. 280) or any Act repealed by that Act.**

6. The law on what constitutes a preliminary objection was outlined in the case of **Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) E.A. 696**; where the Court defined Preliminary Objection as follows;

***“...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.”***

7. This position was reiterated in the case of **Oraro -vs- Mbaja (2005) 1KLR 141** where the court held as follows: -

***“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.***

8. It is common ground that a preliminary objection can only be raised on a pure point of law, argued on the assumption that

there are no disputed facts which stand to be tested by rules of evidence and/or contest on facts that would require the exercise of judicial discretion.

9. A question on limitation of actions is a question that goes to the jurisdiction of a court to entertain a suit as filed. In the case of **Sohanladurgadass Rajput & another vs Divisions Integrated Development Programmes Co Ltd (2021) eKLR**, it was held that: -

***"The question of limitation is a question that goes to the jurisdiction of this Court. It is a clear point of law, which if argued as Preliminary Objection point may dispose of the suit."***

10. It is therefore evident that ground (1) of the preliminary objection is premised on pure points of law and meets the threshold set out in the Mukhisa Biscuit case above.
11. However, grounds (2) premised on the provision of Order 37 Rule 7 of the Civil Procedure Rules, in my considered view do not constitute pure points of law. The same would require the exercise of discretion of the court as they derive their foundation from factual information which stands to be tested by rules of evidence in order to establish whether the extract of the title of the subject land has been annexed and/or if the one annexed reflects the actual position on the ground. Consequently, it is my considered opinion that

ground (2) of the P.O. does not meet the threshold set in the Mukhisa Biscuit case.

**Whether the Preliminary Objection is merited;**

12. As stated hereinabove, the preliminary objection is premised on the provisions of section 41 of the Limitation of Actions Act on the limits of acquiring land by way of adverse possession where the subject land in question is government land.
13. In determining this issue, this court is called upon to examine the facts touching on the acquisition of the title and whether the subject land in question is government land.
14. The respondent in the P.O. has annexed an extract of the title deed/ Green Card of the suit land herein and from a look at the same, Entry No. 1 thereon entered on 28.05.1990, the proprietor thereon is the Government of Kenya. Entry No. 2 entered on 15.12.2022 is the registration in the name of the respondent herein, Daniel Laddama Ruto and Entry No. 3 is the issuance of the title deed in favor of the respondent made on the same date.
15. The Supreme Court of Kenya in **Kenya Airports Authority v Mitu-Bell Welfare Society & 2 Others [2018] eKLR**, held that public land cannot be acquired through adverse possession. The Court underscored that time does not run against public land under Section 41.

16. Similarly, the **Court of Appeal in Chevron (K) Ltd v Harrison Charo Wa Shutu [2016] eKLR**, has also held that adverse possession cannot lie against Government land and that limitation does not operate against public property.
17. I have carefully looked at the facts as contained in the Affidavit in support of the Originating Summons and it is evident that the Applicant's claim is that he entered into the suit land sometimes in the year 2009.
18. Thus, guided by the above decision as read with the provisions of section 41 of the Limitation of Actions Act, it is clear that the Applicant's claim on adverse possession cannot be sustained from the said period of the year 2009 since at the time the subject land was still government land and time for adverse possession could not run against the Government.
19. Thus, in view of the foregoing, it is the finding of this court that the Applicant's claim is limited by virtue of section 41 of the LAA and time for purposes of adverse possession only started to run on or about 15.12.2022, after the land was alienated and issued to the Respondent herein.
20. Be that as it may and without prejudice to the foregoing, from the facts and evidence (copy of green card) annexed in the affidavit in support of the Originating summons, time for adverse possession started running in the year 2022.

21. The Court of Appeal decision in **FRANCIS GITONGA MACHARIA vs MUIRURI WAITHAKA [1998] eKLR** held that:-

***“The limitation period for purposes of adverse possession only starts running after registration of the land in the name of the respondent. It follows that in the instant case, time for adverse possession could not run against the respondent prior to the year 1978 as he had no proprietary interest in the suit property. Time for adversity cannot run against a person who has no interest in the property.....”***

22. At the time of filing this suit in the year 2025, the Respondent had only been registered as proprietor for about 3 years, that is from 15.12.2022. The 12 years' requisite period had not been attained. Consequently, therefore, this suit has been filed prematurely and thus ought to be struck out.

**Costs:**

23. It is a well settled principle that costs follow the event unless the court directs otherwise.
24. In this case, having held that the notice of Preliminary Objection is merited I find that the respondent is entitled to the costs.

**Conclusion:**

25. In view of the foregoing, it is the finding of this court that the Notice of Preliminary Objection dated 18<sup>th</sup> November, 2025 is **merited**.
26. Consequently, the Applicant's suit vide an Originating Summons dated 30<sup>th</sup> September, 2025 and the subsequent application are hereby **struck out** with costs to the Respondent.
27. It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET this 26<sup>th</sup> day of FEBRUARY, 2026.**

**HON. C. K. YANO  
JUDGE**

Ruling delivered in the presence of: -

Ms. Mureithi holding brief for Ms. Koech for Applicant.

Dr. Chebii for Respondent.

Court Assistant - Laban