

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC MISCELLANEOUS APPLICATION No. E048 OF 2025
FORMERLY ELDORET HC MISC. APPLICATION No. 181 OF
2025

REPUBLIC
APPLICANT

-VERSUS-

SOY DIVISION LAND DISPUTES TRIBUNAL **1ST**
RESPONDENT
THE HON. ATTORNEY GENERAL **2ND**
RESPONDENT
JOSEPH KIPKOECH KEBENEI **3RD**
RESPONDENT

-AND-

KIPSONGOK ROTICH **INTERESTED**
PARTY/APPLICANT

RULING:

1. The Interested Party/Applicant filed a Notice of Motion Application dated 7th July, 2025 seeking leave for the Firm of Maritim & Company to come on record as its counsel. The Applicant also sought for an order of reconstruction of the file, and further, that the pleadings and documents annexed to its supporting affidavit be accepted as copies of the originals filed in court.
2. In response, the 3rd Respondent filed a Replying Affidavit and a Notice of Preliminary Objection dated 27th July, 2025 opposing the application on the following grounds:-
 - (a) The Interested/Party Applicant lacks locus standi to institute the application dated 7th July, 2025 he (sic) having passed

away in the year 2007. The application is therefore nullity ab initio.

(b) The Judgment/Decree being sought to be executed in favour of the alleged Interested Party/Applicant having been delivered on 3rd November, 2006 vide the adoption of Soy Divisional Land Dispute Tribunal Case No. 18/2006 in Eldoret Chief Magistrate 38/2006, contravenes the mandatory provisions of section 4(4) of the Limitation of Actions Act, Cap. 22 of the Laws of Kenya hence unenforceable as against the 3rd Respondent.

(c) For the foregoing reasons, the application dated 7/7/2025 is frivolous, vexatious and amounts to an abuse of the due process of this court.

3. On 19th November, 2025 when this matter was mentioned, the court directed that the PO would be heard first by way of written submissions. This ruling is therefore with respect to the PO dated 27th July, 2025.

Submissions:

The 3rd Respondent's Submissions:

4. The 3rd Respondent filed his submissions dated 28th November, 2025 in support of the PO. Counsel for the 3rd Respondent submitted that the Interested Party/Applicant, Kipsongok Rotich (deceased) moved the Soy Disputes Land Tribunal vide Case No. 18 of 2006 seeking ownership of parcel L.R. No. Segero Moiben Block 2/180 measuring 24 Acres (the suit property). That the Tribunal found in his favour vide the award read on 19th October, 2006 which was filed in the Eldoret Chief Magistrate's Court on 27th October, 2006 as Award No. 38 of

2006. Counsel argues that the Applicant seeks to execute the said decree through the court record he seeks to reconstruct vide his Application dated 7th July, 2025.

5. Counsel for the 3rd Respondent submitted that per the orders issued in High Court Misc. Application No. 670 of 2006 on 16th November, 2006 the substantive application was to be filed within 21 days of issuance of the said order. That there being no substantive application filed within the required timeline, the orders of stay ended at the lapse of the given timeline as there is no grounds upon which they could otherwise stand. Counsel further pointed out that the Interested Party/Applicant passed away in the year 2007. Counsel cited the case of **Bashir Haji Abdullah vs Adan Mohamed Nooru & 3 Others (2004) eKLR** and **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969)EA 696**.
6. On the issue of locus standi, Counsel submitted that a deceased person cannot move the court because all legal proceedings involving their estate must be done through a duly appointed legal representative. Counsel argued that any action filed in the name of the deceased, such as the application dated 7th July, 2025 is a nullity and the court cannot issue orders based on a nullity. Counsel added that the Applicant having died in 2007, the suit by him abated one year after his death, and since no orders for revival have been sought, there is nothing to litigate.
7. Counsel further submitted that Section 4(4) of the Limitation of Actions Act bars any action including execution proceedings being brought after 12 years. Counsel submitted that the limitation period starts from the date when the court adopts the

award. Counsel argued that after 12 years, the right to enforce the award is extinguished, and that where a matter is time barred, the court lacks jurisdiction. Counsel thus urged that for the foregoing reasons, the application dated 7th July, 2025 is frivolous, vexatious and amounts to an abuse of the court process. Counsel asked that the application be dismissed with costs to the 3rd Respondent.

The Interested Party's Submissions;

8. The Interested Party also filed his submissions dated 16th December, 2025 opposing the PO. With regard to the issue of locus standi, Counsel for the Interested Party claimed that the 3rd Respondent had misapprehended the nature of the Application and the prevailing circumstances. Counsel submitted that the application does not seek execution of the decree nor substitution of parties, but solely to reconstruct the missing court file, without which no procedurally compliant application including one for substitution can be made. Counsel argued that without reconstruction, the court is disabled from exercising its jurisdiction.
9. Counsel claimed that the issue of locus standi can arise after the procedural framework has been restored through reconstruction of the record. Counsel urged that the objection at this stage is thus premature. That dealing with the objection at this stage will require the court to interrogate matters outside the realm and scope of a pure PO as settled in the **Mukhisa Biscuits Case (Supra)**.
10. As to whether the judgment sought to be executed contravenes Section 4(4) of the Limitation of Actions Act, Counsel submitted that the said argument was without candour and in disregard of

the procedural history of the matter. Counsel explained that the Respondent instituted the judicial review proceedings challenging the decision and was granted orders of stay restraining the execution of the judgment. Counsel contends that the Applicant is not guilty of inaction or indolence, but was legally prohibited from enforcing the decree during the subsistence of the stay.

11. Counsel argued that time for limitation does not run against a party who is prevented by an order of court from enforcing their rights, and relied on **Mehta vs Shah (1965)EA 321** and **Florence Hare Mkala vs Pwani Tawakal Mini Coach & Another (2014) eKLR**. Counsel submitted that to allow the Respondent to rely on limitation would offend equity, justice and the integrity of the judicial process. Counsel also claimed that the issue of whether time begun to run or whether it was suspended are matters that require evidentiary interrogation and substantive analysis, and not for determination by way of a PO. Counsel submitted that where limitation is dependent on contested facts or procedural history, the matter must proceed to substantive hearing. Counsel relied on **Republic vs Kenya national Highways Authority ex parte Adopt-A-Light Ltd (2018) eKLR**.

12. On whether the application is an abuse of the court process, Counsel submitted that reconstruction of a court file is legitimate and essential to the administration of justice, and that the Interested Party's conduct is in good faith and in respect for due process. Counsel argued that the 3rd Respondent is attempting to permanently shut out the

Applicant on technical grounds and procedural impediments occasioned by his own inaction, as opposed to the Applicant's conduct. Counsel relied on **Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & Others (2009) eKLR**, and asked that the PO be dismissed with costs and the application dated 7th July, 2025 be heard and determined on its merits.

Analysis and Determination:

13. From the Notice of Preliminary Objection and rival submissions of parties, as read alongside the authorities cited by the parties, the issues that arise for determination are:

- (i) Whether the 3rd Respondent's Notice of Preliminary Objection dated 27th July 2025 is a proper PO
- (ii) Whether the Interested Party/Applicant has the requisite locus standi to maintain this suit
- (iii) Whether the suit is barred by virtue of Section 4(4) of the Limitation of Actions Act
- (iv) Who shall bear the costs of this suit?

(a) Whether the 3rd Respondent's Notice of Preliminary Objection dated 27th July 2025 is a proper PO

14. The facts relevant to this PO are that the 3rd Respondent herein filed **Eldoret Miscellaneous JR Cause No. 670 of 2006, Kipkeoch Kebenei vs Kipsongok Arap Rotich** seeking leave to file a substantive Judicial Review Application. By order made on 16th November, 2006 the court gave the 3rd Respondent leave to file the substantive Motion within 21 days from the date thereof. The High Court further directed that the leave so

granted would operate as a stay of proceedings and implementation of Soy Land Disputes Tribunal Award Case No. 18 of 2006 as adopted vide CMCC Award No. 38 of 2006.

15. This order was duly extracted on 21st November, 2006. The ex parte Applicant however, did not file the substantive motion as directed, and has not done so to date. During that time the Interested Party in the application for leave died in 2007. Since no application for substitution was made within a year, the suit automatically abated. It appears that no further action was undertaken on the file until the instant matter was filed in the High Court and later transferred to this court, and which gave rise to the instant PO.
16. The Law on preliminary objections is now well settled in the case of **Mukisa Biscuit Manufacturing Co. Limited vs West End Distributors Limited (1969) EA696**, Newbold, V.P, observed as follows:-

“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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase cost and, on occasion, confuse issues. This improper practice should stop.”

17. The objections raised by the 3rd Respondent are on the issue of locus standi and time limitation on execution of a judgment after 12 years. The objection raised on time limitation in this suit flows from the provisions of Order 53 of the Civil Procedure

Rules, as well as Section 4(4) of the Limitation of Actions Act. There can be no doubt that the issue of time limitation goes to the root of jurisdiction of a case to hear a matter, and is thus capable of determining the suit preliminarily.

18. As to whether locus standi also qualifies as a preliminary point, in **Julian Adoyo Ongunga & Another vs Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) (2016) eKLR**, the court explained that:-

“Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings.”

19. The grounds raised by the 3rd Respondent in his PO are proper preliminary points. They are capable of determining the matter preliminarily and need no evidence as they flow entirely from the pleadings filed before this court. For this reason, this court is satisfied that the 3rd Respondent’s Notice of Preliminary Objection qualifies as a proper PO.

(b) Whether the Interested Party/Applicant has the requisite locus standi to maintain this suit;

20. The first ground of objection in the 3rd Respondent’s PO is that of lack of locus standi. The **Black’s Law Dictionary 10th Edition** explains that the term locus standi is Latin for a place

of standing, and goes on to define it as the right to bring an action or to be heard in a given forum. A party to a suit must therefore have a sufficient, direct, and tangible interest in a matter to initiate a lawsuit or legal proceeding.

21. With respect to the issue of locus standi, the 3rd Respondent's objection is to the effect that the Interested Party herein passed away in the year 2007, which is not denied. But in response, Counsel for the Applicant claims that there is need to reconstruct the file first before any substantive application, including one for substitution, can be made. This is to me an admission that indeed the Interested Party, Kipsongok Rotich, is now deceased.
22. It is not entirely clear then who is behind the current application. The Supporting Affidavit to the main Motion was sworn by Joshua K. Maritim an advocate of the High Court of Kenya, who claimed he was instructed to take conduct of this suit on behalf of the Interested Party/Applicant. He did not inform this court where those instructions emanated from. It is even worse because Counsel was clearly not the one who represented the deceased in the matter he seeks to reconstruct, and is through the same application seeking leave to come on record. A critical question thus arises, if the Interested Party is deceased, and Counsel for the Interested Party admits this since he has acknowledged that there is need for substitution, then who instructed the advocate to file the instant suit?
23. Courts have held that the issue of *locus standi* is much more serious where the suit involves the estate of a deceased person. The law is clear that no person is entitled to bring a cause of

action in respect to the estate of a deceased person unless they have been duly appointed as a personal representative. In **Trouistik Union International & Another vs Mbeyu & Another (Civil Appeal 145 of 1990) (1993) KECA 89 (KLR)**, the Court of Appeal defined a personal representative as:-

“But it should be remembered that “personal representatives” as known in this branch of the law, are persons who obtain probate or letters of administration and not blood relatives however close.”

24. Therefore, only an executor under a will or administrator appointed under a grant of letters of administration can commence and maintain an action on behalf of a deceased person's estate. Unless the personal representative is acting under a will where the doctrine of relation applies, the grant of representation must first be obtained so as to have the necessary locus standi. Where a party brings an action before they have taken out letters of administration, the action is incompetent as at the date of its inception.
25. In this case, the Interested Party/Applicant has annexed no document showing that there is a legal representative of the Estate of Kipsongok Rotich, or that the instructions to act came from such legal representative. It is however telling that even after the objection has been raised, the Interested Party/Applicant did not endeavour to present any grant to show that there is a legal representative appointed to represent the estate so as to validate the suit. Quite clearly, without a grant showing that the Applicant herein is an executor or administrator of the estate of the late Kipsongok Rotich, then he

lacks standing to present and prosecute a suit for the benefit of the deceased's estate.

(c) Whether the suit is barred by virtue of Section 4(4) of the Limitation of Actions Act

26. The second objection is with regards to Section 4(4) of the Limitation of Actions Act, which provides that:-

(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

27. The 3rd Respondent claims that through the Application that commenced this suit, the Interested Party/Applicant seeks to execute the judgment of the Soy Divisional Land Dispute Tribunal Case No. 18/2006 in Eldoret Chief Magistrate 38/2006, which was delivered in the year 2006. The 3rd Respondent claims therefore, that the execution of the said judgment is barred under the above Section 4(4) of the Limitation of Actions Act.

28. Counsel for the Interested Party however claims that the 3rd Respondent has misconceived the nature of the Application. Counsel claims that they are currently seeking a reconstruction of the file, upon which, he admits that they will lodge an application for substitution. It may be true that the real reason that the Interested Party seeks reconstruction and substitution

is to eventually seek to execute the award. However, that is not amongst one of the prayers in this suit.

29. Consequently, the issue of whether time begun to run or whether it was suspended are matters that have not arisen since no such prayer for execution has been made. The second ground of the PO therefore is premature as it has not been shown that this suit seeks execution of the 2006 judgment, and is thus not merited.
30. However, the fact that the second ground is unmerited is of little consequence because as found earlier in this decision, owing to the lack of a grant of representation, the Applicant herein does not have locus standi to prosecute this suit. The suit is therefore incompetent, and is for striking out.

(d) Who shall bear the costs of this suit?

31. With regard to costs, Section 27 provides that costs follow the event, and equally vests this court with discretion on whether or not to award costs. The 3rd Respondent has argued his PO successfully and convinced this court to strike out the suit. Consequently, the 3rd Respondent is entitled to the costs of this suit.

Orders:-

32. The upshot is that the Notice of Preliminary Objection dated 27th July, 2025 succeeds on the ground of lack of locus standi on the part of the Interested Party/Applicant. The PO is thus merited and the suit is struck out for that reason. The Interested Party/Applicant shall bear the costs of the suit.
33. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **26TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mrs. Isiaho for 3rd Respondent.

Mr. Maritim for Interested Party/Applicant.

No appearance for 1st and 2nd Respondents.

Court Assistant - Laban.

ORIGINAL