

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELC CASE NO. 89 OF 2021

FORMERLY ELDORET ELC NO. 39 OF 2016

MARIAM SAID MUSA (suing as the personal representative of the estate of AMINA CHEPKEMBOI MWALIMU - DECEASED)PLAINTIFF

-VERSUS-

JOEL ROTICH.....1ST

DEFENDANT

ISAAC KIPKERING KUTO.....2ND

DEFENDANT

PROF. JOSPHAT KIPKOECH YEGO.....3RD

DEFENDANT

HELLEN AUMA OMONDI.....4TH

DEFENDANT

ELPHAS OMBUYA ANGORO.....5TH

DEFENDANT

MARTIN DOUGLAS.....6TH

DEFENDANT

EDEN SPRINGS COMPANY LIMITED.....7TH

DEFENDANT

FLORENCE MBOGA ISAAC.....8TH

DEFENDANT

EDWIN KIRWA BIRGEN.....9TH

DEFENDANT

RULING

- 1.** The plaintiff sued the defendants by way of the plaint last amended on 21st June 2023 for mandatory injunction, among other orders, in respect of Land reference numbers **Nandi/ Kamobo/4501, 2622, 2632,2632 and 1493**
- 2.** In response to the suit, the 3rd 4th 5th and 8th defendants through Rotich Langat and Partners Advocates raised a notice of preliminary objection dated 17th March 2026 based on the grounds, inter alia;

- a) That the Plaintiff lacks Locus Standi to institute and/or prosecute this suit since she has neither beneficiary nor ownership interests having been ousted by the Kadhi's court in the primary succession.
- b) That the 1st, 3rd, 4th, 5th and 8th Defendants reply on the Court of Appeal decision on the meaning and scope of locus standi in the case of **Rugiri -vs- Kinuthia & 3 others (2024) KECA 1601 (KLR)** where it stated that "*Locus Standi is cardinal in civil proceedings because without it, a party lacks the right to institute and/or maintain the suit even where a valid cause of action subsists. It can be equated to a court acting without jurisdiction... Locus Standi concerns the sufficiency and directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted, and should be one of the first things to establish in a litigation*".
- c) That the 1st, 3rd, 4th, 5th and 8th Defendants rely on the Black's Law Dictionary, 9th Edition definition of locus standi as "*the right to bring an action or to be heard*

*in a given forum” and the decision in **Alfred Njau and Others -vs- City Council of Nairobi [1982] KAR 229** held that: “The term Locus Standi means a right to appear in court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”*

d) Consequently, the 1st, 3rd, 4th, 5th and 8th Defendants pray that this suit be dismissed with costs to the defendants for being an abuse of the court process and for the grounds listed above.

3. Mr. Rotich learned counsel for the defendants has sought to withdraw the preliminary objection. He stated that the defendants wish to reserve the issues in their statement of defence in lieu of proceeding with the preliminary objection.

4. Mr. Oduto Kongani and Joan Koech learned counsel for the plaintiff and 9th defendant respectively, have no objection to the withdrawal of the preliminary objection.

5. I have taken note of the issues raised in the parties’ respective pleadings and the preliminary objection.

6. It is trite law that parties are at liberty to withdraw a matter before court and the court has the power to have it withdrawn; see **Asanyo & others vs Attorney General** **({2020} KESC 62 (KLR))**.

7. Furthermore, the withdrawal of the preliminary objection in this matter is aimed at paving way for the hearing of the suit in the spirit of Article 159 (2) (b) of the Constitution of Kenya 2010 which reads;

Justice shall not be delayed.

8. In the circumstances, the 3rd 4th 5 and 8th defendants deserve to with withdraw the preliminary objection.

9. Accordingly, the preliminary objection dated 17th March 2026 is hereby marked as withdrawn with no orders as to costs.

10. It is so ordered.

Dated and Delivered at Kapsabet this 23rd day of March 2026.

HON. G.M.A. ONG'ONDO

JUDGE

In the presence of;

1. Mr. Udoto Kongani learned counsel for the plaintiff
2. Mr. Moses Rotich learned counsel for the 3rd 4th 5th and 9th defendants
3. Ms. Joan Koech learned counsel for the 9th defendant
4. Walter - Court Assistant