

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMABAY
ELC CASE NO. E002 OF 2023

**GRACE ACHIENG AYADO (suing on her own behalf as a
married Woman and as the Administrator of the
Estate of Joseph Ndege Jowi (deceased))
.....PLAINTIFF**

-VERSUS-

**BENARD WAFULA WANGWE1ST
DEFENDANT**

**LAWRENCE OCHICH OLIECH MBAKA.....2ND
DEFENDANT ATTORNEY GENERAL
3RD DEFENDANT**

RULING

**(On whether the 2nd defendant's preliminary objection is
merited)**

Introduction

1. This Ruling is pursuant to a Preliminary Objection dated 24th October 2025. Since an Objection of such a nature is based on a determination of whether a pleading complies with or is in line with the provisions of the law as has been held in the seminal case of **Mukisa Biscuits Manufacturing** (infra), this Court shall, in determining the instant Objection, only limit itself to and specifically highlight and compare the law with the relevant portions of the parties' pleadings herein. Thus, it will, in the relevant sections of this Ruling, cite or quote the parties' respective parts of pleadings that speak to the decision.

Parties' Pleadings

2. The Plaintiff filed a Complaint dated 25th July 2023 and changed some specific aspects in it via an Amended Complaint dated 4th October 2023. She sought the following reliefs:

- 1) An Order be granted in terms of the averments at paragraph 7 herein-above effectively nullifying the said arbitrary, illegal, un-procedural, irregular and fraudulent sub-division and/or sale of the Plaintiff's said matrimonial property known_ PLOT NO.394 (BEING REFERRED HEREIN-ABOVE as West-Kasipul/Kotieno-Kochich/394) or part thereof and/or an Order nullifying the illegal transfer thereof or illegal the Transfer of a Portion thereof to the 1st Defendant and subsequently to the 2nd Defendant herein so that the original title is reinstated and restored back to the intestate Estate of JOSEPH NDEGE JOW (deceased).**
- 2) An Order of Eviction of the 2nd Defendant herein and/or his Servants and/ or his agents from the SAID PLOT. NO 394 (WHICH IS BEING REFERRED HEREIN-ABOVE AS THE Parcel of Land known as West-Kasipul/Kotieno-Kochich/ 394) to be issued forthwith.**
- 3) A declaration that the title deed issued to the 1st Defendant herein in respect of West-Kasipul/Kotieno-Kochich/727 was fraudulent, unprocedural, illegal and therefore null and void.**

- 4) A declaration that the Purported Sale Transfer and the title deed issued to the 2d Defendant in respect of the parcel of land known as West-Kasipul/Kotieno Kochich/727 was fraudulent, unprocedural, illegal and therefor null and void.**
 - 5) An Order of Eviction be issued forthwith against the 2d Defendant herein and/his servants/and/or his agents from the said Parcel of land known as West-Kasipul/Kotieno Kochich/727.**
 - 6) General damages and Mesne profits thereon.**
 - 7) Costs of the Suit.**
 - 8) Any other or further Orders which the Honourable Court deems fit and just to grant the Plaintiff.**
- 3.** The 2nd Defendant filed a Defence dated 4th September 2023 while the 3rd Defendant filed its dated 8th July 2025. The relevant parts thereof shall be referred to as this Court delves into the determination of the Preliminary Objection.
- 4.** Forming the basis of seeking such relief were pleadings at paragraphs 5 and 6A of the Amended Plaintiff. These were, in paragraph 5, that “on or about the 10th June 1987 the Plaintiff said (*sic*) matrimonial Property known as WEST KASIPUL/KOTIENO-KOCHICH/ 394 (or PLOT NO. 394) was unprocedurally, irregularly, fraudulently and secretly subdivided (without seeking and obtaining the Plaintiffs mandatory spousal consent and without seeking and obtaining the Plaintiffs co-wife mandatory spousal consent in their capacity as married women

to the late JOSEPH Ndege Jowi who were in active occupation of the said matrimonial property with valid and bona-fide equitable overriding interest recognized by the law) into West-Kasipul/Kotieno-Kochich/726 and West-Kasipul/Kotieno-Kochich/727 before the Portion Known as West-Kasipul/Kotieno-Kochich/727 was fraudulently transferred to the 1st Defendant herein and subsequently to the 2nd Defendant herein without seeking and obtaining the spousal consent of the Plaintiff and without seeking and obtaining the spousal consent of the Plaintiffs co-wife and without seeking the mandatory consents from the Land Control Board to the detriment of the Plaintiff herein and her children.”

She then gave two particulars of the alleged fraud in the subparagraph or lines that followed the averment.

One of the reliefs she seeks is that of the eviction of the 2nd Defendant from the said parcel of land in issue. She prays that, an Order of Eviction of the 2d Defendant and/or his servants and/ or his agents from the Plot No. 394 referred to as West-Kasipul/Kotieno-Kochich/394 be issued forthwith. She also prays for a similar relief against the said 2nd Defendant from parcel No. West-Kasipul/Kotieno-Kochich/727.

The 2nd Defendant denied, at paragraphs 8, 9 and 10, and specifically at paragraphs 13 and 14 and 15 the contents of paragraph 5. He invited the Plaintiff to make specific proof of the same. Lastly, at paragraph 19 he pleaded that the suit was time barred by averring as follows, “...the suit herein is

statutorily time-barred, incompetent, fatally defective, bad in law and an abuse of court process and the 2nd defendant hereby gives notice that he shall preliminarily move this honourable court to strike out the suit in its entirety on the basis of the aforesaid grounds.”

The 3rd Defendant too denied the allegations. Specifically, at paragraph 4, it pleaded that, “If (which is not admitted) the alleged transfer and registration of the suit property WEST KASIPUL/KOTIENO/394 as stated in paragraphs 5 and 6 of the Amended Plaint was done, the Land Registrar relied upon the documents furnished to it and the same was done procedurally and according to the law. The Plaintiff is thus put to strict proof thereof.”

The Preliminary Objection

5. It was upon the said pleadings that the 2nd Respondent filed a Notice of Preliminary Objection dated 24th October 2025. It was premised on the following grounds:
 - a) The suit herein is statutorily time-barred by virtue of the provisions of the Limitation of Actions Act, CAP 22 of the Laws of Kenya.
 - b) The cause of action herein, if any, is guilty of laches and by which reason it had been extinguished, noting that a period in excess of 36 years has lapsed since the year 1987 when the cause of action accrued as has been stated on the face of the plaint (amended plaint) herein.

- c) The suit herein is incompetent, fatally defective and bad in law for having been instituted by a person who had no locus standi to institute and/or maintain the suit.
 - d) The Plaintiff herein is confused, vague, ambiguous and unintelligible, thereby rendering the suit to be scandalous, frivolous, vexatious, likely to prejudice, embarrass or delay the fair trial of the action and an abuse of court process.
- 6.** On the basis of the foregoing, the 2nd defendant prayed that suit be dismissed in its entirety and the costs thereof be awarded to the 2nd defendant. The Objection was heard.

The Parties' Submissions

- 7.** The Preliminary Objection was canvassed by way of written submissions. The 2nd defendant filed his submission dated 14th November 2025. He structured his submissions around the following four grounds: The cause of action is statutorily time-barred; the cause of action has been extinguished by laches; the suit is incompetent, fatally defective and bad in law for lack of locus standi.; the amended plaintiff is frivolous and vexatious, and likely to embarrass.
- 8.** On the issue of the suit being time barred, the 2nd defendant relied on paragraph 5 of the amended plaintiff to submit that the alleged illegality and or irregularity was discovered in 1987, and the plaintiff waited for 36 years to institute the suit. He submitted that the plaintiff had slept on his rights and argued that the said rights had been extinguished by virtue of section

7 of the Limitation of Actions Act, cap 22 laws of Kenya. This said provision, the 2nd defendant argued, mandates the institution of suits for the recovery of land within 12 years and maintained that the latest the suit could have been instituted would have been 9th June 1999.

9. The 2nd defendant also argued the plaintiff purported to recover trust property on account of being a beneficiary to the estate of her deceased husband. Again, the 2nd defendant relied on section 20 of the Limitation of Actions Act to argue that the said claim is not tenable as it had not been brought within six years as mandated by section 20 of the Limitation of Actions Act.

10. The 2nd defendant relied on **Mukuru Munge v Florence Shingi Mwawana & 2 Others (Court of Appeal at Malindi, Civil Application No. 191 of 2011)** to submit that failure to adhere to limitation of time is not a technicality as to afford consideration under article 159 of the Constitution or to be regarded as an overriding objective of justice. The 2nd defendant also submitted that limitation of time is a public policy issue and argued that imposing time limitations serves to ensure that a case is prosecuted when evidence on the same is still available. He submitted that, the instant suit having been filed after 36 years, the prosecution thereof could be adversely affected by fading memory, which in turn diminishes his chances of getting fairness and justice therefrom.

- 11.** Besides the issue of limitation, the 2nd defendant maintained that the plaintiff's case has been extinguished by virtue of laches as the plaintiff had failed to act for a period of 36 years.
- 12.** The third ground for the objection was based on the argument that the suit is incompetent, fatally defective and bad in law for having been instituted by a person who had no locus standi to institute and/or maintain the suit. He submitted that the plaintiff did not exhibit any evidence of being an administrator of the estate of her late husband. He also submitted that no evidence had been tendered to demonstrate that the plaintiff was the administrator of the estate of her deceased co-wife. He equally submitted that there was no grant of letter of administration in respect of the estate of the said co-wife had been availed. On these grounds, the 2nd defendant submitted that the plaintiff's suit was incurably defective and therefore bad in law.
- 13.** The fourth limb of the objection was that the amended plaint was frivolous, vexatious and likely to embarrass or delay the trial on account of multiple and inconsistent causes of action
- 14.** The 2nd defendant submitted that the plaintiff is pursuing multiple causes of action, being: a succession claim, a matrimonial cause, a claim for recovery of land, and a claim for enforcement of a trust. He concluded that the institution of the said multi-faced claim renders the plaintiff's case herein to be ambiguous, confused, vague and unintelligible and impossible to comprehend. He also added that the unintelligibility also

renders the plaintiff's claim herein ambiguous and, therefore, incompetent.

15. The 2nd defendant submitted that, by combining all the above said categories of claims in one proceeding, the plaintiff has clouded those substantive and procedural rules and made it difficult for the 2nd defendant to know the exact case that the he is expected to meet. He equally argued that the manner in which the plaintiff's case herein has been framed renders it difficult to comprehend the plaintiff's claim and to know the standard by which the plaintiff's claim may be evaluated. He concluded that the plaintiff's claim as currently framed has the potential of embarrassing him, as he may not know exactly how to defend the plaintiff's claim. ambiguous, imprecise and vexatious pleading

16. Further to the above, the 2nd defendant submitted that the plaintiff has made broad, blanket and generalized averments of fraud, illegality, arbitrariness and un-procedurality, but all without any concrete substantiation. He also submitted that the plaintiff had made blanket and generalized mentions of various statutes, again all without any concrete substantiation. He cited the case **Co-operative Bank of Kenya & another v Gisemba (Civil Appeal E053 of 2022) [2024] KEHC 3080 (KLR) (20 March 2024) (Judgment)** to emphasize on the need for precision when drafting pleadings.

- 17.** On the basis of the above argument, the 2nd defendant invited this court to invoke its powers under order 2 rule 15 of the civil procedure rules and strike out the plaintiff's suit.
- 18.** The plaintiff filed her submissions dated 24th November 2025. She submitted that she discovered the alleged fraudulent, illegal and procedural subdivisions of her matrimonial home in 2023 following a search conducted by herself on or about 30th June 2021. She maintained that, although she had suspected that the 1st defendant was involved in the said subdivision, a perusal of the deed file on 3rd October 2023 proved otherwise as she found out the indeed, it was the 2nd defendant who has caused the said subdivision as the said subdivisions were not registered in the name of the 1st defendant.
- 19.** The above stated discoveries, the plaintiff submitted, prompted her amendment of the plaint, the lodgment of the plaintiff's list and bundle of documents on record and the withdrawal of the 1st defendant from the suit.
- 20.** The plaintiff gave a chronology of events concerning the litigation of her matter and concluded that the 2nd defendant presented himself as one who had panicked and had resorted to applications, an appeal, and now this preliminary objection, all of which are aimed at preventing her case from being heard on merit.
- 21.** As to when the cause of action arose, the plaintiff, in paragraph 13 of her written submissions, contended that it

accrued for the first time in 2003 when she discovered, through a search conducted at the Rachuonyo Registry that the suit land had been subdivided in 1987. Elsewhere she argues, in paragraphs 1, 2 and 3 of her submissions that she discovered the fraud in October 2023. This is a disconnect which can only be resolved through a perusal of pleadings. In any event that is how a Preliminary Objection is resolved.

22. The plaintiff further submitted the time for instituting suits as provided by the Limitation of Actions Act, in the case of fraudulent transactions involving land, begins to run at the point when the fraud is discovered and not when the alleged fraud actually took place. She relied on **Nakuru Court of Appeal decision in Civil Appeal No. 3 6 Of 2019 and the Supreme Court decision in Petition No. 17 (E021) O F 2 0 2 2 as Consolidated with Petition No. 2 4 (E027) of 2022** as well **Monica Wangu Wamwere & 5 others vs The Attorney General of Kenya in Petition No. 26, 34 and 35 of 2019 (Consolidated)** as to buttress this position.

23. The plaintiff also submitted that the 2nd defendant was being mischievous by alleging that he had faded memory and instead submitted that the said 2nd defendant is a former area chief who is coherent and eloquent litigant of sound mind, who can vividly recall how he acquired the suit property in question.

24. The plaintiff further submitted at paragraph 18 of her submissions that, her legal counsel perused the deed file at the land registry in the year 2003 and discovered that the 1st

defendant was not the registered owner of subdivision no. 727. As such, to her, the 1st Defendant did not have the capacity to transfer the same to the 2nd defendant.

25. The plaintiff concluded that the preliminary objection filed by the 2nd defendant does not meet the test established in **Mukhisa Biscuits Manufacturing & Co. Ltd -Vs- West End Distributors (1969) EA 696** on account of three reasons. Foremost, she submitted that the 2nd defendant's allegations that the cause of action had accrued to the plaintiff 36 years ago is being disputed by the Plaintiff and the same was not substantiated by the 2nd defendant. Secondly, the plaintiff contended that the 2nd defendant has not filed a formal application to enable her respond to the said spurious allegations by way of a replying affidavit. Lastly, the plaintiff submitted that the 2nd defendant has not filed any pleadings to rebut and/or traverse the plaintiff's amended plaint on record despite leave having been graciously granted to him to do so.

26. On whether the plaintiff has locus standi to institute the suite, the plaintiff submitted that she has the requisite locus standi, having obtained a limited grand ad litem to enable her institute the suit.

27. Finally, on the issue of the amended plaint being frivolous, vexatious, mischievous, incompetent and bad in law, the plaintiff maintained that since the 2nd defendant declined to amend his pleadings despite being granted the opportunity to do so, he is precluded from attacking the said pleadings. In any

event, the plaintiff maintained that the attack on his amended plaintiff had been previously done in an application and submissions previously filed before this court by the 2nd defendant. As such, the plaintiff submitted that the issue had been rendered *res judicata*. She argued that the 2nd defendant should raise the said issues before the court of appeal.

28. On the basis of the foregoing, the plaintiff prayed that the preliminary objection be dismissed with costs and the suit be listed for compliance with order 11.

The 2nd Defendant's Rejoinder Submissions

29. The 2nd defendant filed rejoinder submissions dated 26th November 2025. He submitted that there are inconsistencies concerning when the alleged fraudulent subdivision was discovered. The 2nd respondent also blamed the plaintiff for giving evidence through her submissions as opposed to the pleadings. He equally argued that delay in filing the matter cannot be explained through submissions.

30. The 2nd defendant claimed that even if the alleged discoveries were made in 2003, the suit would still be time barred. On the issue of the plaintiff's assertion that the 2nd defendant had filed applications as well as the instant preliminary objection, the 2nd defendant asserted his right to raise interlocutory issues in the pendency of the suit.

31. On the issue of faded memory, 2nd defendant submitted that the long duration taken by the plaintiff to institute the suit would affect his case bearing in mind that he intended to call

witnesses to testify in support of his case. He added that the issue of faded memory can also arise during cross-examination, bearing in mind that his evidence is drawn from both evidence on chief and the evidence of other parties.

32. On the question of limitation of actions as determined by the supreme court in **Monica Wangu Wamwere & 5 Others vs The Attorney General of Kenya in Petition No. 26, 34 and 35 of 2019 (Consolidated)** and relied upon by the plaintiff, the 2nd defendant submitted that limitation of time may apply to cases on human rights violations when suits have been instituted with unreasonable delay that has not been explained.

33. The 2nd plaintiff also submitted that the plaintiff had altered her pleadings by arguing that she discovered the alleged subdivision in 2003 yet she had pleaded that the same was discovered in 1987 in her amended plaint.

34. The 2nd defendant maintained that the plaintiff had no locus standi to institute the suit as she had not proved that she had been granted letter of demonstration to administer her husband's estate. Besides, she had not demonstrated that she had obtained letters of administration for purposes of administering her co-wife's estate.

35. The 2nd defendant admitted that the question of illegality, fraud as alleged by the plaintiff cannot be determined at the interlocutory stage.

36. Finally, on the issue of the 2nd defendant not amending his pleadings despite being granted the same opportunity by the court, the 2nd defendant submitted that he still has ample time to do with the leave of this court.

Issues, Analysis and Determination

37. After careful analysis of the pleadings, the preliminary objection and the submissions of the respective parties, I have formed the opinion that the following issues should be determined: whether the preliminary objection is merited; and who should bear the costs of the application.

38. The very first legal point the proceedings in this Preliminary Objection need to address is the legal position that submissions do not constitute a parties' pleadings. Thus, a party cannot introduce through them

39. The law governing preliminary objections was set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors. (1969) EA 696** where the court established the threshold that must be met in preliminary objections. Accordingly, the court held that:

“A Preliminary Objection consists of appoint of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as preliminary point may dispose of the suit. example is an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by

the contract giving rise to the suit to refer the dispute to arbitration. A Preliminary Objection is in the nature of that used to be called 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." (emphasis mine)

40. The court in **Saleh v Osano & another (Environment and Land appeal E031 of 2023) [2025] KEELC 1030 (3 March 2025) (Judgment)** cited **Oraro v Mbaja [2005]1KLR 141** where the court had held that that:

A preliminary objection correctly understood is a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not as a matter of legal principle, a true preliminary objection which the court should allow to proceed"

41. I have examined the 2nd defendant's grounds for the preliminary objection. The first ground of the preliminary objection is that the suit is time barred by virtue of the Limitation of Actions Act. The second ground faults the plaintiff of being guilty of laches as the suit was brought 36 years after

the alleged cause of actions. The 3rd ground is that the suit is fatally defective, having been brought by a person who does not have locus standi. Lastly, the 2nd defendant's 4th ground was that the Plaintiff is confused, vague, ambiguous and unintelligible, thereby rendering the suit to be scandalous, frivolous, vexatious, likely to prejudice, embarrass or delay the fair trial of the action and an abuse of court process.

42. Guided by the definition of a preliminary objection and the authorities cited above, this court quickly finds that any limb that would invite it to analyze the merits of the evidence or consider facts herein is not a preliminary objection properly so called. Thus, the court shall not consider it. In that regard, the 4th limb of the Objection which requires support thereof by way of evidence is not merited as a point of law hence the court does not wish to venture into discussing it.

43. That aside, from the very outset it is clear to me that the Plaintiff in her claim is carefully selective, and this speaks to dishonesty on her part. She is abating and reprobating in her claim, yet the law is that he who comes to equity ought to do equity or come with clean hands. The court's finding on this is based on the plaintiff's own pleadings that the suit land of which she claims the 2nd Defendant is not entitled to both registration and occupation was initially part of West Kasipul/Kotieno-Kochich/ 394. The same was subdivided into parcel numbers West Kasipul/Kotieno-Kochich/726 And 727. From her own documents that she filed in the List of

Documents, parcel No. West Kasipul/Kotieno-Kochich/726 is registered in the name of the Ndege Jowi (now deceased), whose Estate she sues on behalf. Incidentally and curiously, the Plaintiff does not mention plead that fact and neither does she aver that the same was fraudulently or illegally registered in that name nor does she pray that it be declared a nullity or illegally acquired. But she prays that parcel No. 727 be declared as much and be nullified and reverts to the original No. 394. How possible is that without affecting the registration of parcel No. 726? In my view this is a suit which is selective and not aimed at bringing about justice in its entirety.

44. Be that as it may, and turning to the merits of the 1st and 2nd limbs of the Preliminary Objection both of which are on limitation, in Kenya, limitation of the time of instituting actions generally is provided for under the Limitation of Actions Act, Chapter 22 Laws of Kenya, besides finding other limitation provisions in specific statutes that address specific aspects or situations. For instance, the Government Proceedings Act, Chapter 40 Laws of Kenya, the Kenya Railways Corporation Act, the Kenya Roads Acts, among many other statues. Thus, statutory time of limitation is a valid ground raising a preliminary objection. Its determination flows from the parties' pleadings as compared with the provisions of the law.

45. Section 4 (2) of the Limitation of Actions Act provides that;

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

46. Section 26 (c) of the Act allows the extension of time where fraud is pleaded so that time begins to run when the fraudulent acts are discovered by the plaintiff. The plaintiff claimed fraud in regard to the subdivision of the suit land.

47. In the instant case the Plaintiff pleaded that fraud was committed on 10th June 1987 when the suit land, namely, parcel No. West Kasipul/Kotieno-Kochich/ 394 was subdivided into parcel numbers WEST KASIPUL/KOTIENO-KOCHICH/726 and 727 before the latter parcel was transferred to the 2nd Defendant.

48. In her submissions the plaintiff alleged that the said fraud was discovered when she instructed her advocate to search the deed file in the land registry. Submissions do not constitute pleadings. In this said submissions, time frame keeps changing since she also mentions the year 2003 (*sic*) in paragraphs 13 and 18 of her submissions as the time when the alleged fraud and or illegality was discovered. Elsewhere in her submissions she tries to allude that it was in the year 2023.

49. Be that as may, this court notes that submissions do not take the place of evidence and further finds that the plaintiff had the duty of disclosing in her pleadings when the alleged

fraud was discovered, which she has brought out as having been on 10th June 1987. The court cannot rely on facts sneaked in by way of submissions to agree to a different time than as was pleaded by the plaintiff and answered to by the 2nd and 3rd Defendants. In **Daniel Toroitich Arap Moi v. Mwangi Stephen Muriithi & Another [2014] eKLR** the court of appeal held that:

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

50. To discern if the suit is time barred or not, one needs to carefully analyze the pleadings as against the law of limitation. One fact pleaded which is clear is that fraud was allegedly committed on or about 10th June 1987. The other fact though not pleaded in the main body of the Amended Plaint but which comes out clearly from the reliefs sought is that the 2nd Defendant is in occupation of the suit land and that is why an order of eviction against him and or his servants or agents is

sought. The plaintiff carefully avoids to plead how long the said Defendant has been in occupation of the suit land. But the 2nd Defendant answers to both the allegation of fraud and relief of eviction sought by pleading at paragraph 8 that there was no requirement of the spousal consent at the time the subdivision and transfer of the suit land took place, and in paragraph 12 and 13 that he took part in any fraud.

51. The plaintiff is not clear on when she discovered the alleged fraud and illegality but she specifies at paragraph 5 of the Amended Plaint that it took place on 10th June 1987. The same is true of her Reply to Defence despite the fact that the 2nd Defendant has pleaded that the subdivision took place at the time stated as averred by the Plaintiff. This court finds that since the 2nd Defendant has been in occupation of the suit land since the time the subdivision took place, the Plaintiff knew and/ or would have with due diligence known all along that the person (in occupation whom she wants to evict now) and whom she now wishes the court to believe as having acquired the suit land by fraud and illegality had, indeed, acquired the land as a registered owner or was residing on it as the owner. Thus, the alleged fraud has been in her knowledge for a period more than the Limitation of Actions Act provides for instituting a suit for fraud.

52. At any rate, it is a white lie for the Plaintiff to state that she discovered the alleged fraud in the year 2003 or even 2023 when the title to the parcel of land over which she subtly or

cleverly shies away from or avoids asking the Court to cancel or declare a nullity, being the title for parcel No. West-Kasipul/Kotieno-Kochich/726 registered in the name of Ndege Jowi on 10th June 1987 was issued on 12th January 2015. From the time the title was issued to her or the Estate of her deceased husband, if indeed, there was a fraud or illegality, she discovered the alleged fraud, and the time started running from then. Thus, by the time she filed the instant suit in 2023 which was eight years after the issuance of the title to her, the period of limitation had since long expired.

53. The plaintiff seeks the eviction of the 2nd defendant from the suit property, implying that the 2nd defendant had been in occupation of the said land. She does not however state when the 2nd defendant begun occupying the suit property that is alleged to have been illegally and fraudulently subdivided and transferred to the 2nd defendant. Given these set of circumstances, is the court to be convinced that the plaintiff did not know of the alleged fraudulent and illegal subdivision of her land, when her pleadings clearly state that the same was done in 1987? The answer to this question is in the negative.

54. With regard to locus standi this court will not take much of its time on the same. This is because it is my finding that the plaintiff has locus standi to sue since she brought the suit on behalf of the Estate of Joseph Ndege Jowi (deceased), having obtained a Limited Grant ad Litem over the Estate, on 23rd March 2022.

55. The upshot of the foregoing that the 2nd defendant's preliminary objection is merited on grounds one and two. This court allows is and dismisses the entire suit on that account.

56. On the issue of costs, section 27 of the Civil Procedure Act is instructive on how costs should be awarded. Accordingly, the 2nd defendant is awarded costs of the objection and the suit.

57. Orders accordingly.

Ruling **dated, signed** and **delivered virtually** via the **Teams Platform** this **16th** day of **March, 2026**.

Hon. Dr. iur F. Nyagaka

Judge

In the presence of:

1. Mr. Ochich Advocate for the 2nd Defendant
2. Mr. Ngoge Advocate for the Plaintiff (absent)
3. State Counsel for the 3rd Defendant (absent)