

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC CASE No. E056 OF 2025**

**LEHA CHEBET KOSKEI**  
**JONAH CHERUIYOT MUTAI**  
**JANE CHEPCHIRCHIR KOSGEI**  
**WILLIAM KIBET KOSGEI** (*Suing as*  
*Legal Representatives of the Estate of the*  
*Late*                    **CHERUIYOT**                    **ARAP**                    **KOSKEI**)

...**PLAINTIFFS/RESPONDENTS**

***VERSUS***

**GERISHON      KINUTHIA      NGANGA      .....1<sup>ST</sup>**

**DEFENDANT**

**STEPHEN      KAMAU      NDUNGU      .....2<sup>ND</sup>**

**DEFENDANT**

**CHIEF              LAND              REGISTRAR              .....3<sup>RD</sup>**

**DEFENDANT/APPLICANT**

**RULING**

1. The 3<sup>rd</sup> Defendant (hereinafter referred to as “**the Applicant**”) did file a Preliminary Objection dated 07.10.2025 (hereinafter referred to as “**the present PO**”) against the Plaintiffs’ (hereinafter referred to as “**the Respondents**”) Plaintiff dated 27.06.2025 (hereinafter referred to as “**the present suit**”) seeking to struck out the same on the following grounds; -

(a)The Plaintiff’s claim concerns a dispute over land arising from a written contract agreement executed in 1994.

(b)The matter was instituted in the year 2025 more than thirty (30) years after the cause of action arose.

(c) Under Section 7 of the Limitation of Actions Act (Cap 22), states that;

***'An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.'***

(d) The Plaintiff failed to institute the suit within the prescribed limitation period, rendering the claim statute-barred.

(e) The Plaintiff has neither pleaded nor demonstrated any facts warranting an extension of the limitation period under Section 27 of the Limitation of Actions Act (Cap 22).

(f) The suit is therefore incompetent, barred by limitation of time, and ought to be struck out with costs to the Defendant.

2. The present PO was duly served on the Respondents who did oppose the same through Grounds of Opposition dated 03.11.2025.

3. According to the Grounds of Opposition filed by the Respondents, the present PO was opposed on the following facts; -

(i) The Respondents did indicate that the present PO did not comply with the elements of a Preliminary Objection as pronounced in the case of ***Mukisa Biscuits Company vs Westend Distributors Limited (1969) EA*** and ***Oraro vs Ombija (2005) KLR 41***.

(ii) The Respondents did aver that the present PO was premised on factual information which required the production of both oral and documentary evidence to ascertain the true facts of the dispute.

- (iii) The Respondents were of the view that one of the grounds in the present PO was that the cause of action occurred in the year 1994 which fact could only be proved through a hearing of the main suit.
- (iv) The Respondents did admit that although the contract was executed in the year 1994, the cause of action could only arise upon default of certain obligations by the parties herein thereafter.
- (v) As such, the actual and true date of when time started running for purposes of calculating time limitation could only be ascertained through oral and documentary evidence at a hearing.
- (vi) In essence, the Respondents did plead that the Applicant herein did not have proper grounds to file and sustain the present PO before this Court.
- (vii) The Respondents did further plead that the late CHERUIYOT ARAP KOSKEI who was the Vendor did pass away on the 24.11.2007.
- (viii) The Respondents stated that the present suit herein is one to recover land of a deceased person who was in possession of the land at the time of his death, and was the last person entitled to the land, and which action accrues on his demise per Section 9(2) of the Limitation of Actions Act read with Sections 45, 51 and 82(a) of the Law of Succession Act.
- (ix) The Respondents state that the period of limitation should factor in the duration that it took the instituting party to obtain authority under the Law of Succession Act.
- (x) According to the Respondents, they first obtained Letters of Administration on 27.07.2017, which were rectified on 20.11.2018 and further amended on 12.02.2025 hence the Respondents had until 29.07.2029 to file suit.

- (xi) The Respondents did admit that the present suit herein was instituted on 27.06.2025 which was within the period prescribed by law.
  - (xii) The Respondents did state that Section 27 referred to by the Applicant under Ground 5 of the present PO relates to actions of tort and the extension of the period prescribed under Section 4(2) of the Limitation of Actions Act.
  - (xiii) The Respondents asserted that the present suit is not founded on a claim of tort but purely for recovery of land on behalf of a deceased person under Section 9(2) of the Limitation of Actions Act, and there was therefore no need to seek extension under Section 27 of the Act.
  - (xiv) In conclusion, the Respondents did aver that the present PO is fatally defective and ought not be considered by this Court and should be dismissed with costs.
4. Upon service of the Grounds of Opposition filed by the Respondents, the Court did direct that the present PO would be canvassed by way of written submissions.
  5. In compliance, the Applicant did file their submissions dated 20.12.2025 while the Respondents did file their submissions dated 23.01.2026.
  6. The Court has duly perused the present suit, the present PO, the Grounds of Opposition dated 07.10.2025 and the submissions by both parties and identifies the following issues for determination; -

**ISSUE NO. 1- WHAT IS THE CAUSE OF ACTION PLEADED IN THE PRESENT SUIT?**

**ISSUE NO.2- WHEN DID THE CAUSE OF ACTION AGAINST THE DEFENDANTS ACCRUE?**

**ISSUE NO. 3- WAS THE PRESENT SUIT FILED WITHIN THE PRESCRIBED TIME PROVIDED IN LAW?**

**ISSUE NO. 4- IS THE PRESENT PO MERITED OR NOT?**

**ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT PO?**

7. The Court having duly identified the above issues for determination, the same will now be discussed as provided below.

**ISSUE NO. 1- WHAT IS THE CAUSE OF ACTION PLEADED IN THE PRESENT SUIT?**

8. The first issue for determination is what is the cause of action filed by the Respondents in the present suit.
9. According to the Applicant, the cause of action in the present suit emanates from an Agreement For Sale that was executed in the year 1994.
10. The Applicant was of the considered view and submission that the Agreement For Sale executed in the year 1994 was a binding contract governed by the Law of Contract and any proceedings for enforcement of the same should be brought within Six (6) years from the date of the said Contract.
11. The Respondents on the other hand admit the existence of the Agreement For Sale executed in the year 1994.
12. However, the Respondents were of the view that the cause of action in the present suit was for recovery of land.
13. Consequently, period within which the Respondents were permitted by law to institute the present proceeding was twelve years from the date of when the breach of contract occurred.

14. The answer to this issue can only be derived from the Plaint dated 27.06.2025.
15. To begin with, the Respondents did give a history of the dealings between their father CHERUIYOT ARAP KOSKEI (DECEASED) and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.
16. The Respondents state that on or about 10.02.1994, the 2<sup>nd</sup> Defendant who was registered owner of a property known as LR.NO.8451/4 measuring 90 acres which offer to sell to their father CHERUIYOT ARAP KOSKEI (DECEASED) a portion measuring 85 acres therein at an agreed price of Kenya Shillings Four Million Five Hundred and Five Thousand (KShs 4,505,000/-).
17. According to Paragraph 10 of the Plaint, the Respondents do state that various payments were made to the 2<sup>nd</sup> Defendant in line with the Agreement For Sale dated 10.02.1994 until 30.09.1995 when their father CHERUIYOT ARAP KOSKEI (DECEASED) was informed that the same property had been sold to the 1<sup>st</sup> Defendant herein in contravention of the Agreement For Sale dated 10.02.1994.
18. Based on Paragraph 11 and 12 of the Plaint, the Respondents father CHERUIYOT ARAP KOSKEI (DECEASED) had not completed the full purchase price provided in the Agreement For Sale dated 10.02.1994.
19. The Respondents state that there was an Agreement between their father CHERUIYOT ARAP KOSKEI (DECEASED), the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant that the balance of the purchase price would be paid to the 1<sup>st</sup> Defendant who was not the registered owner of the portion which was contained in the Agreement For Sale dated 10.02.1994.
20. Unfortunately, the Respondents did not place before this Court an Amended Agreement For Sale and/or an Addendum to the Agreement For Sale dated 10.02.1994 to confirm the acceptance of the variation alluded to with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

21. Be as it may, it is clear from the Plaint filed by the Respondents that the purchase price agreed upon in the Agreement For Sale dated 10.02.1994 was not never fully paid to the 2<sup>nd</sup> Defendant who was the registered owner at the time of execution.
22. In the reliefs sought, the Respondents are seeking to be declared the lawful owners of some property known as LR.NO.8451/28, LR.NO.8451/32 and LR.NO.8451/33 belonging to the 1<sup>st</sup> Defendant.
23. In other words, the Respondents herein are seeking to recover land from the 1<sup>st</sup> Defendant which was subject matter of the Agreement For Sale dated 10.02.1994 entered with the 2<sup>nd</sup> Defendant.
24. Clearly therefore, the cause of action by the Respondent is for recovery of land registered in the name of the 1<sup>st</sup> Defendant and not enforcement of the Agreement For Sale dated 10.02.1994.
25. In the Court's view, the Agreement For Sale dated 10.02.1994 was clearly frustrated and/or negated by the sub-division of the original property known as LR.NO.8451/4 by the 2<sup>nd</sup> Defendant and the subsequent transfer of the resultant sub-divisions namely LR.NO.8451/28, LR.NO.8451/32 AND LR.NO.8451/33 to the 1<sup>st</sup> Defendant herein.
26. In other words, the Agreement For Sale dated 10.02.1994 is no longer enforceable by either the Respondents and/or the 2<sup>nd</sup> Defendants as the property known as LR.NO.8451/4 no longer exists in law.

**ISSUE NO.2- WHEN DID THE CAUSE OF ACTION  
AGAINST THE DEFENDANTS ACCRUE?**

27. The Court having made a finding that the cause of action by the Respondents is for recovery of land, the next question is when the cause of action actually arose.
28. According to the Applicant, the cause of action arose in the year 1994 when the Agreement For Sale dated 10.02.1994 was executed.
29. The Respondents on the other hand are of the view that the cause of action arose in the year 2007 when their father CHERUIYOT ARAP KOSKEI (DECEASED) did pass away on 24.11.2007.
30. As earlier stated, the cause of action in this suit is for the recovery of land from the 1<sup>st</sup> Defendant who is the registered owner of the properties known as LR.NO.8451/28, LR.NO.8451/32 and LR.NO.8451/33.
31. The question that needs to be answered is when did the Respondents or their father CHERUIYOT ARAP KOSKEI (DECEASED) discover that there was a breach of the Agreement For Sale dated 10.02.1994 which either threatened his interest or was actually against his interest in the original property known as LR.NO.8451/4 registered in the name of the 2<sup>nd</sup> Defendant.
32. Based on Paragraph 10 of the Plaintiff, there is an express admission that the Respondents father CHERUIYOT ARAP KOSKEI (DECEASED) did become aware of the unlawful sale and sub-division of the original property known as LR.NO.8451/4 which was the subject matter in the Agreement For Sale dated 10.02.1994 with the 2<sup>nd</sup> Defendant in the year 1995.
33. Clearly therefore, it is the Court's considered view that the cause of action herein did arise in the year 1995 when the Respondents father CHERUIYOT ARAP KOSKEI (DECEASED) became aware of the unlawful sale and sub-division of the original property known as LR.NO.8451/4 by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant.

**ISSUE NO. 3- WAS THE PRESENT SUIT FILED WITHIN  
THE PRESCRIBED TIME PROVIDED IN LAW?**

34. The third issue is whether or not the present suit was filed within the prescribed time provided by law.
35. As already stated, the cause of action in the present suit is the recovery of land from the 1<sup>st</sup> Defendant herein by the Respondents.
36. The Limitation of Actions Act, Cap 22 provides that a claim for recovery of land should be filed within twelve (12) years from when the cause of action was discovered.
37. The Court in Issue No. 2 hereinabove did make a finding that the Respondents cause of action arose in the year 1995 when their father CHERUIYOT ARAP KOSKEI (DECEASED) did discover that the original property known as LR.NO.8451/4 which was the subject matter of the Agreement For Sale dated 10.02.1994 had been sub-divided by the 2<sup>nd</sup> Defendant and sold to the 1<sup>st</sup> Defendant herein.
38. The Respondents and/or their father CHERUIYOT ARAP KOSKEI (DECEASED) had twelve (12) years from the year 1995 to institute any proceeding for the recovery of any portion of land within the original property known as LR.NO.8451/4.
39. This period of twelve (12) years within which the Respondents and/or their father CHERUIYOT ARAP KOSKEI (DECEASED) could have filed any proceeding for recovery of land did lapse in the year 2007.
40. Even if the Court was to accept the Respondents reliance on Section 9(2) of the Limitation of Actions Act, Cap 22, the right of action would have accrued on the 24.11.2007 when their father CHERUIYOT ARAP KOSKEI (DECEASED) was called to be with the Lord.

41. The period of twelve (12) years from 24.11.2007 would have ended on the 24.11.2019.
42. In essence, the Plaint dated 27.06.2025 was outside the prescribed twelve (12) years provided by the provisions of the Limitation of Actions Act, Cap 22 and therefore time based.

**ISSUE NO. 4- IS THE PRESENT PO MERITED OR NOT?**

43. Based on the finding in Issue No. 3 hereinabove, the Court is of the considered view and finding that the present PO is merited.

**ISSUE NO.5- WHO BEARS THE COSTS OF THE PRESENT PO?**

44. Costs are usually awarded to a winning party.
45. The Applicant having duly succeeded in the prosecution of the present PO, the Respondents herein are condemned to pay the costs of the present PO and the substantive suit herein.

**CONCLUSION**

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

**A. THE PRELIMINARY OBJECTION DATED 07.10.2025 IS MERITED.**

**B. THE PLAINT DATED 27.06.2025 BE AND IS HEREBY DECLARED TIME-BARRED.**

**C. THE PLAINT DATED 27.06.2025 BE AND IS HEREBY STRUCK OUT.**

**D.THE PLAINTIFFS ARE HEREBY CONDEMNED TO PAY COSTS OF THE PRELIMINARY OBJECTION DATED 07.10.2025 AND THE PLAINT DATED 27.06.2025 TO THE 1<sup>ST</sup> TO 3<sup>RD</sup> DEFENDANTS HEREIN.**

**DATED, SIGNED and DELIVERED at ELDORET this on this 9<sup>TH</sup> DAY OF APRIL, 2026.**

**EMMANUEL.M.WASHE  
JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Advocate For 3<sup>rd</sup> Defendant/Applicant: Ms. Masaka

Advocate For Plaintiffs/Respondents: Mr. Mukuha