

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELCC NO. E010 OF 2025 (OS)

HELLEN CHEMUTAI

**(Suing as the Administratrix of the estate of EZEKIEL
CHEPKWONY alias KIPKEMOI A. CHEPKWONY).....**

....PLAINTIFF

VERSUS

**DAVID KIPNGENO MARITIM.....1ST
DEFENDANT**

**SELY CHEPKEMOI MARITIM.....2ND
DEFENDANT**

**(Sued as the administrators of the estate of Maritim
Maina)**

RULING.

Introduction.

1. This ruling is in respect of the Defendants' Preliminary Objection dated 7th July, 2025. It is on the following grounds;

a. *That the Court lacks jurisdiction to hear and determine this matter as it constitutes an estate of a deceased person in LR No. Kericho/Kimolwet/168 (sic).*

- b. That no claim for adverse possession shall issue against an estate of a deceased person.**
- c. That Applicant's (sic) application and Originating Summons dated 21st May, 2025 are fatally defective and incurable and offends the provisions of Order 24 of the Civil Procedure Rules 2010.**
- d. That the application and suit before the Honourable Court amounts to an abuse of the Court process and the same ought to be dismissed and/or struck out with costs.**

Factual Background.

2. The Plaintiff commenced the present proceedings vide the Originating Summons dated 21st May, 2025 where she seeks the determination of the following questions;

- a. Whether the estate of the late Ezekiel Chepkwony alias Kipkemoi A. Chepkwony (Deceased) be declared to have acquired title equivalent to 4 acres by adverse possession being**

part of the suit premises known as Kericho/Kimolwet/168 having stayed in open, quiet and peaceful occupation for a period of over 50 years (sic).

b. Whether a declaration should be issued that the Plaintiff's are (sic) the rightful owners of a portion measuring 4 acres out of land known as Kericho/Kimolwet/168.

c. Whether a permanent injunction do issue restraining the Defendants, her (sic) servants or agents from taking over possession, occupying, alienating, trespassing/interfering, selling or disposing of or dealing in any way whatsoever with a portion measuring 4 acres out of Kericho/Kimolwet/168 belonging to the Plaintiff.

d. Any other relief the Court may deem fit and just to grant.

3. As at the time of writing of this ruling, the Defendants have not filed a Response to the Originating Summons.

4. On 18th September, 2025 the Court issued directions that the Preliminary Objection under consideration be canvassed by way of written submissions.

5. It was mentioned severally to confirm filing of submissions and on 21st January, 2026 it was reserved for ruling.

Issues for Determination.

6. The Defendants filed submissions on 21st January, 2026 and the Plaintiff filed submissions on 21st October, 2025.

7. The Defendants submit that land parcel No. **Kericho/Kimolwet/168** which is the suit parcel of land belongs to **Maritim Maina** (deceased).

8. The Defendants also submit that the Plaintiff did not purchase the said parcel of land during the lifetime of the deceased.

9. The Defendants further submit that this Court does not therefore have jurisdiction to hear and determine this suit as it relates to the estate of a deceased person.
10. The Defendants rely on the judicial decision of **Boniface Munyao versus Mutinda & 2 Others [2016] eKLR** and submit that the Plaintiff is a stranger to the estate of **Maritim Maina** (Deceased).
11. It is the Defendants submissions that no claim for adverse possession can be sought against the estate of a deceased person.
12. It is also the Defendants submissions that the Plaintiff's Notice of Motion application dated 21st May, 2025 and the Originating Summons of the same date are fatally defective and offend the provisions of **Order 24** of the Civil Procedure Rules.

- 13.** It is further the Defendants submissions that the agreement that the Plaintiff is relying on was not entered into by **Maritim Maina** (deceased) and **Ezekiel Chepkwony** (deceased) and the Plaintiff does not therefore have the *locus standi* to commence the present proceedings.
- 14.** The Defendants submit that the Plaintiff is not a beneficiary of the estate of **Maritim Maina** (deceased) within the meaning of **Section 29** of the **Law of Succession Act** and neither is she a creditor of the said estate as per the provisions of **Section 66** of the **Law of Succession Act**.
- 15.** The Defendants rely on **Section 45** of the **Law of Succession Act** and submit that the Plaintiff is intermeddling with the estate of a deceased person.
- 16.** The Defendants also rely on **Order 2 Rule 15** of the **Civil Procedure Rules** and submit that the pending application and suit are an abuse of the Court process and they should therefore be dismissed.

- 17.** The Defendants conclude their submissions by urging the Court to allow their preliminary objection and dismiss the Plaintiff's Notice of Motion application dated 21st May, 2025 and the Originating Summons of an even date.
- 18.** The Plaintiff submits that she is the Administratrix of the estate of **Ezekiel Chepkwony** alias **Kipkemoi A. Chepkwony** (deceased) who was her father.
- 19.** The Plaintiff also submits that in the year 1973, her deceased father purchased a four-acre portion of land parcel No. **Kericho/Kimolwet/168** from **Joseph A. Maritim** who was the son of **Maritim Maina** (deceased).
- 20.** The Plaintiff further submits that at the time of purchase, the registered owner of the said parcel of land was **Maritim Maina** (deceased) and he was present when the agreement was being made.

- 21.** It is the Plaintiff's submissions that the portion of land her deceased father purchased would have been the inheritance of **Joseph A. Maritim**.
- 22.** It is also the Plaintiff's submissions that their family has been in open, continuous and uninterrupted possession and occupation of the said portion of land for a period of fifty years.
- 23.** It is further the Plaintiff's submissions that her deceased father died on 4th June, 1983.
- 24.** The Plaintiff submits that in order to defeat the ends of justice, the Defendants filed CM Succession Cause No. E091 of 2021 where land parcel No. **Kericho/Kimolwet/168** was distributed equally among the five siblings without taking into consideration, their possession of four acres of land.
- 25.** The Plaintiff then submits on the following issues;

a. Whether this Honourable Court has jurisdiction to hear and determine this matter.

b. Whether adverse possession can issue against an estate of a deceased person.

c. Whether the application and Originating Summons dated 21st May, 2024 are fatally defective and offend the provisions of Order 24 of the Civil Procedure Rules.

d. On abuse of the Court process. (sic)

26. On the first issue, the Plaintiff relies on **Section 13** of the Environment and Land Court Act and submits that just because the suit parcel of land belongs to the estate of a deceased person does not mean that this Court does not have jurisdiction.

27. The Plaintiff also submits that the issue of whether or not the suit parcel of land belongs to a deceased person is an issue of fact that it is to be determined at trial and not by way of a preliminary objection.

- 28.** On the second issue, the Plaintiff reiterates that her claim of adverse possession begun in the year 1973 when **Maritim Maina** (deceased) was still alive.
- 29.** The Plaintiff also reiterates that at the time of his death, they had been in possession of the land for decades. The Plaintiff relies on the judicial decision of **Munai vs Langat (Sued in his capacity as the Administrator and Personal Representative of the Estate of Talelei w/o Chemosit alias Taplule W/O Chemosit- Deceased) [2023] KEELC 146 (KLR)** in support of her submissions.
- 30.** It is the Plaintiff's submissions that a judgement was delivered in Kericho HC Succession Cause No. 8 of 2003 and the Court found that the estate of her deceased father was considered part of the estate of **Maritim Maina** (deceased).
- 31.** It is also the Plaintiff's submissions that she had filed an Objection in the said proceedings and the Court held that

they were entitled to a four-acre portion of the suit parcel of land.

- 32.** On the third issue, the Plaintiff submits that the Defendants have not demonstrated any fatal defect and/or incurable irregularity in the Originating Summons dated 21st May, 2025.
- 33.** The Plaintiff relies on **Order 37 Rule 7** of the **Civil Procedure Rules** and submits that the Originating Summons is properly before this Court and is supported by a competent affidavit.
- 34.** On the fourth issue, the Plaintiff submits that she has properly invoked the jurisdiction of this Court and the suit is neither frivolous, vexatious nor an abuse of the Court process.
- 35.** The Plaintiff also submits that the Defendants preliminary objection is misconceived, raises factual issues and does not raise issues of law. The Plaintiff relies on the judicial decision

of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696** in support of her submissions.

- 36.** The Plaintiff concludes her submissions by urging the Court to dismiss the Defendants Preliminary Objection with costs.

Analysis and Determination.

- 37.** I have considered the Defendants Preliminary Objection and the

rival submissions. It is my view that the following issues arise for determination;

a. Whether this Court has jurisdiction to hear and determine this suit and whether a claim of adverse possession can be sought against the estate of a deceased person.

b. Whether the Notice of Motion application and Originating Summons dated 21st May, 2025 are fatally

defective and offend the provisions of Order 24 of the Civil Procedure Rules.

c. Whether the Notice of Motion application and Originating Summons dated 21st May, 2025 amount to an abuse of the Court process and ought to be dismissed with costs.

d. Who should bear costs of the Preliminary Objection.

A. Whether this Court has jurisdiction to hear and determine this suit and whether a claim of adverse possession can be sought against the estate of a deceased person.

- 38.** The judicial decision of **Ushago Diani Investment Limited v Abdulwahab (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling)** cited with approval **Oraro v Mbaja [2005] eKLR 141** where the Court held as follows on the nature of preliminary objections;

“A preliminary objection is now well identified as and declared to be 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 a 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. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

- 39.** A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
- 40.** Ground (1) of the Preliminary Objection is that this Court does not have jurisdiction to hear and determine the present suit as the suit parcel of land belongs to a deceased person.
- 41.** Ground (2) of the Preliminary Objection is that no claim of adverse possession can be sought against the estate of a deceased person.
- 42.** The Defendants submit that the Plaintiff did not purchase a portion of the suit parcel of land during the life time of **Maritim Maina** (Deceased) and therefore the Plaintiff

cannot seek for orders of adverse possession against his estate.

43. The Plaintiff on the other hand submits that her deceased father one **Ezekiel Chepkwony** alias **Kipkemoi A. Chepkwony** purchased a portion of the suit parcel of land on 29th June, 1973 from **Joseph A. Maritim** in the presence of **Maritim Maina** (deceased) who was the registered owner.

44. The Plaintiff also submits that her claim of adverse possession begun during the lifetime of **Maritim Maina** (deceased) and therefore the Court has jurisdiction to hear and determine her claim.

45. It is not disputed that **Maritim Maina** (deceased) is the registered owner of land parcel No. **Kericho/Kimolwet/168**. It is also not disputed that the Defendants are the legal representatives of his estate.

46. What is disputed is whether this Court has jurisdiction to hear and determine the Plaintiff's claim of adverse possession which is against the estate of a deceased person.
47. The issue of jurisdiction is a pure point of law and can be raised and/or addressed when raised in a preliminary objection.
48. In the judicial decision of **Motor Vessel "lillian S" -V- Caltex Oil (Kenya) Ltd C.A. Civil Appeal No 50 of 1989** the Court held as follows;

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a

continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”[Emphasis mine]

49. In the judicial decision of **Ekessa v Magero & another** [2026] KEELC 1187 (KLR) the Court held as follows;

“It is now well settled that a claim for land by way of adverse possession can be filed against the Estate of a deceased person - see Karuntimi Raiji -v- M’makinya M’itunga 2013 eKLR. Under the doctrine of adverse possession, the Plaintiff’s claim to the suit land runs against the title and not necessary against the current holders of the title. See also Peter Thuo Kairo -V- Kuria Gacheru 1988 2 KLR III where the Court of Appeal reiterated that a claim for land

by adverse possession subsists not only against the present holders but also against their predecessors in title.” (Emphasis mine)

50. In the above cited judicial decision, the Court held that a claim for land by way of adverse possession can be filed against the estate of a deceased person.

51. Consequently, Grounds (1) and (2) of the Defendants Preliminary Objection fail.

B. Whether the Notice of Motion application and Originating Summons dated 21st May, 2025 are fatally defective and offend the provisions of Order 24 of the Civil Procedure Rules.

52. This question for determination addresses ground (3) of the

Defendants Preliminary Objection.

53. The Defendants contend that the Notice of Motion application and Originating Summons dated 21st May, 2025 are defective and offend the provisions of **Order 24** of the Civil Procedure Rules.

54. The Defendants submit that the agreement that the Plaintiff is relying on was not entered into between their deceased father and the Plaintiff's deceased father.

55. The Plaintiff submits that the Defendants have not demonstrated any incurable irregularity in the Originating Summons.

56. The Plaintiff also submits that the issue of whether or not her claim will succeed is an issue of evidence and cannot be determined at this preliminary stage.

57. Order 24 of the Civil Procedure Rules generally provides for Death and bankruptcy of parties. It provides for the

procedure to be followed in the event a Plaintiff or Defendant dies and whether bankruptcy of a Plaintiff can bar a suit among other provisions.

58. It is important to note that the parties herein are suing and/or being sued in their capacities as legal representatives of estates of deceased persons.

59. It is my view that the Defendants have not demonstrated how the pending Notice of Motion Application and Originating Summons offend **Order 24** of the **Civil Procedure Rules**.

60. Further, the Defendants contention that the agreement relied on by the Plaintiff was not entered into by **Maritim Maina** their deceased father is a factual issue which will be best raised and/or addressed during the hearing.

61. Therefore, ground **(3)** of the Defendants Preliminary Objection fails.

C. Whether the Notice of Motion application and Originating Summons dated 21st May, 2025 amount to an abuse of the Court process and ought to be dismissed with costs.

- 62.** This question for determination addresses ground (4) of the Defendants Preliminary Objection.
- 63.** The Defendants submit that the pending Notice of Motion application and the Originating Summons are an abuse of the Court process as the Plaintiff is neither a creditor nor a beneficiary of the estate of the deceased.
- 64.** The Defendants also submit that the Plaintiff is intermeddling with the estate of the late **Maritim Maina** (Deceased).

65. The Plaintiff on the other hand submits that she has properly invoked the jurisdiction of this Court and the suit is neither frivolous, vexatious nor an abuse of the Court process.
66. It is important to note that the Defendants have based their contention that the pending application and the Originating Summons are an abuse of the Court process on the allegations that the Plaintiff is intermeddling with the estate of a deceased person.
67. It is my view that the issue of whether or not the Plaintiff is intermeddling with the estate of the deceased is a factual issue which is beyond the scope of a preliminary objection.
68. Ground (4) of the Defendant's Preliminary Objection also fails.

D. Who should bear costs of the Preliminary Objection.

69. The general rule is that costs shall follow the event in accordance with the provisions of **Section 27** of the **Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

70. Taking the foregoing into consideration, the Defendants Preliminary Objection dated 7th July, 2025 lacks merit and it is hereby dismissed with costs. The said costs shall be in the cause.

71. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 16TH DAY OF APRIL, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

**Mr. Bii for the Defendants.
Mr. Malel for the Plaintiffs**

Court Assistant; Mr. Joseph Makori.

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