

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC CASE NO. E001 OF 2026**

**SIMEON SAIMANGA LESRIMA .....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**STEPHEN KIBET SURTAN ..... 1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**  
**IRENE JEPKOSGEI SURTAN ..... 2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**  
**TERRY JERONO SURTAN ..... 3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**RULING:**

1. The Plaintiff/ Applicant herein filed a Notice of Motion Application dated 18<sup>th</sup> December, 2025, against the Defendants/Respondents seeking the following orders: -
  - i. Spent.
  - ii. That pending the hearing and determination of this Application inter-partes and/or pending the hearing and determination of the suit, the Respondents, their agents, servants, family members or any persons acting under their authority or instructions, be and are hereby restrained by way of temporary injunction from erecting any further structures, excavating, cultivating, leasing, selling, transferring, alienating, developing or in any other manner interfering with the suit property known

as L.R. No. KAPSARET/KAPSARET BLOCK 5 (KAPTELDON)/17.

- iii. That this honourable court be pleased to issue an order of eviction directing the respondents, jointly and/or severally, together with their agents, servants, family members or any persons claiming through or under them to forthwith vacate and deliver up vacant possession of the suit property known as L.R. No. KAPSARET/KAPSARET BLOCK 5 (KAPTELDON)/17 to the Applicant.
  - iv. That the Officer Commanding Police Station (OCS), Kapseret Police Station, be directed to provide necessary security and assistance to enforce the eviction orders, if granted.
  - v. The costs of this application be awarded to the Applicant.
2. The application is premised on 7 grounds on the face thereof and supported by the applicant's Affidavit sworn on even date.
  3. The applicant deponed that he is the registered proprietor of all that parcel of land known as KAPSARET/KAPSARET BLOCK 5 (KAPTELDON)/17 (hereinafter referred to as the 'suit land'), having acquired the same lawfully. He annexed a copy of the title deed and a certified copy of official search in respect to the suit land.

4. It is his claim that on or about the year 2007, he discovered that the respondents had unlawfully trespassed upon, entered into and occupied the suit property without his consent, license or authority and proceeded to erect structures thereon.
5. It is the applicant's contention that upon the said discovery, he caused notices to vacate to be issued to the respondents, vide demand to vacate diversely dated 29.08.2023 and 25.10.2023.
6. In addition, in full compliance with section 152E of the Land Act, a formal Eviction Notice dated 08.02.2024 was issued and duly served upon the respondents personally. The said notice was also served upon the Officer Commanding Station (OCS) Kapseret and upon the Deputy County Commissioner.
7. The applicant thus avers that the statutory three-month notice period stipulated in the Eviction Notice dated 08.02.2024 has since lapsed but the respondents have refused, neglected and/or failed to vacate the suit land and have remained in illegal occupation despite the notice.
8. Moreover, it is the applicant's assertion that instead of vacating the suit land, the respondents have proceeded to erect additional structures and developments on the suit land.
9. The applicant therefore claims that the respondent's continued unlawful occupation has denied him the use, enjoyment, possession and development of his lawful

property and as a result, has caused him substantial prejudice, inconvenience and loss.

10. He thus avers that unless this court intervenes by granting the orders sought, the respondents are likely to further alter the status quo by continuing developments or attempting to alienate portions of the suit land to his detriment.
11. In conclusion, he urged the court to allow the application and grant the orders sought, which he maintained are necessary to preserve his constitutional right to property as provided under Article 40 of the constitution.
12. The application was opposed. The defendants/respondents filed a Replying Affidavit dated 3<sup>rd</sup> February, 2026 and sworn by the 1<sup>st</sup> respondent on his own behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
13. He dismissed the plaintiff's application as being frivolous, vexatious and an abuse of the court process, devoid of merit, incompetent, misconceived and an attempt in futility and thus ought to be dismissed with costs.
14. It is the 1<sup>st</sup> respondent's claim the suit land originally belonged to their grandfather, Samson Silong Ole Surtan, who acquired the same from the Government of Kenya in the year 1995. That upon the said acquisition, their grandfather gifted the suit land to their mother.
15. It is therefore his contention that they have been in possession and occupation of the suit land together with their mother and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who are his sisters, since the year 1998.

16. That in addition, their mother, who died in the year 2007 was also buried on the suit land.
17. He deponed that at the time of gifting them the suit land, their grandfather had already put up dwelling houses and other amenities, which they initially lived in. He, however, admitted to have since made numerous improvements which include permanent houses, water towers with tanks, pit latrines, kitchen, dairy units and many others.
18. It is the 1<sup>st</sup> respondent's claim that their grandfather never sold the suit land to anyone, even the plaintiff.
19. He maintained that they have lived in the suit land harmoniously with their neighbours, who are familiar with the surrounding neighbourhood, including the Area Chief.
20. It is therefore the 1<sup>st</sup> respondent's claim that the plaintiff's suit offends the statutory provisions of section 4(2) and 7 of the Limitation of Actions Act, Cap 22 Laws of Kenya and is thus time barred.
21. Consequently, he dismissed the plaintiff's suit as being an afterthought, brought late in the day after the 12 years statutory period required for actions based on the recovery of land. It is his contention that this court's jurisdiction to entertain the suit is ousted.
22. Further, it is his contention that they stand to suffer irreparably if the orders sought are granted as their rights to enjoy and utilize the suit land that they have enjoyed for the past 30 years shall be limited and inhibited.

23. He dismissed the allegations set out in paragraphs 8 – 15 of the Supporting Affidavit and averred that the said allegations cannot be used to as a basis to sustain the issuance of the orders sought
24. He maintained that the balance of convenience tilts in their favor owing to their occupation of the suit land and therefore there is need to maintain the status quo.
25. In conclusion, he averred that the plaintiff had not met the legal threshold for the grant of temporary injunction in the nature sought and urged the court to dismiss the application with costs to the respondents.
26. This court issued directions on the disposal of the application by way of written submissions. Parties filed and exchanged their rival submissions. The applicant filed his submissions dated 12.03.2026 while the respondents filed their joint submissions dated 16.03.2026 which I have read and considered.

**Analysis and Determination:**

27. I have carefully considered the grounds in the application, the supporting affidavit and the annexures therein, the replying affidavit in response thereto as well as the rival submissions in totality. Consequently, it is therefore my considered view that the following issues arise for determination: -
  - i. Whether the plaintiff's suit and application are statutorily time barred.*

- ii. *Whether the applicant has met the requirements for the grant of an order of temporary injunction.*
  - iii. *Whether the eviction order sought is tenable at an interlocutory stage.*
  - iv. *Who shall bear the costs of the application.*
28. Having identified the issues for determination above, I will now proceed to determine the same as hereunder.

**Whether the plaintiff's suit and application are statutorily time barred;**

29. It is now well settled that a question of limitation is a question that goes to the root of the jurisdiction of a Court. Where a claim/matter is barred by statute, the court lacks jurisdiction to hear and determine it.
30. This position was reiterated/restated by the court in the case of **Sohanladurgadass Rajput & another vs Divisions Integrated Development Programmes Co Ltd (2021) eKLR**, where it was held that: -
- "The question of limitation is a question that goes to the jurisdiction of this Court. It is a clear point of law, which if argued as Preliminary Objection point may dispose of the suit."***
31. It is the respondents claim that the plaintiff's suit and application offend the provisions of section 4(2) and (7) of the Limitation of Actions Act. It is their contention that they have been in possession and occupation of the suit land

since the year 1998 and thus the plaintiff's right to recover the land is barred by dint of section 7 of the Act, the same having been filed after 12 years.

32. Further, it is their claim that from the plaintiff's supporting affidavit, it is the plaintiff/applicant's contention that he discovered the respondents' possession and occupation sometimes in the year 2007. They thus aver that at the time of filing the present suit and application, the 3 years' statutory period had since lapsed and the plaintiff's action based on trespass is thus time barred by dint of section 4(2) of the Limitation of Actions Act.
33. I have critically looked at the plaintiff's claim and the facts deponed in the supporting affidavit and I do acknowledge that from the facts in the supporting affidavit and paragraph 6 of the plaint, it is the applicant's own admission that he discovered the respondents' alleged acts of trespass sometimes in the year 2007. I need not over-emphasize on the settled principle of law that parties are bound by their own pleadings.
34. Section 7 of the Limitation of Action Act provides the limitation period within which to file actions for the recovery of a land. The section states as follows: -

***“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.”***

35. Further, section 4 (2) of the Limitation of Action Act provides the timelines within which an action founded on tort and/or trespass as in the instant suit, should be filed. The section provides as follows: -

***(2) 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:***

36. As stated hereinabove, from the applicant's own admission, he discovered the alleged acts of trespass and/or illegal possession and occupation of the suit land by the respondents in the year 2007. The plaintiff/applicant also confirmed that the respondents are still in occupation and use of the suit land to date, hence the order of eviction sought.

37. Therefore, having discovered the alleged acts of trespass and/or illegal occupation and use of the suit land in the year 2007, it is evident that the cause of action accrued in the same year 2007. At the time of filing the present suit in the year 2026, a period of 19 years had since lapsed, which period is beyond the 12 years and 3 years statutory period required for the filing of actions for the recovery of land and actions founded on trespass respectively.

38. The question that therefore follows is whether this court is vested with the requisite jurisdiction to entertain the plaintiff's suit and application as filed.

39. As earlier stated, a question on limitation is a question that goes to the root of the jurisdiction of a Court to entertain the matter before it. In **Iga vs. Makerere University [1972] EA** it was held:

***“A plaint which is barred by limitation is a plaint barred by law. A reading of the provisions of Section 3 and 4 of the Limitations Act Cap 70 together with Order 7 Rule 6 of the Civil Procedure Rule of Uganda which has same provisions with Limitations Act of Kenya seems clear that unless the applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the court cannot grant the remedy or relief.”***

40. In view of the foregoing, it is the finding of this court that the plaintiff's suit and application are statutorily time barred by dint of the provisions of sections 7 and 4(2) of the Limitation of Actions Act.

41. Consequently, this court is not vested with the requisite jurisdiction to hear and determine the plaintiff's suit and the

present application as filed. As such therefore, I must down my tools and make no further step.

42. In the premises, the remaining issues are abandoned for want of jurisdiction.

**Who shall bear the costs of the application;**

43. It is well settled that costs follow the event unless the court directs otherwise.
44. In this case, having held that the plaintiff's suit and application are time barred, it is my finding that the respondents are entitled to costs of defending the same.

**CONCLUSION**

45. The upshot of the above is that the Plaintiff's suit vide Plaint dated 18<sup>th</sup> December, 2025 and the present application vide the Notice of Motion dated 18<sup>th</sup> December, 2025 be and are hereby **struck out with costs** to the Defendants/Respondents for want of jurisdiction.
46. It is so ordered.

**DATED, SIGNED and DELIVERED in ELDORET this 7<sup>th</sup> day of MAY, 2026.**

**HON. C. K. YANO  
JUDGE**

Ruling delivered in the presence of: -

Ms. Onderi for the Plaintiff.

Mr. Langat holding brief for Mr. Kibii for the Defendants.

Court Assistant - Laban

ORIGINAL