



**Chemurwok & another v Director of Land Adjudication and Settlement
& 4 others (Environment and Land Miscellaneous Application
E014 of 2025) [2026] KEELC 2741 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2025
LA OMOLLO, J
MAY 7, 2026**

BETWEEN

RACHEL CHEMURWOK 1ST APPLICANT

ZIPPORAH CHEMURWOK 2ND APPLICANT

AND

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST
RESPONDENT**

**THE COUNTY LAND AND ADJUDICATION OFFICER,
KERICHO 2ND RESPONDENT**

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE LAND REGISTRAR, KERICHO COUNTY 4TH RESPONDENT

THE ATTORNEY GENERAL OF KENYA 5TH RESPONDENT

RULING

1. The Applicants commenced the present proceedings vide the Originating Summons dated 9th May, 2025.
2. The Originating Summons is expressed to be brought under Article 159 (1) of *the Constitution* of Kenya, Sections 26, 27, 28, 29, 30 & 39 of the *Limitation of Actions Act*, Sections 1, 1A, 3 & 3A of the *Civil Procedure Act* and Order 50 Rule 6 of the Civil Procedure Rules.
3. The Applicants seek the following orders;
 - a. That this Honourable Court be pleased to grant the Applicants leave to file a suit out of the limitation period which suit seeks the discharge of the deceased's property known as LR



No. 8700/2 LR No. 8700/2 Manori Farm (assisted Farm A/C No. 40/6025) (measuring approximately 392 acres) and compensation for the Respondents' failure and or refusal to discharge the same while knowing full well that the Deceased had fully settled his Settlement Fund Trustee Loan in the year 1988.

- b. That the costs of this application be in the cause.
4. The application is supported by the affidavit of Rachel Chemurwok that was sworn on 9th May, 2025.

Factual Background

5. The Originating Summons first came up for hearing on 24th July, 2025 which hearing was adjourned to 6th October, 2025.
6. The hearing was further adjourned to 12th November, 2025 when the Court issued directions that the Originating Summons be heard by way of written submissions.
7. On 9th February, 2026 after parties confirmed filing of submission, the application was reserved for ruling on 9th February, 2026.

The Applicants' Contention.

8. The 1st Applicant contends that she and her Co-Applicant are the legal representatives of the estate of Daniel Chepkeiyo Chemurwok (Deceased).
9. She also contends that their deceased husband, Daniel Chepkeiyo Chemurwok was the owner of LR No. 8700/2 Manori Farm (assisted Farm A/C No. 40/6025) (measuring approximately 392 acres).
10. She further contends that before their husband died, he finished paying his Settlement Fund Trustee loan and was in the process of processing his title.
11. It is her contention that the Respondents refused to transfer the suit parcel of land to his name which frustrated him and he suffered a cardiac arrest in the year 1994.
12. It is also her contention that after his demise, she and her co-Applicant took out letters of administration for his estate in Kericho HCC Succession No. 21 of 2010.
13. It is further her contention that upon getting the confirmed grant, they on numerous occasions approached the Respondents seeking to subdivide the suit parcel and transfer it to the rightful beneficiaries but their efforts bore no fruits.
14. She contends that the suit parcel has been invaded by third parties who have secured title deeds illegally without involving them as they are the administratrix of the estate of the deceased. She goes on to state that the proper process of adjudication has not taken place.
15. She also contends that that despite demand and notice of institution of suit being issued, the Respondents have failed and/or neglected to issue them with transfer documents, discharge and the title for the suit parcel.
16. She further contends that she is apprehensive that unless the 1st Respondent is compelled to discharge the suit parcel, their right to own property shall be infringed.
17. It is her contention that on 8th April, 2021 they filed Kericho ELC Constitutional Petition No. E002 of 2021 which was dismissed on 3rd April, 2025.



18. It is also her contention that the Court relied on the doctrine of Constitutional Avoidance and held that they should pursue a civil claim.
19. It is further her contention that she sought legal counsel and has decided to seek legal redress from the Respondents for failure to discharge and register the suit parcel of land in their joint names.
20. She contends that she is advised by her advocates on record that her claim is statute barred.
21. She also contends that this Court has the discretion to enlarge time within which to file a suit.
22. She further contends that they are seeking that the Court enlarges time within which to file their intended suit taking into consideration that they have a lawful claim which has high chances of success.
23. She ends her deposition by stating that she has filed the application under consideration without unreasonable delay.

The Respondents' Response.

24. In response to the Applicant's application, the Respondents filed Grounds of Opposition dated 11th November, 2025. The grounds are as follows;
 - a. That the Applicants are guilty of inordinate delay in filing the application seeking leave to file the suit out of time and is in violation of the doctrine of laches.
 - b. That the court does not have jurisdiction to determine this matter as it is statutorily barred under section 7 of the Limitations of Actions Act, which stipulates;
"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."
 - c. That jurisdiction to extend time under section 27 of the Limitations of Actions Act is limited to a cluster or cadre of tort and in particular, the tort pertaining to a claim of Damages for negligence, nuisance or breach of duty and does not give jurisdiction to the Court to extend time for filing suit in cases involving contract or any other causes of action.
 - d. That the suit is statutorily barred and the Court does not have jurisdiction to determine the matter or to enlarge the limitation period beyond the statutory provisions.

Issues for Determination.

25. The Applicants filed submissions on 9th February, 2026 while the Respondents filed submissions on 6th February, 2026.
26. The Applicants rely on the judicial decision of County Executive of Kisumu v County Government of Kisumu and 8 others [2017]eKLR and submit on the following issues;
 - a. Whether the Applicants have satisfied the conditions for leave to file a suit out of time.
 - b. Whether the Respondent will suffer any prejudice should the leave be granted.
 - c. Whether the application has been made without unreasonable delay.
27. On the first issue, the Applicants rely on Article 162 (2) of *the Constitution* of Kenya, Sections 1A & 1B of the *Civil Procedure Act*, the judicial decision of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR and submit that they were issued with



- a Grant of Letters of Administration Intestate with respect to the estate of their deceased husband on 22nd May, 1995.
28. It is the Applicants submissions that the said grant was confirmed on 15th May, 2015.
 29. It is also the Applicants submissions that time begun to run upon confirmation of the said grant.
 30. It is further the Applicants submissions that they have established sufficient grounds for the Court to exercise its discretion and allow them to file the intended suit.
 31. The Applicants submit that they are lay people and they were not aware that the intended suit is strictly regulated and ought to have been filed within twelve years.
 32. The Applicants also submit that the Respondents will not be prejudiced if they are granted leave to file a suit out of time as they will have an opportunity to defend themselves.
 33. The Applicants reiterate the averments in the affidavit in support of the Originating Summons, rely on the judicial decision of Mureithi Charles & another v Jacob Atina Nyagesuka [2022] eKLR and submit that they made a mistake in failing to file the suit within time which mistake is not gross enough to deny them an opportunity to be heard on merit.
 34. On the second issue, the Applicants rely on the judicial decision of Stecol Corporation Limited v Susan Awuor Mudemb [2021] eKLR and reiterate that the Respondents will not suffer any prejudice if the prayers sought are granted.
 35. The Applicants conclude their submissions by urging the Court to allow their application as prayed.
 36. The Respondents submit on the following issues;
 - a. Whether the orders sought are merited.
 - b. Costs of the application
 37. On the first issue, the Respondents rely on Section 7 of the *Limitation of Actions Act* and submits that the Applicants suit is statute barred.
 38. The Respondents rely on the judicial decision of Togom & another v Kipchumba (Environment & Land Case E016 of 2024) and submits that if a suit is statute barred, then the Court lacks the jurisdiction to entertain it.
 39. It is the Respondents submissions that the Cause of action arose in the year 1988 and therefore the intended suit is statute barred.
 40. The Respondents rely on the judicial decision of Moffat Muriithi Muchai (Suing on behalf of the Estate of the late Milka Njoki Muchai (Deceased) v Wanjiru Wanjohi Gatundu & 2 Others [2019] eKLR in support of their submissions.
 41. The Respondents rely on Section 27(1) of the *Limitation of Actions Act*, the judicial decision of Mary Osundwa v Nzoia Sugar Company Ltd [2002]eKLR and submit that the Course of action relates to the issuance of a discharge of charge in relation to the suit property.
 42. The Respondents also submit that the refusal to issue a document is an administrative issue rather than a tort of negligence.
 43. The Respondents further submit that the Court does not have jurisdiction to extend time to the Applicants to file the intended suit.



44. It is the Respondents submissions that extension of time is not the right of a party as it is an equitable remedy that is only available to deserving parties.
45. The Respondents conclude their submissions by urging the Court to dismiss the Applicants application with costs.

Analysis and Determination.

46. I have considered the Applicants' Originating Summons, the response thereto and the rival submissions and my view is that the only issue that arises for determination is whether leave should be granted to the Applicants to file the intended suit out of time.
47. The Applicants contend that their deceased husband is the rightful owner of LR No. 8700/2 (Manori Farm) (Assisted Farm A/C No. 40/6025).
48. The Applicants also contend that he took a loan from the Settlement Fund Trustees, charged the said parcel of land, repaid the loan but the Respondents failed to issue a discharge of charge.
49. The Applicants further contend that they were given a Grant of Letters of Administration for his estate and despite following up severally, the Respondents have failed to assist them.
50. It is the Applicants contention that they filed a Constitutional Petition on 8th April, 2021 which Petition was dismissed on 3rd April, 2025.
51. It is also the Applicants contention that their Constitutional Petition was dismissed on the ground that they ought to have pursued a civil remedy.
52. It is further the Applicants contention that their claim is statute barred and they are therefore seeking for extension of time within which to file it.
53. On the other hand, the Respondents contend that the Applicants claim is statute barred.
54. The Respondents submit that the intended suit relates to alleged failure to issue a discharge of charge which is an administrative issue rather than a tort of negligence or tort.
55. The Respondents also submit that the Court does not therefore have jurisdiction to grant leave to the Applicants to file the suit out of time.
56. It is evident that the Applicants Course of action relates to alleged failure to discharge LR No. 8700/2 Manori Farm.
57. Order 37 Rule 6 of the Civil Procedure Rules provides as follows;
 - “(1) An application under section 27 of the *Limitation of Actions Act* made before filing a suit shall be made ex parte by originating summons supported by affidavit.
 - (2) Any such application made after the filing of a suit shall be made ex parte in that suit.”
58. Section 27 of the *Limitation of Actions Act* provides as follows;
 - “(1) Section 4(2) does not afford a defence to an action founded on tort where—



- a. the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
- b. the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and
- c. the Court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and
- d. the requirements of subsection (2) are fulfilled in relation to the cause of action.

(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—

- (a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and
- (b) in either case, was a date not earlier than one year before the date on which the action was brought.

(3) This section does not exclude or otherwise affect—

- (a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or
- (b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

59. The Applicants have attached to their Affidavit in support of the application a copy of a letter dated 13th September, 1988 written by the District Settlement Officer Kericho District which states that Daniel Chepkeiyot paid the Settlement Fund Trustee Loan in respect of LR No. 8700/2.
60. The Applicants have also attached a letter dated 19th August, 1993 written by C.M Osebe, the District Land Adjudication Officer, Kericho which is addressed to The Principal Magistrate, Kericho. The letter states among other things that Daniel Chemuruok is the owner of LR No. 8700/2 and he has repaid the Settlement Fund Trustee loan in full but is yet to be given a title deed.
61. A copy of Certificate of Death No. 279884 is also attached. It shows that Daniel Chepkeiyo Chemurwok died on 21st April, 1994. His death was registered on 10th May, 1994 and the death certificate was issued the same date.



62. A copy of a Grant of Letters of Administration Intestate issued in Nakuru HC Succession Cause No. 196 of 1994 In the Matter of the Estate of Daniel Chepkeiyo Chemurwok on 22nd May, 1995 has also been attached.
63. It shows that the grant was issued to;
 - a. Elizabeth Chemutai Chemurwok
 - b. Zipporah Wangui Chemurwok
 - c. Rachel Cheruiyot Chemurwok
 - d. Ruth Chepkoech Chemurwok
64. A copy of a Certificate of Confirmation of Grant issued in Kericho HC Succession Cause No. 21 of 2010 in the Matter of the Estate of Daniel Chepkeiyo Chemurwok has also been attached. It states that the Grant issued on 22nd May, 1995 was confirmed on 15th May, 2015.
65. Copies of letters dated 15th January, 2018, 28th December, 2018 and 16th May, 2018 have been attached. The letter dated 15th January, 2018 states that LR No. 8700/2 Manori Farm has been subdivided without their consent, the letter dated 28th December, 2018 is a Notice of Intention to sue while the letter dated 16th May, 2018 requests for the discharge of charge of LR No. 8700/2.
66. From the documents attached, it is evident that Daniel Chemurwok, the Applicants' deceased husband was issued with letters dated 13th September, 1986 and 19th August, 1993 that intended to show that he repaid the Settlement Fund Trustee loan.
67. The documents also show that he died on 21st April, 1994 and a Grant of Letters of Administration was issued on 22nd May, 1995 and confirmed on 15th May, 2015.
68. It is evident that the Applicants begun following up the issue of discharge of charge in the year 2018 before they filed the Constitutional Petition in the year 2021.
69. It is also evident that the Applicants did not take any step to follow up on the alleged issue between the year 1995 when they were issued with the Grant of Letters of Administration until the year 2018.
70. The Applicants submit that they are lay people and they did not know that their intended claim ought to have been filed within twelve years.
71. The Applicants also submit that they made a mistake which mistake is not gross enough to deny them the opportunity to be heard.
72. The Court of Appeal in *Mary Osundwa v Sugar Company Limited* [2002] KECA 203 (KLR) while considering Section 27 (1) of the *Limitation of Actions Act* held as follows;

“ This section clearly lays down the circumstances in which the Court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the Court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort.” (Emphasis mine)



73. In the above cited judicial decision, the Court of Appeal held that jurisdiction to extend time is limited to actions founded in tort and does not give the Court jurisdiction to extend time for filing of a suit involving contracts and/or any other course of action.
74. As stated, the Applicants cause of action against the Respondents is for discharge of a charge. This cause of action in respect of which the Applicants are seeking extension of time to file a suit does not fall within the scope of Section 27(1) of the *Limitation of Actions Act*.
75. The Court therefore lacks jurisdiction to grant the order sought.
76. I am constrained to also mention that Section 27(1) of the *Limitation of Actions Act*, leave to extend time is provided for in the event of ignorance of material facts and not ignorance of the law. This was as held in the judicial decision of Chondo & another v Mwijo & 5 others [2022] KEELC 15369 (KLR) where Court stated as follows;
- “The extension of limitation period is provided in case of ignorance of material facts. Based on the facts and material placed before this Court, the applicants have not been able to prove that material relating to the cause of action herein were not within their knowledge. Instead they plead ignorance of legal procedures in filing suit after the death of the deceased. This clearly cannot be a defence based on the maxim ignorance of the law is no defence.” (Emphasis mine)
77. The Applicants submit that they are lay people and they did not know that the intended claim was strictly regulated and they could not file it after the lapse of twelve years. As was held in Chondo & another v Mwijo & 5 others (supra) ignorance of the law is no defence.

Disposition.

78. Taking the foregoing into consideration, I find that the Applicants Originating Summons dated 9th May, 2025 lacks merit and it is hereby dismissed with costs.
79. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 7TH DAY MAY, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Morata for the Applicants.

Mr. Ojwang for the Respondents - Absent

Court Assistant; Mr. Joseph Makori.

