

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KWALE**  
**ELC NO. E018 OF 2022**

1. CHIGODI MRISA TSUMA
2. TSUMA MRISA TSUMA
3. NYONDO MRISA TSUMA
4. JACKSON MRISA TSUMA
5. NDORO MRISA TSUMA
6. CHIGODI MRISA TSUMA
7. NYONDO MRISA TSUMA
8. TSUMA MRISA TSUMA .....

**PLAINTIFFS**

**- VERSUS -**

1. NYAMAWI MNYAMBU JANGAA
2. BABU CHIFYU MWANONGO
3. JANGAA CHIFYU MWANONGO
4. SAMUEL CHIFYU BENDERA
5. SELEMANI MNYAMBU
6. NYAMAWI NGOME JANGAA
7. MWAMUMBO JANGAA
8. DEPUTY COUNTY COMMISSIONER,  
KINANGO SUB - COUNTY.....

**DEFENDANTS**

## **RULING**

### **I. Introduction**

1. This Ruling by the Honourable Court is made pursuant to the Notice of Preliminary Objection dated 12<sup>th</sup> November 2025, filed by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants herein.
2. As per the direction by this Court in the presence of all parties The Preliminary Objection was canvassed by way of written submissions, with the 1<sup>st</sup> to 7<sup>th</sup> Defendants' written submissions filed on 3<sup>rd</sup> March 2026, and the Plaintiffs' written submissions in opposition filed on 26<sup>th</sup> March 2026 by Luvuno Lung'anzi & Company Advocates.

### **II. The Preliminary Objection by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> Defendants**

3. The Preliminary Objection is grounded on three ( 3 ) distinct limbs that:-
  - a). The suit was filed on behalf of a clan and the court has not issued orders for it to be prosecuted as a representative suit.
  - b). A clan was not a legal person and had no capacity to file the suit.

c). The suit was time-barred and the Plaintiffs' alleged interest in the land in question was extinguished under the provisions of the Limitation of Actions Act, Cap 22.

4. Although this is a matter whereby the Court is called upon to make a determination on pure matters of law, it imperative that there be some brief background of the matter. These were that:

i). The Plaintiffs were eight named individuals who describe themselves, under Paragraph 4 of the Amended Plaint dated 18<sup>th</sup> November 2022, as adult male Kenyans residing in Munyuni, Samburu area, Kinango Sub-County within Kwale County.

ii). They claimed to be from the Duruma tribe clan of Mwadzine wa Buta and assert that they were the beneficial, legal and absolute owners of a portion of the parcel of land known as Title Number KWALE/SOUTH SAMBURU/130 situated in Munyuni, Samburu area, Kinango Sub-County, measuring approximately 8,555 acres/3,462 Hectares (Hereinafter referred to "The Suit Land").

- iii).The title deed for the suit land was issued on 16<sup>th</sup> February, 2021 and is registered under the name **“SOUTH SAMBURU GROUP RANCH.”**
- iv). The suit land is community land. The members were from the Duruma tribe and who rear livestock, with each family occupying vast land for grazing purposes. The dispute herein involves members of the Chigodi Mrisa Family (the Plaintiffs) and the Nyamawi Jangaa Family (the 1<sup>st</sup> to 7<sup>th</sup> Defendants).
- vi). The Plaintiffs averred that the Defendants, who were from the Duruma tribe clan of Mwadzine wa Chiruu, were allowed decades ago to occupy approximately 30 acres of the Plaintiffs’ family land by the Plaintiffs’ paternal grandfather, the late Tsuma Chilungu (deceased), but have since commenced selling portions of that land to third parties without the consent of the Plaintiffs.
- vii). The conflict crystallized in October 2021 when the Defendants were purporting to offer for sale to third parties a portion of the suit property measuring approximately 198 acres.
- viii). The dispute was previously brought before the Senior Chief Mundu, the Senior Chief of Samburu Location, in the year 2019. The Chief directed that the status quo be maintained,

that the families live in peace, and that the Defendants not sell portions of the Chigodi Mrisa family's land to third parties.

- ix). Despite this, the Defendants proceeded with their intended alienation, prompting the filing of the present suit.
- x). The matter was thereafter referred to mediation, which was unsuccessful, and the case was returned to court.

### **III. The Submissions by the parties**

#### **A. The Written Submissions by the 1<sup>st</sup> to 7<sup>th</sup> Defendants**

5. Though the Law firm of Messrs. Mulei & Company Advocates filed their written submissions. M/s. Kayatta Advocate submitted that a reading of the Plaintiffs' Amended Plaint disclosed that the suit was, in substance, a representative suit filed on behalf of a clan. The Learned Counsel drew the Court's attention to the contents paragraph 4 of the Amended Plaint where the Plaintiffs describe themselves as being from the Duruma tribe clan of "Mwadzine wa Buta," and argued that this language, read together with the context of the dispute over community land, unmistakably framed the suit as one brought on behalf of a larger clan grouping.

6. The Learned Counsel contended that the only authorisation on record was a consent to sign court documents dated 20<sup>th</sup> April 2022, whereby the 2<sup>nd</sup> to 8<sup>th</sup> Plaintiffs empowered the 1<sup>st</sup> Plaintiff, Chigodi Mrisa Tsuma, to sign court documents on their behalf. The Counsel argued that this consent was governed by the provision of Order 1 Rule 8(2) of the Civil Procedure Rules 2010, which provides that where individuals sue on behalf of a larger group such as a clan, the suit was viewed as a representative suit for which a notice must be issued to all persons having the same interest.
7. As no such notice was issued and no court order was obtained sanctioning the representative nature of the suit, the Preliminary Objection on this ground was said to be well-founded. To buttress on this point, the Learned Counsel referred Court on the case of:- "**Civil Case No. 433 of 2003, Rose Florence Wanjiru - Versus - Standard Chartered Bank Kenya Limited & J. Wanyela**", for the proposition that the provisions of Order 1 Rule 8 are mandatory and not merely directory, constituting essential preconditions for the trial of a case as a representative suit.

8. On the capacity ground, the Learned Counsel argued that the suit property was community land originally held under the South Samburu Group Ranch, managed under “**the Land (Group Representatives) Act, Cap. 287**”, now repealed, and currently governed by the Community Land Act, 2016. The South Samburu Group Ranch has since been dissolved. The Learned Counsel submitted that on this community land framework, where a clan member sues as an individual in respect of community land, the question of locus standi becomes acute and the suit is liable to be struck out. The Learned Counsel further relied on the case of:- “**John Macharia Mwangi & 2 Others - Versus - Daridson Mwangi Gatuiria [2014] eKLR**” and “**Jubilee Party - Versus - Salaries & Remuneration Commission & 2 Others [2021] eKLR**” to buttress the argument that capacity to sue must be strictly established.

9. On the limitation ground, the Learned Counsel did not develop extensive submissions but reiterated that the Plaintiffs’ alleged interest in the land was extinguished under the Limitation of Actions Act Cap. 22 and prayed that the Preliminary Objection be allowed with costs.

### **B. The Written Submissions by Plaintiffs**

10. The Law firm of Messrs. Luvuno Lung'anzi & Company filed their written submissions. Mr. Kamau Advocate submitted that the 1<sup>st</sup> to 7<sup>th</sup> Defendants had misconstrued the contents of the Amended Plaint. The Learned Counsel drew the Court's attention to the first paragraph of the Amended Plaint dated 18<sup>th</sup> November 2022, which described the Plaintiffs simply as adult male Kenyans residing in Munyuni, Samburu area, Kinango Sub-County. The Learned Counsel emphasized that there was no averment anywhere in the Amended Plaint that the Plaintiffs had filed the suit on behalf of others or in representation of the members of the Mwadzine wa Buta Clan.

11. On the representative suit ground, the Counsel submitted that the consent to sign court documents dated 20<sup>th</sup> April 2022, whereby the 2<sup>nd</sup> to 8<sup>th</sup> Plaintiffs authorised the 1<sup>st</sup> Plaintiff to sign court documents on their behalf, was executed in accordance with Order 1 Rule 13 of the Civil Procedure Rules 2010, which provides that where there are more Plaintiffs than one, any or more of them may be authorised by any other of

them to appear, plead or act in proceedings, and that such authority shall be in writing signed by the party giving it and filed in the case.

12. The Learned Counsel argued that this is a straightforward joinder of Co - Plaintiffs under the provision of Order 1 Rule 1 of the Civil Procedure Rules 2010, which permitted all persons to be joined as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction is alleged to exist, whether jointly, severally, or in the alternative.
13. On the issue of "***the locus standi***", the Learned Counsel placed heavy reliance on the Supreme Court of Kenya's decision in the case of: "***Matemu - Versus - Trusted Society of Human Rights Alliance & 5 Others (Civil Application 29 of 2014) [2014] KESC 6 (KLR) (9<sup>th</sup> December 2014)***", where the Supreme Court, comprising W.M. Mutunga CJ & P, K.H. Rawal DCJ & VP, P.K. Tunoi, M.K. Ibrahim, J.B. Ojwang and N.S. Ndungu SCJJ, held that locus standi has been greatly enlarged by the Constitution of Kenya, 2010. The Supreme Court observed that the provision of Articles 22 and 258 of the

Constitution have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general. The Court further noted that Article 22 (2) of the Constitution provides that court proceedings may be instituted by a person acting as a member of, or in the interest of, a group or class of persons. The Learned Counsel relied on the case of:- ***“John Wekesa Khaoya - Versus - Attorney General, Petition No. 60 of 2012; [2013] eKLR”*** for the proposition that the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution.

14. On the limitation ground, the Learned Counsel submitted that the cause of action in the instant suit was not one that arose decades ago but rather in October, 2021, when the Defendants began purporting to offer for sale to third parties a portion of the suit property measuring approximately 198 acres, as averred in paragraph 17 of the Amended Plaint. The Learned Counsel further pointed out that the title deed for the suit land was itself

only issued on 16<sup>th</sup> February, 2021. Given that the suit was filed in the year 2022, it could not conceivably be time-barred.

15. The Learned Counsel also relied on the nature and threshold of a preliminary objection as defined in the celebrated authority of "***Mukisa Biscuit Manufacturing Co. Limited - Versus - West End Distributors Limited [1969] EA 696***", where Law JA held that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit, and further that it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. Counsel argued that the limitation ground in particular fails this threshold as it requires ascertainment of facts not apparent on the face of the pleadings.

16. On the issue of costs. The Learned Counsel cited the case of:-"***Kimeu Mativo & 7 Others - Versus - Rafiki Microfinance Limited & 2 Others (2020) KEELC 3447 (KLR)***" and the proviso of Section 27 of the Civil Procedure Act,

Cap. 21 submitting that costs follow the event and that the Preliminary Objection should be dismissed with costs to the Plaintiffs.

#### **IV. Analysis and Determination**

17. I have keenly considered the pleadings, the written submissions of both the parties and the authorities cited, the relevant provision of the Constitution of Kenya, 2010 and the statutes.
18. To reach an informed, fair, reasonable this Court had identified the following three ( 3 ) issues for determination. These are:-

- a) Whether the 1<sup>st</sup> - 7<sup>th</sup> Defendant's Preliminary Objection dated 12<sup>th</sup> November 2025 raises a pure point of law?***
- b) Whether the 1<sup>st</sup> - 7<sup>th</sup> Defendant's Preliminary Objection dated 12<sup>th</sup> November 2025 is merited warranting the striking out of the suit against it?***
- c) Who will bear the Costs of the Objection?***

**ISSUE No. a). Whether the 1<sup>st</sup> - 7<sup>th</sup> Defendant's Preliminary Objection dated 12<sup>th</sup> November 2025 raises a pure point of law?**

19. Under this sub - heading, the Honourable Court will be examining the meaning, scope and nature of preliminary objection. According to the Black Law Dictionary a preliminary objection is defined as:

**“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”**

20. The court in “*the Classicus Locus*” case of:- “**Mukisa Biscuits Manufacturing Co. Limited - Versus - West End Distributors Limited (1969) EA 696**” described a preliminary objection as hereunder:--

**'So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are 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.'**

21. Sir Charles Newbold, JA in the same case stated that: -

**'A Preliminary Objection is in the nature of what used to be 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.'**

22. Additionally, in the course of time, the High Court has deliberated extensively on this legal issue. From instance, the case of:- “**Nitin Properties Limited - Versus - Singh Kalsi & Another [1995] eKLR**” the court stated thus:--

**'A Preliminary Objection 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.'*

23. Similarly, the Tanzanian Court of Appeal sitting in Dar es Salaam, in the case of:- ***“Karata Ernest & Others - Versus - the Attorney General (Civil Revision No. 10 of 2020 (2010) TZCA 30 (29<sup>th</sup> December, 2010)***, (Luanda, JA, Ramadhani, CJ, Rutakangwa, JJA), expounded the issue of preliminary objections in a more exhaustive manner as follows: -

***“At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only "consists of a point of law which has been pleaded, or which arises by dear implication out of the pleading obvious examples include: objection to the jurisdiction of the court; a plea of limitation; when the court has been wrongly moved either by non-citation or wrong citation of the enabling provisions of the law; where an appeal is lodged when there is no right of appeal; where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by a patently incurably defective copy of the decree appealed from; etc. All these are clear pure points of law. All the same, where a taken point of objection is premised on issues of mixed facts and law that point does not deserve consideration at all as a preliminary point of objection. It ought to be argued in the "normal manner" when deliberating on the merits or otherwise of the concerned legal proceedings.’***

24. Further, the Supreme Court addressed its mind on this issue in the case of:- ***“Aviation & Allied Workers Union***

**Kenya - Versus - Kenya Airways Limited & 3 Others [2015] eKLR**” and stated:-

**“Thus, a Preliminary Objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.”**

25. I have further relied on the decision of:- **“Attorney General & Another - Versus - Andrew Mwaura Githinji & another [2016] eKLR”**: - as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection *inter alia*: -

**(i) A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.**

**(ii) A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and**

**(iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.**

26. See also the case of: **“In the matter of Siaya Resident Magistrate Court Kisumu HCCMisc. App No. 247 of 2003”** where the Court held that:-

**“A Preliminary Objection cannot be raised if any facts has to be ascertained.”**

Therefore, from the above holdings of the Courts, it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere. The Court must first determine, as a

threshold matter, whether the three limbs of the Preliminary Objection satisfy the foundational requirement articulated in “**Mukisa Biscuit Manufacturing Co. Ltd (Supra)**”, that a preliminary objection must consist of a pure point of law arising from the pleadings, arguable on the assumption that all facts pleaded by the other side are correct, and capable of disposing of the suit without any factual ascertainment. This Court is satisfied that all three limbs, as framed, do raise pure points of law on the face of the pleadings.

27. The first limb, on the face of the Amended Plaint, raises the pure legal question of whether, the suit constitutes a representative suit within the meaning of Order 1 Rule 8 of the Civil Procedure Rules, 2010. Further, it is whether the mandatory procedural prerequisites for such a suit have been complied with.
28. The second limb raises the pure legal question of whether a clan, as a collective entity, possesses the legal personality and capacity to institute civil proceedings under the provision of Sections 8 and 9 of the Civil Procedure Act, Cap. 21, read together with the Community Land Act, No. 27 of 2016.
29. The third limb raises the pure legal question of whether the Plaintiffs' claim is statute-barred under the Limitation of Actions Act, Cap 22, Sections 7 and 17, classically recognized since **Mukisa Biscuit** as a paradigm preliminary point.

30. Therefore, the Court proceeds to conclude that the issues being raised herein from the above limbs and its quite clear that though they are not within the purview of point of pure law but also contains a concoction of facts. By all means, the safest route to take here would be to have these issues to be intensify interrogated and tested during a full trial. For these reason, therefore, the objection must fail by all means.

**ISSUE No. b). Whether the 1<sup>st</sup> - 7<sup>th</sup> Defendant's Preliminary Objection dated 12<sup>th</sup> November, 2025 is merited warranting the striking out of the suit against it?**

31. The first ground of the Preliminary Objection is that the suit was filed on behalf of a clan without the court sanctioning it as a representative suit under Order 1 Rule 8 of the Civil Procedure Rules, 2010. The Counsel for the Defendants submitted that the consent to sign court documents executed by the 2<sup>nd</sup> to 8<sup>th</sup> Plaintiffs in favour of the 1<sup>st</sup> Plaintiff is the kind of authority contemplated under Order 1 Rule 8(2), which he argued governs suits filed on behalf of a larger group such as a clan. Counsel relied on *Rose Florence Wanjiru v Standard Chartered Bank Kenya Limited* (Civil Case No. 433 of 2003) for the principle that Order 1 Rule 8 requirements are mandatory and essential preconditions for the prosecution of a representative suit.

32. The provision of Order 1 Rule 8 (1) of the Civil Procedure Rules, 2010 provides as follows:

**"Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. The court shall, in every case, give notice of the institution of the suit to all such persons either by personal service or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct."**

33. Order 1 Rule 13(1) and (2) of the Civil Procedure Rules, 2010, on the other hand, provides as follows:

**"(1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding. (2) The authority shall be in writing signed by the party giving it and shall be filed in the case."**

34. The Court must determine which of these two provisions governs the consent dated 20<sup>th</sup> April 2022 filed by the 2<sup>nd</sup> to 8<sup>th</sup> Plaintiffs in favour of the 1<sup>st</sup> Plaintiff, and by extension whether the suit is a representative action under Order 1 Rule 8.

35. The distinction between a representative suit under Order 1 Rule 8 and a joint suit by co-plaintiffs under Order 1 Rule 1 and Rule 13 is fundamental. A representative suit is one brought by one or more persons on behalf of a larger body of persons, typically unnamed, who share the same interest but are not individually named as parties. The hallmark of such a

suit is that the named plaintiff purports to represent and bind persons who are not before the court. Order 1 Rule 8 is designed to protect those unnamed, absent persons by requiring court sanction and appropriate notice to them.

36. A joint suit by multiple Co - Plaintiffs is entirely different. It is a suit filed by numerous persons, each named and joined individually, each pursuing their own interest in the same subject matter, in a single suit to avoid multiplicity of proceedings. Order 1 Rule 1 expressly permits this, and Order 1 Rule 13 merely facilitates the practical management of such suits by allowing one co-plaintiff to be authorised to sign documents on behalf of the others.
37. Turning to the pleadings in the present suit, the Court finds that the eight Plaintiffs are individually named. Each is identified by his own name. The Amended Plaint is filed in their collective names. The consent to sign court documents filed on 20<sup>th</sup> April 2022 expressly states that the 2<sup>nd</sup> to 8<sup>th</sup> Plaintiffs empower the 1<sup>st</sup> Plaintiff, Chigodi Mrisa Tsuma, to sign all court documents on their behalf and to stand as a witness to adduce evidence on their behalf and his own. This is the precise mechanism envisaged under the provision of Order 1 Rule 13. It does not make the suit a representative one; it merely designates one of the co-Plaintiffs to act for the others on administrative and procedural matters.

38. The Court further notes, as counsel for the Plaintiffs correctly observed, that there is no averment anywhere in the Amended Plaint that the Plaintiffs sue on behalf of all members of the Mwazine wa Buta Clan or on behalf of any other unnamed persons. Paragraph 4 of the Amended Plaint identifies the Plaintiffs as being from the Duruma tribe clan of Mwazine wa Buta: this is a statement of ancestry and tribal identity, not a declaration that the named individuals represent all members of that clan in these proceedings.
39. The Defendants' submissions also raised the community land dimension, contending that since the suit land is community land under the South Samburu Group Ranch, a clan member who sues as an individual faces locus standi issues. This Court notes that this argument confuses the mode of suing with the nature of the land. The question of whether community land can only be represented by its governing structure is a matter going to the merits of the substantive claim — specifically, whether the Plaintiffs have the right they assert over a defined portion of the group ranch — and is not a preliminary point of law disposable without hearing evidence. It is not the same as the Order 1 Rule 8 representative suit question.
40. Accordingly, the Court finds that the suit is not a representative suit within the meaning of Order 1 Rule 8 of the Civil Procedure Rules 2010. The eight Plaintiffs are individually named co-plaintiffs suing in their own right in

respect of a shared proprietary interest. The first ground of the Preliminary Objection fails and is dismissed.

41. The second ground is that the clan is not a legal person and has no capacity to file the suit. As already found under Issue 1, the suit is not filed by a clan as a legal entity. The suit is filed by eight named natural persons. Nevertheless, the Court will examine the locus standi of the Plaintiffs, including in the context of the community land framework raised by the Defendants.
42. The starting point is the constitutional framework. Article 22(1) of the Constitution of Kenya, 2010 provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or is threatened. Article 22(2) expands this further by permitting court proceedings to be instituted by, inter alia, a person acting as a member of, or in the interest of, a group or class of persons. Article 258 contains analogous provisions in relation to constitutional enforcement. Article 48 guarantees every person the right of access to justice.
43. The Supreme Court in the case of:- “**Matemu - Versus - Trusted Society of Human Rights Alliance & 5 Others [2014] KESC 6 (KLR)**”, a decision heavily relied upon by the Plaintiffs — analysed the concept of locus standi in the constitutional era at length. The Supreme Court held that the promulgation of the 2010 Constitution enlarged the

scope of locus standi in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general. The Supreme Court further cited “**John Wekesa Khaoya - Versus -Versus - Attorney General, Petition No. 60 of 2012; [2013] eKLR** for the proposition that the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in Articles 22 and 258 which ensure unhindered access to justice.

44. The Court also notes that the Supreme Court in “**the Matemu**” case extensively discussed Article 260 of the Constitution, which defines “person” to include “a company, association or other body of persons whether incorporated or unincorporated.” Whilst this is a broader principle relating to legal personality of entities, it underscores the constitutional disposition towards expansive access to justice rather than restrictive technical barriers to standing.
45. In the present case, each of the eight Plaintiffs is an identified natural person. Each is a Kenyan citizen of full age. The Amended Plaint asserts a direct, personal and proprietary interest — a beneficial, legal and absolute ownership interest over a defined portion of the suit property — in each Plaintiff’s own right. The Plaintiffs are not an abstract entity, a deregistered organization, or an unincorporated body attempting to invoke the court’s

jurisdiction without individual standing. They are natural persons asserting their own rights. Under Article 48 and Article 22 of the Constitution, each of them has an unimpeachable right of access to the courts.

46. The authorities cited by the Defendants, ***John Macharia Mwangi & 2 Others - Versus - Daridson Mwangi Gatuiria [2014] eKLR*** and ***Jubilee Party - Versus - Salaries & Remuneration Commission & 2 Others [2021] eKLR***, deal with different factual matrices involving institutional or political party standing and do not assist in the specific factual circumstances of natural persons asserting personal land interests. They do not establish a principle that individual members of a family or clan lack capacity to sue in respect of community or group ranch land. Whether the Plaintiffs have the substantive legal right they assert over a specific portion of the group ranch is a matter for determination on the merits at trial, not a matter of capacity on a preliminary objection.
47. This Court therefore finds that the Plaintiffs, being eight named natural persons with direct and personal interests in the suit property, have the legal capacity and locus standi to institute and maintain the present suit. The second ground of the Preliminary Objection fails and is dismissed.
48. The third ground is that the suit is time-barred and the Plaintiffs' alleged interest in the land is extinguished under the Limitation of Actions Act, Cap 22. Section 7 of the Limitation of Actions Act provides:

**"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."**

49. Section 13 of the same Act provides that at the expiration of the period prescribed under Section 7, the title of the person whose right of action has accrued shall be extinguished.
50. Applying this test, the limitation ground faces an insurmountable obstacle: the question of when the cause of action accrued is not a pure point of law apparent on the face of the pleadings. It is a question requiring ascertainment of fact.
51. As the Counsel for the Plaintiffs correctly submitted, paragraph 17 of the Amended Plaint specifically avers that the cause of action arose in October, 2021, when the Defendants began purporting to offer for sale a portion of the suit property to third parties. Furthermore, the title deed for KWALE/SOUTH SAMBURU/130, which the Defendants themselves acknowledge to be the mother title for the suit property, was only issued on 16<sup>th</sup> February, 2021. It is logically impossible for a cause of action relating to that title to have accrued more than twelve years before its issuance.
52. The Defendants' limitation argument appears to proceed on the basis that the dispute between the Chigodi Mrisa Family and the Nyamawi Jangaa Family over the 30-acre occupation dates back decades — a fact that, if true,

might raise limitation questions of a different character. But even if that is so, this cannot be resolved at a preliminary stage without evidence. The precise nature of the cause of action pleaded, the date on which the right of action first accrued (whether from the original occupation, the adverse sale in October 2021, or some other event), and whether any continuing breach or fresh cause of action exists, are all deeply factual matters that are inextricable from the merits of the suit. To determine them on a preliminary objection would require this Court to delve into factual findings, which the Mukisa Biscuit rule expressly forbids.

53. Moreover, as the Court noted, Order 2 Rule 15 of the Civil Procedure Rules 2010 permits striking out of pleadings at any stage only where they disclose no reasonable cause of action, are scandalous, frivolous or vexatious, or are an abuse of process. The Plaintiff on its face discloses a live and substantial cause of action. It is neither frivolous nor vexatious. It cannot be struck out on limitation grounds at this preliminary stage.

54. The Court therefore finds that the limitation ground does not qualify as a pure point of law disposable without reference to fact and evidence. The Defendants retain full liberty to raise limitation as a substantive defence at trial. The third ground of the Preliminary Objection is hereby dismissed.

**ISSUE No. c) Who will bear the Costs of the Objection?**

55. It is now well established that the issue of Costs is the discretion of Courts. Costs was an award which was granted to a party at the conclusion of any legal action and proceedings in any litigation.
56. According to the Black Law Dictionary, "Cost" is defined to mean:- ***"the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other"***. The provisions of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that Costs follow events. By the events, it means the results or outcome of any legal action or proceedings thereafter.
57. Further, these legal principles were upheld in the Supreme Court case of ***"Jasbir Rai Singh - Versus - Tarchalans Singh, (2014) eKLR"*** and the Court of Appeal cases of ***"Cecilia Karuru Ngayu - Versus - Barclays Bank of Kenya & Ano. (2016) eKLR"*** the Courts held: -  
  
***"..... the basic rule on attribution of costs is that costs follow the event.....it is well recognized that the principles costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in presenting or defending the case"***.
58. In the instant case, the Court is alive to the fact that the Plaintiffs and the 1<sup>st</sup> to 7<sup>th</sup> Defendants are neighbours from the same community with a longstanding land-use relationship that predates this dispute. In the overall interests of sustaining peace and tranquility among the parties and their future relationship based on the

constitutional imperative to promote alternative dispute resolution and reconciliation, this Court holds that each party to bear their own costs.

## **V. Conclusion and final orders**

59. Consequently, upon causing an in-depth analysis to the framed issues herein, the Honourable Court on Preponderance of Probabilities and the balance of convenience reaches at the following findings. These are:

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**a) THAT the Notice of Preliminary Objection dated 12<sup>th</sup> November, 2025, filed by the 1<sup>st</sup> to 7<sup>th</sup> Defendants through the Law firm of Messrs. M.K. Mulei & Company Advocates be and is hereby dismissed in its entirety.**

**b) THAT in essence the main suit ELC No. E018 of 2022 shall proceed to full hearing on its merits.**

**c) THAT the 1<sup>st</sup> to 7<sup>th</sup> Defendants shall have full liberty to raise the defence of limitation of actions, the Community Land Act, 2016 framework, and any other substantive defences at the trial of the main suit without prejudice arising from this Ruling.**

**d) THAT the matter be listed for further directions on 30<sup>th</sup> September, 2026 on compliance. There will be hearing on 2<sup>nd</sup> November, 2026 preferably through Physical means.**

**e) THAT each party to bear their own costs.**

**IT IS ORDERED ACCORDINGLY.**

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS  
VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS... 4<sup>th</sup>  
.... DAY OF ..... MAY ....2026**

.....

**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT  
AT  
KWALE.**

**Ruling delivered in the presence of: -**

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Kamau Advocate for the Plaintiffs.
- c) M/s. Kayatta Advocate for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup>  
Defendants/Objectors.