



**Ghani v Abdi & another (Environment & Land Case E018 of 2022)
[2023] KEELC 16404 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16404 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E018 OF 2022
EO OBAGA, J
MARCH 23, 2023**

BETWEEN

MOHAMED IFTEKHAR GHANI PLAINTIFF

AND

MOHAMED JAMA ABDI 1ST DEFENDANT

**BOARD OF MANAGEMENT, MARIA SOTI EDUCATIONAL
TRUST 2ND DEFENDANT**

RULING

1. This is a ruling in respect of a preliminary objection by the 1st defendant filed on September 6, 2022 on the following grounds: -
 1. That the suit against the defendant is statute barred by virtue of the provisions of the *Limitation of Actions Act* cap 22 Laws of Kenya.
 2. That this honorable court lacks the requisite jurisdiction to hear and determine this matter.
2. The plaintiff filed a suit against the defendant seeking the following reliefs: -
 - a. A declaration that the transfer and registration of 2nd defendant as the entire owner of that parcel of land known as Eldoret Municipality/block 8/2015 and all documents used in effecting such registration are unlawful, illegal, null and void and were procured by fraud and in contravention of the law.
 - b. An order directing the Land Registrar Uasin Gishu County to cancel the certificate of lease issued to the 2nd defendant on January 17, 1996 over land parcel number Eldoret Municipality/ block 8/2015 and rectify the register for the said parcel of land by cancelling the 2nd defendant's name as the entire owner of the parcel of land and substituting therein that the plaintiff is entitled to 1¼ acres.



- c. A declaration that the agreement between the 1st defendant over the entire parcel number Eldoret Municipality/block 8/2015 is unlawful, illegal, null and void and ineffectual against 1 ¼ acres belonging to the plaintiff.
 - d. An order of permanent injunction restraining the 1st defendant from re-entering into trespassing upon and /or otherwise interfering with the plaintiff's 1 ¼ acres comprised on parcel number Eldoret Municipality/block 8/2015.
 - e. An order of compensation at the current market price against the 1st defendant for loss of 1 ¼ acres of land.
 - f. General damages from the time the discharge was registered.
 - g. Exemplary damages.
 - h. Any other relief as the court may deem fit and just to grant.
3. The plaintiff and the 1st defendant had entered into an agreement with the plaintiff in which they agreed to take 1 ¼ acres out of the 1st defendant's land in exchange for a company which was owned by the 1st defendant together with its assets.
 4. The 1st defendant's land had been charged to a bank. It was agreed that he 1st defendant was to transfer the 1 ¼ acres to the plaintiff after the discharge of charge. The plaintiff who was a friend of the 1st defendant was explained by the 1st defendant that the title to his land had been lost by the bank and that he would transfer the 1 ¼ acres upon acquisition of a new title.
 5. The plaintiff was aroused in 2021 when he saw people putting up a perimeter fence round the suit property. He went to the Lands office where he was informed that the parcel file in respect of the land was not available. He found out that the 1st defendant had transferred the entire land to the 2nd defendant on January 17, 1996 immediately after discharging the title.
 6. The 1st defendant now contends that the suit is statute barred and that this court has no jurisdiction to hear the same. Parties were directed to file written submissions. The 1st defendant filed his submissions on January 23, 2023. The plaintiff filed his submissions on January 18, 2023.
 7. I have gone through the submissions. The only issues for determination are whether this suit is statute barred and whether this court lacks jurisdiction to handle the same. The parties did not submit on the aspect of jurisdiction. This was perhaps after realizing that the ground of jurisdiction was misguided. The only issue which remains for determination is whether this suit is statute barred.
 8. From the facts of this case, the agreement was entered into on April 3, 1995. This suit was filed on March 7, 2022. The facts of this case shows that the 1st defendant acted in a fraudulent manner. He concealed the fact that he had transferred the entire land to the 2nd defendant on January 17, 1996. This fraud was only discovered in 2021.
 9. The plaintiff acted in good faith because he trusted the 1st defendant who was his friend with whom they shared the same religion. There is no way he would have discovered the fraud because of the trust which he had in the 1st defendant. Section 26 of the *Limitation of Actions Act* provides as follows: -

“Where, in the case of an action for which a period of limitation is prescribed, either— (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or (b) the right of action is concealed by the fraud of any such person as aforesaid; or (c) the action is for relief from the consequences of a mistake, the period of



limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it: Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which— (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or (ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.”

10. It is clear that in cases where fraud is alleged, time for purposes of limitation does not start running until the fraud is discovered. I have said herein above that the plaintiff had no reason to doubt what the 1st defendant was telling him. He would not therefore have been expected to discover the fraud until he saw people fencing the entire land. Time for purposes of limitation therefore started running in 2021. I therefore find that the preliminary objection is devoid of merit. The same is dismissed with costs to the plaintiff.

11 It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 23RD DAY OF MARCH, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Jama for 1st defendant.

Mr. Mathai for plaintiff.

Court Assistant –Laban

