



**Titus & 36 others v Mutunkei (Environment & Land Case
E037 of 2022) [2023] KEELC 17018 (KLR) (18 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17018 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E037 OF 2022**

**MN GICHERU, J
APRIL 18, 2023**

BETWEEN

JACINTA KANINI TITUS & 36 OTHERS PLAINTIFF

AND

LENGISA OLE SHANKA MUTUNKEI DEFENDANT

RULING

1. This Ruling is on the Notice of Preliminary Objection dated November 4, 2022 which reads as follow;
 - i. The suit is bad in law and should be struck out for misjoinder as the alleged cause of action for each Plaintiff ought to be a separate and distinct suit.
 - ii. The suit is already time barred by virtue of the *Limitation of Actions Act* (CAP 22 Laws of Kenya).

2. The Preliminary Objection which is by the Defendant is not supported by any submissions. Submissions were to be filed within 90 days from November 7, 2022 which was to be around mid-February but as I write this Ruling in early April, no submissions have been received from the Defendant's counsel.

The Plaintiff's counsel filed written submission dated December 20, 2022 in which he urges that no suit should be defeated by reason of misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it, as per Order 1 rule 9 of the Civil Procedure Rules.

3. In addition to the above, counsel for the Plaintiffs urges that under Article 159(2) (d) of the *Constitution* of Kenya, it is provided that justice should be administered without undue regard to procedural technicalities.



4. I have considered the Preliminary Objection in its entirety including the two grounds and the submissions by the learned counsel for the Plaintiff.

Regarding the first ground, I find that there is nothing wrong with the suit as it is. It is properly filed and the thirty-seven plaintiffs properly joined because the reliefs that they seek arise out of a series of similar transactions. All the thirty-seven plaintiff's claim that they bought land from one person who is the Defendant herein in a series of many very similar transactions. Filing separate suits would cause delay and lengthen the period within which the actions would be concluded. Joining parties with similar claims is to be encouraged and not discouraged and it is very much in line with Order 1 rule 1 of the Civil Procedure Rules which provides as follows.

'All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transactions or series of acts or transaction is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law of fact would arise'

Though the cause of action for each Plaintiff is alleged to have occurred at different times, there is similarity in the facts and even the law that will apply to those facts.

5. The second ground in the preliminary objection does not specify which provisions of the Limitations of Actions Act it relies on. The Act has 45 Sections and many more subsections and the Defendant's counsel should have been more precise as to which particular Section the objection is based on.

If I were to assume that he wished to rely in Section 7 which provides 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,'

I would find that this is not an action to recover land. The Plaintiff already have the land. They are in occupation. What they seek is to be declared lawful owners and to be registered accordingly. They also seek to have the Defendant restrained from interfering with their quiet possession. Section 7 of the Law of Limitation Action Act would apply to a party who says he is not in possession and actual occupation.

6. Finally, on this issue, it is trite law that a court should sustain a suit rather than strike it out. Striking out pleadings is a draconian move that should be avoided except in the clearest of cases such as lack of jurisdiction, limitation or res judicata. Striking out a suit that can be sustained though an amendment is neither fair nor just. It is in fact a derogation of the right to a fair hearing which is enshrined on Article 50(1) of the Constitution.

For the above stated reasons, I dismiss the Preliminary Objection dated January 4, 2022. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

