



**Gerrit v Terakate Properties Limited (Environment & Land Case
E117 of 2023) [2023] KEELC 18062 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18062 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E117 OF 2023**

EK WABWOTO, J

JUNE 16, 2023

BETWEEN

JORDENS GERRIT PLAINTIFF

AND

TERAKATE PROPERTIES LIMITED DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion Application dated 22nd March 2023 accompanied by a supporting affidavit sworn by Jordens Gerrit seeking the following orders:
 - i. Spent.
 - ii. That pending the hearing and determination of this application inter-partes an injunction do issue restraining the Defendant from transferring and/or interfering with the Plaintiff/Applicant's parcel numbers 316 and 317, each measuring 33 by 60 feet, to be excised from L.R. No. 28987 (I.R. 150081).
 - iii. That pending the hearing and determination of this application, the Defendant do provide the Plaintiff with documents relating to the subdivision of property L.R. No. 28987 (I.R.150081), including Subdivision Scheme Approval from Ministry of Lands and Physical Planning, Beacons Certificate from private surveyor, Plaintiff's Certificate of Title resulting from Plot Nos. 316 and 317, and all documents relating to the said plots.
 - iv. That pending the hearing and determination of this suit an injunction do issue restraining the Defendant from transferring and/or interfering with the Plaintiff/Applicant's parcel numbers 316 and 317, each measuring 33 by 60 feet, to be excised from L.R. No. 28987 (I.R. 150081).



- v. That pending the hearing and determination of this suit an inhibition be placed against property L.R. No. 28987 (I.R. 150081) restraining any dealings with the Plaintiff/Applicant's parcel numbers 316 and 317, each measuring 33 by 60 feet.
- vi. That pending the hearing and determination of this suit, the Defendant do provide the Plaintiff with documents relating to the subdivision of property L.R. No. 28987 (I.R.150081), including Subdivision Scheme Approval from Ministry of Lands and Physical Planning, Beacons Certificate from private surveyor, Plaintiff's Certificate of Title resulting from Plot Nos. 316 and 317, and all documents relating to the said plots.
- vii. That the costs of this application be awarded to the Defendant.

2. The Application was made on the grounds that:

- i. By an agreement dated 8th August 2006, the Defendant agreed to sell to the Plaintiff entered into an Agreement for Sale with our clients for purchase of Plot No. 317 at a consideration of Kshs.380,000/-.
 - ii. Subsequently, by an agreement dated 27th August 2007, the Defendant entered into another agreement with the Plaintiff for sale of Plot No. 316, at a consideration of Kshs. 450,000/-.
 - iii. The terms of terms and conditions of the Agreements between the parties were inter alia that the Completion Dates for the Agreements would be 90 days from the respective dates of the Agreements.
 - iv. Despite the Plaintiff paying full purchase price for the Plots and his repeated requests, the Defendant has refused and continues to refuse to take any steps towards completion of the said Agreements.
 - v. Consequently, the Plaintiff is unable to carry out any developments his parcels.
 - vi. There is imminent risk that that the Defendant may transfer the Plaintiff's parcels to third parties, or deal with the Plaintiff's parcels, in contravention of the Agreements and contrary the Plaintiff's interests.
 - vii. The Plaintiff has unlawfully been deprived of the enjoyment of his properties and denied the right to construct residential homes on the plots.
3. On 13th April 2023, the Court directed that the Application would be canvassed by way of written submissions. In the Plaintiff's submissions dated 18th April 2023, it was submitted that as of 10th April 2022, the suit property had been transferred to the Defendant who is now a beneficial owner of undivided share measuring 7.757 Hectares. It was also submitted that the Defendant's refusal to subdivide and transfer the suit property has affected the Plaintiff's ability to secure respective construction permits and approvals from the County Government.
4. The Defendant filed a Replying Affidavit dated 12th April 2023, and a supplementary affidavit dated 26th April 2023 both sworn by Pius Mwangi Gukira it was argued that Plot 316 and Plot 317 do not exist on any official plan and thus there can be no basis for enforcing any orders sought and further that the Plaintiff was aware that the Defendant was purchasing the mother parcel under L.R No 11329 from DEVELCO Investments Limited who then breached the agreement and transferred it



to Kasarani Hills Limited. The Defendant averred to having sued Kasarani Hills in ELC 58 of 2011 wherein the matter was dismissed.

5. In submissions dated 26th April 2023, the Defendant raised several issues including lack of letters of administration, limitation of time under Section 7 of the Limitation of Actions Act, incompetency, prematurity of the suit and prejudice against third parties.
6. I have considered the application, rival affidavits and respective submissions. In my view, the issue that arises for determination is whether the Plaintiffs application is merited to warrant the grant of the orders sought.
7. This Court must consider the merit of the application firstly on the scale on whether it is time barred since this issue in and of itself would have the ability to extinguish the entire application. Section 7 of the Limitation of Actions Act outlines that:

“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.”

8. It is undisputed that the suit stems from two Sale agreements dated 8th August 2006 and 27th August 2007 for the purchase of the suit properties. In the Plaint dated 22nd March 2023 the Plaintiff has sought inter alia orders for specific performance of the agreements dated 8th August 2006 and 27th August 2007. In the case of Gatboni –vs- Kenya co-operative Creameries Ltd (1982) KLR 104 Potter, JA stated the rationale of the Law of Limitation as follows: -

“The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

9. It is this Court’s finding that the suit ought to have been filed in August 2019, at the latest and in this instance is evidently time barred. Having found out that the suit was time barred, I need not pronounce myself on other issues raised in the application.
10. In the foregoing, this Court finds that the Notice of Motion application dated 22nd March 2023 and Plaintiff’s suit is time barred and is hereby dismissed in its entirety with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JUNE 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Sila for the Plaintiff/Applicant.

Mr. Gichigi for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

