



**Kamau & 4 others (The Registered Trustees of New Testament Church of God Kenya) v Njuguna t/a Charismata Ministries Network & 2 others (Environment & Land Case E072 of 2024) [2025] KEELC 1333 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1333 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E072 OF 2024**

**MAO ODENY, J  
MARCH 19, 2025**

**BETWEEN**

**FLORENCE WANJIRU KAMAU, SAMUEL KAGOCHI MWAURA, PETER MACHARIA SIGAKA, ALFRED GEORGE RIOBA, FRANCIS WAMWEYA NGANGA ..... PLAINTIFF**

**THE REGISTERED TRUSTEES OF NEW TESTAMENT CHURCH OF GOD KENYA**

**AND**

**REVEREND DR MUSA NJUGUNA T/A CHARISMATA MINISTRIES NETWORK ..... 1<sup>ST</sup> DEFENDANT**

**MUSA NJUGUNA MINISTRIES INC ..... 2<sup>ND</sup> DEFENDANT**

**REV MUSA NJUGUNA, THE REGISTERED TRUSTEE CHARISMATA REVIVAL NETWORK ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of two applications. The first application is a Notice of Motion Application dated 28<sup>th</sup> October, 2024 by the Plaintiff seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That an order of temporary injunction be and is hereby issued, restraining the Defendants by themselves, their servant, agents and or employees from dealing, interfering, disposing and or alienating any portion of and or the whole of the property known as on L.R Number Mau



Summit/Molo Block 1/181 (Mutirithia) and Mau Summit/Molo Block 1/182 (Mutirithia) pending the hearing and determination of this suit.

- d. That the Defendants by themselves, their servant, agents and or employees be and are hereby restrained from entering, attending, changing sign posts, imposing their pastors, trespassing, conducting or otherwise interfering or taking over the operations of the Plaintiff's churches situated in Molo which are erected on L.R Number Mau Summit/Molo Block 1/181 (Mutirithia) and Mau Summit/Molo Block 1/182 (Mutirithia) and other churches situate in Nakuru, Eldama Ravine and Njoro pending the hearing and determination of this suit.
  - e. That the defendants be and are hereby ordered to release to the plaintiff forthwith all the movable property in their possession belonging to the plaintiff and or purchased with funds from the plaintiff directly or from the mother and sister churches abroad including, motor vehicles, tents, public address systems and any other property pending the hearing and determination of this suit.
  - f. That without prejudice and alternative to order 5 above, that the Defendants their servants and or agents be and are hereby restrained from transferring, wasting or otherwise parting with possession of the Plaintiff's moveable properties belonging to the Plaintiff's churches in Molo, Njoro, Nakuru and Eldama Ravine, including motor vehicles, tents and public address systems pending the hearing and determination of this suit.
  - g. That the costs of this application be provided for.
2. The application was supported by the affidavit of Francis Wamweya Nganga and Peter Macharia Sigaka who deponed that they are the trustees of the Plaintiff and in 2004, the 1<sup>st</sup> Defendant/Respondent began replacing pastors and painting off the Plaintiff/Applicant churches sign boards and writing the name of his new church. They deponed that the 1<sup>st</sup> Defendant/Respondent also claimed the Molo church and the two plots therein. The Applicants further stated that on 30<sup>th</sup> July, 2004, Moses P.N Njoroge registered a caution against the two properties to prevent the 1<sup>st</sup> Defendant/Respondent from interfering with the suit properties.
  3. Subsequently the Applicant filed a suit and an application on 15<sup>th</sup> October 2004 where the court granted an injunction against the Defendants restraining them from entering, attending, changing signposts, imposing pastors, trespassing, interfering with the church or transferring the suit properties. They deponed that the suit was originally No 47 of 2004 which was later registered as ELC No 129 of 2019.
  4. It is their deposition that the 1<sup>st</sup> Defendant/Respondent did not testify in Court but the trial court struck out the Plaintiff's suit as they had no locus standi to institute and maintain the suit on behalf of New Testament Church of God Kenya hence the new suit.
  5. The 1<sup>st</sup> Defendant, Rev Dr. Musa Njuguna filed a Replying Affidavit sworn on 4<sup>th</sup> November, 2024 where he deponed that the Applicant does not have a prima facie case as the previous case having been adjudicated and struck out as an incompetent claim. He deponed that the Applicants cannot claim that they will suffer irreparable loss if they are not permitted to use his land pending the hearing and determination of the suit and urged the court to dismiss the Application.
  6. Francis Wamweya Nganga and Peter Macharia Sigaka filed a Further Affidavit sworn on 21<sup>st</sup> November, 2024 and deponed that if interim orders sought are not granted would fatally disrupt the worship services that have subsisted at the Plaintiff Church for over 30 years. They deponed that no amount of damages would compensate the Plaintiff.



7. The second application is a Notice of Motion Application dated 4<sup>th</sup> November, 2024 by the Defendants seeking the following orders:
  - a. That the plaintiffs' suit filed by way of plaint dated 28<sup>th</sup> October, 2024 be struck out.
  - b. That costs of this application and costs of the entire suit be borne by the plaintiffs/respondents.
8. The application was supported by the affidavit of the 1<sup>st</sup> Defendant, Reverend Musa Njuguna sworn on 4<sup>th</sup> November, 2024 where he deponed that on 1<sup>st</sup> September 2004, the Plaintiff filed Nakuru HCCC No 247 of 2004 and the suit was later transferred to this court and given number ELC 129 of 2019. He further deponed that the suit was a claim for recovery of land which was heard and a judgment delivered in September 2024 where the suit was struck out since the same was filed by parties who had no locus standi. He deponed that the Plaintiff subsequently filed an application for stay of execution, which is still pending, before the court.
9. The 1<sup>st</sup> Defendant further deponed that the Plaintiffs in this matter have not filed an appeal against the striking out of Nakuru ELC 129 of 2019 but have instead filed this present suit which is based on the set of facts in Nakuru ELC 247 of 2004 (later Nakuru ELC 129 of 2019). Further that this suit is statute barred under Section 7 of the [Limitation of Actions Act](#) and the same ought to be struck out.
10. Francis Wamweya Nganga and Peter Macharia Sigaka filed a Replying Affidavit sworn on 17<sup>th</sup> January, 2025 and deponed that a suit that is prosecuted can and does in fact stop time from running under the Limitations of Actions Act. They deponed that the ruling delivered by the court stated that the previous suit ELC No 129 of 2019 was struck out and not dismissed thus a fresh suit can be filed and urged the court to grant orders sought for a temporary injunction.

### **Plaintiffs' Submissions**

11. Counsel for the Plaintiff filed submissions dated 21<sup>st</sup> November, 2024 and identified the following issues for determination:
  - a. Whether the Plaintiff's suit is statute barred?
  - b. Whether the Plaintiff/Applicant should be granted the orders of temporary injunction.
  - c. Who should bear the costs of this Application?
12. On the first issue, counsel submitted that the instant suit is not time barred as a suit that is prosecuted can and does stop time from running under the [Limitation of Actions Act](#) and relied on the case of Kamunge & 2 others vs Waweru & another (Sued as the Administrators of the Estate of Mary Wanja Waweru (Environment & Land Case E001 of 2020) [2023] KEELC 19009 (KLR).
13. On the second issue, counsel submitted that the Plaintiff had purchased the suit properties and held the title deeds in its name before the fraudulent dealing by the Defendant, the Plaintiff has a genuine and arguable case. On whether there is irreparable injury, counsel submitted that unless the orders of injunction are granted, the Defendant would proceed to interfere with the suit properties to the detriment of the Applicant church rendering this suit nugatory.
14. Counsel further submitted that no amount of damages would compensate the Plaintiff for the interruption of a right that is enshrined and protected under Article 32 of [the Constitution](#) of Kenya. According to counsel, the greater inconvenience would be in failing to grant the injunctive orders occasioning the eviction of the church from the suit properties and relied on the cases of Giella vs Cassman Brown & Co Ltd [1973] EA 358, Nguruman Limited vs Jan Bonde Nielsen & 2 others [CA No 77 of 2012](#) (2014) eKLR, Mrao vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR,



Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR, Paul Gitonga Wanjau vs Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR and Robert Mugo Wa Karanja vs Ecobank (Kenya) Limited & another [2019] eKLR.

15. On the third issue, counsel urged the court to award costs to the Plaintiff and relied on Section 27 of [Civil Procedure Act](#) and the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No 6 of 2014.

### **Defendants' Submissions**

16. Counsel for the Defendants filed submissions dated 28<sup>th</sup> November, 2024 and submitted that the period of limitation in a claim based on land is governed by Section 7 of the [Limitation of Actions Act](#) and that period can only be extended under Section 26 of the Act in cases of fraud and mistake. Counsel submitted that the Plaintiff has not brought itself under Section 26 of the Act.
17. Counsel further submitted that interruption of time where a suit is actively prosecuted applies to claims based on adverse possession under Section 13 and 38 of the Act and not a claim for recovery of land. Further, assuming that the time taken in prosecuting a suit is to be discounted for purposes of [Limitation of Actions Act](#), a suit filed by a party who lacks locus standi is null and void ab initio and legally, it never existed.
18. Counsel submitted that time taken to engage in a null and void proceedings cannot be considered by the court and the present suit is time barred and ought to be struck out with costs. Counsel relied on the cases of Kenya Commercial Finance Co Ltd vs Afraha Education Society [2001] Vol 1 EA 86, Wambui Gikwa vs Paul Kimani Muraba [2016] eKLR, Joseph Gachumi Kiritu vs Lawrence Munyambu Kabura Civil Appeal No 20 of 1993, [Donald Osewe Oluoch vs Kenya Airways Limited Civil Appeal No 247 of 2014](#), Kamunge & 2 others vs Waweru & another (KLR), CA & 5 others vs Jael Mureithi & 3 others [2021] eKLR and Elijah Nderitu Gachaga vs Francis Gakuu Gachaga & 2 others [2019] eKLR.

### **Plaintiffs Supplementary Submissions**

19. Counsel for the Plaintiffs filed supplementary submissions dated 17<sup>th</sup> January, 2025 and submitted that the only reason the case was previously struck out was because it did not produce the certificate issued upon registration under the [Trustees \(Perpetual Succession\) Act](#).
20. According to counsel, the Defendants reliance on the case of Kamuge & 2 others vs Waweru & another cannot apply to this case as it was in the context of adverse possession. Further that the court therein explored all options including when a suit is discontinued or dismissed for want of prosecution. Counsel also relied on the cases of Manchester Outfitters (Suiting Division) Ltd (Now known as King Wollen Mills Ltd) & another vs Standard Chartered Financial Services Ltd & 2 others (Petition 6 of 2016) [2019] KESC 7 (KLR), Westmount Holdings SDN BHD vs Central Bank of Kenya & 2 others (Petition 16 (E023) OF 2021) [2023] KESC 11 (KLR), Sifax Nigeria Ltd & Others vs Migfo Nigeria Ltd & Another (2018-LD-SC-1651), Andu Akuru A Twiga CBO vs Chief Land Registrar; National Land Commission (Interested Party) KEELC 20419 (KLR), Miradi Ujenzi Consultancy vs Gontier; Kenya Commercial Bank (Garnishee) KEHC 9496 (KLR) and Musaina vs General & another; Salaries and Remuneration Commission & 3 others (Interested Parties) KEHC 8239 (KLR) and urged the court to dismiss the Defendants' application with costs.

### **Analysis And Determination**

21. The issues that arise for determination are as to whether this suit is time barred and the implication of the striking out of the Plaintiff's suit (originally No 47 of 2004 and subsequently registered as ELC



No 129 of 2019) for lack of locus standi and whether the Plaintiff has met the threshold for grant of temporary injunction.

22. Section 7 of the *Limitation of Actions Act* states:

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.

23. In the Case of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104, the Court of Appeal held as follows:

“...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

24. The purpose of the Law of Limitation was stated in the case of *Mehta v Shah* [1965] E.A 321, as follows:

“The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

25. If the court answers the question as to whether the suit is time barred in the affirmative, then it will not deal with the issue of whether the plaintiff has met the threshold for grant of temporary injunction as the matter shall have been spent.

26. From the plaint, the dispute between the Plaintiffs and the defendants arose in 2004 whereby the Plaintiff filed a suit which was struck out vide a Judgment delivered in September 2024 on the ground that the Plaintiff lacked locus standi. The Plaintiff subsequently filed the present suit seeking the same relief as the previous one.

27. The Defendants urge the court to strike out this suit on the ground that it is time barred. The Plaintiffs however argue that time stopped running when the matter was pending before the court hence not time barred.

28. The Statute of Limitation of Actions applies and there are exceptions under Section 26 and 27 of the Act. There is nowhere in the Statute that states that the pendency of a matter before a court stops time from running. Similarly, the Plaintiff did not utilize the provisions in the Act that allow exceptions and extension of time.

29. In the case of *Donald Osewe Oluoch v Kenya Airways Limited* [2017] eKLR the Court of Appeal held as follows:

“It would seem that it was not brought to the attention of the Judge that that passage was a verbatim reproduction of Section 14 of the Indian Limitation Act. In other words, the principle which counsel for the respondent urges us to apply, namely, that where a litigant pursues litigation with due diligence, but that litigation fails because the court refuses to entertain such litigation by reason of defect of jurisdiction and that time taken in such proceedings should be taken into account and excluded when computing the period of



limitation for later proceedings, is a codified legal principle in India. That is not the case in Kenya.

30. I have considered the two applications and find that the suit is time barred and therefore struck out with each party bearing their own costs. The Plaintiffs' application dated 28<sup>th</sup> October 2024 is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF MARCH 2025.**

**M. A. ODENY**

**JUDGE**

