



**Cherogony v Rono & 10 others (Environment & Land Case
212 of 2013) [2023] KEELC 19046 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19046 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 212 OF 2013**

**A OMBWAYO, J
JULY 26, 2023**

BETWEEN

MATHEW CHEBON CHEROGONY APPLICANT

AND

KIPKIRUI ARAP RONO 1ST RESPONDENT

JOSEPH TANUI TINDERET 2ND RESPONDENT

ELIJAH KOMEN KATYA 3RD RESPONDENT

BENSON MUCHAI 4TH RESPONDENT

SAMUEL KAIRU 5TH RESPONDENT

JOSEPH K BIRIR 6TH RESPONDENT

DAVID KANDAGOR 7TH RESPONDENT

JOHN WACHIRACHIRI 8TH RESPONDENT

MATHEW KIPYEGON SANGA 9TH RESPONDENT

DAVID MBUGUA KAHURIA 10TH RESPONDENT

JOHN NDUNGU 11TH RESPONDENT

RULING

2. The 10th defendant/ applicant has come to court with an application that the suit to be struck out because it was filed prematurely having been filed before the expiry of the 12 years period provided for under section 7 of the *limitation of Action Act*.



3. The application is based on grounds that the applicant is the registered owner of Nakuru Municipality Block 29/1130 Ronda and was issued with a title on July 24, 2002. That prior to the registration the land in his name, it was registered under the government of Kenya on the March 29, 2000. That he has continued to practice small subsistence farming on the parcel of land until the filing of the instant matter. The plaintiff respondent is his neighbour and owns the adjacent parcel of land Nakuru Municipality Block 29/1131
4. That on the basis of the above any suit on account of adverse possession could only be tenable against him if the same would have been filed on the July 25, 2104 which is exclusively 12 years. That further it is untenable and indeed no provision of law allows for prescriptive rights against the government of Kenya being the 1st registered owner of the parcel of land from the March 29, 2000. That any suit filed earlier than the month of July 2014 is indeed premature. That this honorable has upon perusal of the court file scheduled this matter for hearing on the July 3, 2023.
5. The 10th defendant applicant contends tthat it would be an exercise in futility and a waste of judicial scarce time to continue with the case against the 10th defendant / applicant. The affidavit reiterates the grounds of the application.
6. The plaintiff filed a replying affidavit states that the application is overtaken by events as the court addressed the issue on February 13, 2019 and gave the plaintiff an opportunity to prove his case and that the matter has taken off for hearing whereby one witness has already testified and that the District Land Registrar has been summoned to appear in court.
7. I have considered the rival affidavits and o find that section 7 of the [Limitation of Actions Act](#) provides: -

7.	<p>Actions to recover land</p> <p>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.</p>
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Section 13 (1) of caps 2 provides: -



13.	<p>Right of action not to accrue or continue unless adverse possession</p> <table border="1" data-bbox="858 309 1386 1368"> <tr> <td data-bbox="858 309 1123 1368">(1)</td> <td data-bbox="1123 309 1386 1368"> <p>A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.</p> </td> </tr> </table>	(1)	<p>A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.</p>
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Section 37 provides



37.

Application of Act to registered land

This Act applies to land registered under the *Government Lands Act* (cap. 280), the *Registration of Titles Act* (cap. 281), the *Land Titles Act* (cap. 282) or the *Registered Land Act* (cap. 300), in the same manner and to the same extent as it applies to land not so registered, except that—

(a)

where, if the land were not so registered, the title of the person registered as proprietor would be extinguished, such title is not extinguished but is held by the person registered as proprietor for the time being in trust for the



		<p>person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estate or interest of any other person interested in the land whose estate or interest is not extinguished by this Act;</p>
	(b)	<p>an easement acquired under section 32 of this Act does not come into being until a copy of the judgment establishing the right to the easement has been registered against the title</p>



	<p>to the land affected thereby, but is, until that time, held by the person for the time being registered as proprietor in trust for the person who has acquired it.</p>
(a)	<p>where, if the land were not so registered, the title of the person registered as proprietor would be extinguished, such title is not extinguished but is held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estate or interest of any other person interested in the land whose estate or interest is not extinguished by this Act;</p>
(b)	<p>an easement acquired under section 32 of this Act does not come into being until a copy of the judgment establishing the right to the easement has been registered against the title to the land affected thereby, but is, until that time, held by the person for the time being registered as proprietor in trust for the person who has acquired it.</p>

Section 41 provides



41.	<p>Exclusion of public land This Act does not—</p> <p>(a) enable a person to acquire any title to, or any easement over—</p> <p>(i) Government land or land otherwise enjoyed by the Government;</p> <p>(ii) mines or minerals as defined in the Mining Act (Cap. 306);</p> <p>(iii) mineral oil as defined in the Mineral Oil Act</p>
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(Cap.
307);

(i) water
vested
in
the
Government
by
the
Water
Act
(Cap.
372);

(v) land
vested
in
the
county
council
(other
than
land
vested
in
it
by
section
120(8)
of
the
Registered
Land
Act
(Cap.
300));
or

(vi) land
vested
in
the
trustees
of
the
National
Parks



	of Kenya; or
(i)	Government land or land otherwise enjoyed by the Government;
(ii)	mines or minerals as defined in the Mining Act (Cap. 306);
(iii)	mineral oil as defined in the Mineral Oil Act (Cap. 307);
(iv)	water vested in the Government by the Water Act (Cap. 372);
(v)	land vested in the county council (other than land vested in it by section



	120(8) of the Registered Land Act (Cap. 300); or
(vi)	land vested in the trustees of the National Parks of Kenya; or
(b)	affect the right of Government to any rent, principal, interest or other money due under any lease, licence or agreement under the Government Lands Act (Cap. 280) or any Act repealed



	by that Act.	
(a)	enable a person to acquire any title to, or any easement over—	
(i)	Government land or land otherwise enjoyed by the Government;	
(ii)	mines or minerals as defined in the Mining Act (Cap. 306);	
(iii)	mineral oil as defined in the Mineral Oil Act (Cap. 307);	
(iv)	water vested in the Government by the Water Act (Cap. 372);	
(v)	land vested in the county council (other than land vested in it by section 120(8) of the Registered Land Act (Cap. 300)); or	
(vi)	land vested in the trustees of the National Parks of	



		Kenya; or	
(i)	Government land or land otherwise enjoyed by the Government;		
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(v)	land vested in the county council (other than land vested in it by section 120(8) of the Registered Land Act (Cap. 300)); or		
(vi)		land vested in the trustees of the National Parks of Kenya; or	
(b)	affect the right of Government to any rent, principal, interest or other money due under any lease, licence or agreement under the Government Lands Act (Cap. 280) or any Act repealed by that Act.		

8. In the matter before me, it is a fact that the suit land was registered in the names of the Government of Kenya on 29th March 2000. The plaintiff was registered as the owner on July 9, 2002 and the title issued. According to the existing laws, one cannot claim adverse possession against the Government of Kenya and therefore in this case, time starts running on July 9, 2002. Compiling 12 years from 9th July 2002 would take us to July 9, 2014 as the earliest date to originating summons should have been filed. Filing the originating summons on February 22, 2013 appear like putting the cart in front of the horse but this conclusion is subject to a proper hearing of the case. This court has been reluctant to strike out the plaint as per the ruling on February 13, 2019. Equally, I do decline to strike out the plaint on the basis that it raises no cause of action. The application is dismissed with costs in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF JULY 2023.

A O OMBWAYO

JUDGE

