



Wainaina & 2 others (Suing as Trustees of Wamoro Group) v Kuria & 2 others (Environment & Land Case 468 of 2003) [2023] KEELC 20438 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20438 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 468 OF 2003
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

**ELIZABETH WANJIKU WAINAINA 1ST PLAINTIFF
RUTH GACHECHE 2ND PLAINTIFF
NAOMI NJERI 3RD PLAINTIFF
SUING AS TRUSTEES OF WAMORO GROUP**

AND

**WALLACE KURIA 1ST DEFENDANT
PAUL NJOROGE 2ND DEFENDANT
HANNAH WAMBUI NJOROGE 3RD DEFENDANT**

RULING

1. The Notice of Motion application dated December 19, 2022 is for determination. It is brought by Jane Muthoni Mwenja, Daniel Gaitho Thuka and Reuben Gathogo Muiruri who are administrators of the estates of the Plaintiffs. They seek orders to revive this suit and leave for the continuation and completion of the execution process on parcel LR Karai/Karai/353.
2. The application is based on grounds on its face and on the supporting affidavit of the Applicants. They aver that the Plaintiffs who are now deceased were the trustees of Wamora Women's group which was the registered owner of the parcel of land known as LR/Karai 352.
3. They contend that the Plaintiffs filed the instant suit and in a judgment delivered on July 8, 2008, the court found that the Plaintiffs are the legal proprietors of the suit property. Subsequently, they extracted the decree dated September 16, 2008 and commenced the execution process vide the application filed on October 8, 2008, of which an eviction order dated March 20, 2009 was issued.



4. The applicants aver that the Plaintiffs were unable to evict the Defendants as they were continuously hostile to the Court bailiffs, then all the Plaintiffs passed away, thus the execution process stalled. Thereafter, the women group fell into disarray due to lack of leadership but it eventually appointed them as new trustees.
5. They re-applied for execution of the decree, but the Deputy Registrar ruled on December 20, 2021 that execution was disallowed in accordance with the provisions of Section 4(4) of the Limitation of Actions Act.
6. They aver that the Deputy Registrar failed to give cognizance to the law and the view of courts where it has been severally held that in the case where the execution process had been started, the process must be allowed to be completed even if completion comes after the statutory 12 years period as long as the action for enforcement of judgement is not fresh.
7. No documents have been filed in opposition to the application, nevertheless, the court has to determine the application on its merits. See- Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR.
8. The issue falling for determination is whether the court should allow revival of the suit as well as continuation and completion of the execution process in respect of the suit property, in view of the fact that the initial plaintiffs passed away, while the decree is more than 12 years old.
9. Judgement herein was entered in this matter on July 8, 2008. The Death certificates annexed to the affidavit in support of the application indicate that all the Plaintiffs died in year 2009. The applicants argue that their application for execution of the decree was not a fresh quest to enforce the judgment, thus they should be allowed to continue and to complete the execution process.
10. The provisions of Section 4(4) of the Limitations of Actions Act stipulate as follows;

' An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered,'
11. In the case of M'ikiara M'rinkanya & Another V Gilbert Kabeere M'mbijiwe [2007] eKLR, the Court of Appeal stated thus;

' It is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished....'
12. The applicants herein were prevented from executing the decree primarily because of the death of the initial plaintiffs. However, the said plaintiffs passed away 14 or so years ago in year 2009. The delay in execution of the decree is therefore inordinate.
13. In the circumstances, the application dated December 19, 2022 has no merits and the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-



Rita Joyce for plaintiffs

Court Assistant: Eddel

