



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sang & another (Suing as Legal Representatives of the Estate of the Late Richard Kipsang Maindi) v Maindi (Environment & Land Case E027 of 2022) [2023] KEELC 19996 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19996 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIRONMENT & LAND CASE E027 OF 2022**  
**MN MWANYALE, J**  
**SEPTEMBER 21, 2023**

**BETWEEN**

**JAMES KIPRONO SANG AND SALOME SANG (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE RICHARD KIPSANG MAINDI) ..... PLAINTIFF**

**AND**

**JOHN KITUR MAINDI ..... DEFENDANT**

**RULING**

1. Before Court for determination is the Notice of Preliminary objection dated 20/2/2023, raising the sole issue that the suit is time barred by virtue of provisions of Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya.
2. Parties were directed to file written submissions on the Notice of Preliminary Objection. The Defendant submits that the suit is time barred since his registration of as proprietor of the suit property Nandi/Kapkures/132 was done on May 14, 1985 and any right to claim the suit property ought to have been lodged within 12 years, and the rights stood extinguished on or about May 14, 1997 upon the lapse of the 12 years as provided for in law.
3. In support of this submissions the Defendant has cited *inter alia* the decisions in the cases of Gatboni vs Kenya Co-operative Creameries Ltd (1982) KLR 104, as well as *Mehta vs Sha* (1965 (E. A. 321).
4. In summation the Defendant submits that the case having being filed 37 years when the right first accrued is time barred.
5. In response the Plaintiff submits that their suit is based on breach of Trust and the Plaintiff are claiming as legal representatives. The Plaintiff submit that their cause of action is founded on customary trust



- hence their claim is based on Section 20 (1) (b) of the Limitation of Actions Act and hence the provisions of Section 7 of the Limitation of Actins Act do not apply.
6. In support of this submissions, the Plaintiff have cited the decision in the case of Macharia Kihari vs Ngigi Kihari as well as the decision in the case of Stephens and 6 others vs Another Civil appeal No. 18/1987. The Plaintiff thus urge the Court to dismiss the Notice of Preliminary Objection.
  6. I have analyzed the Notice of Preliminary Objection, the rival submissions as well as the authorities cited by the parties. The Court frames two issue of determinations, which shall dispose off the Notice of Preliminary objection.
  7. The issues are;
    - i) what is the cause of action pleaded in the suit?
    - ii) whether or not the suit is time barred.
  8. The Defendant submits that the cause of action is an action to recovery suit, which is by dint of Section 7 of the Limitation of Actions Act, time barred.
  9. The Plaintiffs on their part submit that their claim is based on customary trust and is founded on Section 20 (i) (b) of the Limitation of Actions Act, and hence it is not statute barred as the provision of the Limitation of Action Act do not apply to a cause of action by beneficiaries to recover property held in trust.
  10. I have looked at the Originating Summons and the determination sought include a declaration that the Respondent is holding part of parcel Nandi/Kapkures/132 in trust as a trustee for the Applicant's and all the beneficiaries of the late Richard Kipsangi Maindi.
  11. There is also sought a declaration that the land parcel number Nandi/Kapkures/132 is subject to trust being ancestral land.
  12. From the above, it is not in doubt that the pleaded cause of action is Trust, and the suit is a claim by beneficiaries to recover property held in Trust by a Trustee and it would squarely be founded on Section 20 (1) (b) of the Limitation of Actions Act even though; the above provision was not expressly pleaded.
  13. The claim herein is based on ancestral land and is thus a suit for customary trust.
  14. As was held in Macharia Kihari vs Ngigi Kihari, Civil Appeal No. 170/1993, cited by the Plaintiff, under Section 20 (2) of the Limitation of Action Act the provisions of the Limitation of Action Act would not apply to a trust coming into existence under customary law; and the limitation period under Section 20 (1) (b) including Section 7 of the Limitation of Action Act would thus not apply in this case.
  15. The Court thus finds that the cause of Action herein is an action to recover from trustee trust property under Section 20 (1) (b) of Limitations of Action Act, and that the said actin is thus not statute barred under the provisions of Section 7 of the Limitation of Actin Act.
  16. The upshot is that the Notice of Preliminary Objections was ill-cp0nceived and the same is dismissed with costs in the cause.

**DELIVERED AND DATED AT KAPSABET THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**HON. M. N. MWANYALE**

**JUDGE**

