



**Wokabi & another (As Administrators of the estate of Soromeeti Kapore  
- Deceased) v Wangora (Environment & Land Case E024 of 2022)  
[2023] KEELC 19972 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19972 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E024 OF 2022  
LC KOMINGOI, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MARY WARUGA WOKABI ..... 1<sup>ST</sup> PLAINTIFF**

**GEORGE LWANGA KORONTO ..... 2<sup>ND</sup> PLAINTIFF**

**AS ADMINISTRATORS OF THE ESTATE OF SOROMEETI KAPORE -  
DECEASED**

**AND**

**JACOB MWANTO WANGORA ..... DEFENDANT**

**RULING**

1. By a plaint dated March 18, 2022 the Plaintiffs filed this suit against the defendant seeking for a declaration that the transfer of the suit property being LR No Ngong/ngong/1768 to the defendant from the name of the deceased (Soromeeti Ole Kapore) was fraudulent, irregular, unlawful, null and void and that the deceased be declared the lawful proprietor.
2. In response the defendant filed a statement of defence dated May 10, 2022, denying the allegations in the plaint.

He also filed a Notice of Preliminary Objection dated May 10, 2022 on the grounds;

- “1. That the cause of action disclosed by the plaintiffs arose in the year 1976 – 46 years ago and is brought way outside the prescribed period of time, to the detriment of the Defendant and in contravention of the Provision of the Limitation of Actions Act”.



3. On the October 12, 2022 the Court with the consent of parties, directed that the Preliminary Objection be canvassed by way of written submissions.

### **The Defendant's Submissions**

4. They are dated November 9, 2022. It is submitted by counsel that the plaintiff's claim for recovery of the Land is statute barred under Section 7 and 26 of the *Limitation of Actions Act*.
5. Counsel also submitted that the plaint is silent on when the plaintiff's discovered the alleged fraud. That they have not pleaded that they and/or Soromeeti Kapere (Deceased) could not have discovered the alleged fraud with reasonable diligence in all those forty five (45) years.
6. It is also submitted that the sub divisions arising out of LR No Ngong/Ngong/1768 have since been transferred. No allegations of fraud are made against the purchasers and that they have not been sued as parties herein.
7. Counsel also submitted that the Defendant is now being called upon to trace documents and witnesses of a transaction undertaken forty six (46) years ago.
8. It is also submitted that this suit ought to have been filed before the end of twelve (12) years from November 8, 1976. That the delay has not been explained. He prays that the preliminary objection be upheld and the suit be dismissed in its entirety.

### **The Plaintiff's Submissions.**

9. They are dated March 23, 2023. Counsel submitted that time started running in 2012 when the plaintiffs were able to get *locus standi* to institute a suit on behalf of the estate through Grant of Letters of Administration until 2022, when this suit was filed. Hence the twelve (12) years provided for in Section 7 of the *Limitations of Actions Act* had not lapsed.
10. Counsel further submitted that the Act provides that the period of Limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it. That the plaintiffs can only ascertain when they discovered the fraud at the hearing of the main suit.  
  
She has put forward the cases of *Delilah Ondari Vs Fredrick Ondieki Atandi* (2022)eKLR ; *Salim Mohamed Salim Tweshe Vs Khalid Salim Naaman & 5 others* (2020)eKLR.
11. Counsel further submitted that the plaintiffs are willing to call witnesses who knew both the deceased and the Defendant and are privy to the history of the suit land. That the matter ought to proceed to full trial in the interest of justice.
12. Counsel further submitted that the plaintiffs' claim is that the suit land was fraudulently transferred to the defendant as the deceased never sold the land to the Defendant. That no sale agreement on documents of transfer have been furnished by the defendant. These are issues which can only be determined once oral evidence is adduced.  
  
She has put forward the case of *Mintina Ene Keton Koponi (Suing as legal representative of the estate of Keton Ole Koponi Parsena (Deceased) Vs Francis Njakwe Gathiara & 2 Others* (2018) eKLR.  
  
She prays that the Preliminary Objection be dismissed and the matter to proceed to full trial.
13. I have considered the pleadings filed, the preliminary objection, the rival submissions and the authorities cited.



The issue for determination is whether this suit is time barred.

The test as to whether an application is a proper preliminary objection has been stated in the case of *Equity Bank Limited Vs Bryan Yongo & Another* (2014) eKLR where the court held that “any true preliminary objection should not be entangled with factual issues.

14. In the case of *Mukisa Biscuits Manufacturing Company Limited Vs West End Distributors Limited* (1969) EA 696 Law JA stated as follows,

“.....so far as I am aware a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary objection may dispose of the suit.

Examples are an objection to the jurisdiction of the court or a plea of limitation or a submissions that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Sir Charles Newbold P; stated;

“.....A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.....”

15. It is the plaintiffs’ case of that the suit property LR No Ngong/Ngong/1768 was fraudulently transferred to the defendant on November 8, 1976. The plaintiffs have attached a copy of the green card which shows the title was closed on sub division on July 4, 1989.

The resultant titles are 10863 to 10874 respectively.

16. There is no doubt therefore that the suit property was transferred to the defendant in 1976. Upon the sub division, the resultant titles have been transferred to third parties. The said purchasers have not been enjoined in these proceedings. There is no explanation offered by the plaintiffs.

The Land Registrar is also not a party to these proceedings.

17. Section 7 of the *Limitation of Actions Act* provides 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 same person through which he claims to that person”.

Section 26 of the *Limitation of Actions Act* provides that;

“Where in the case of an action for which a period of limitation is prescribed, either-

- a. the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; on
- b. the right of action is concealed by the fraud of any person as aforesaid; or
- c. the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it;



Provided that this section does not enable an action to be brought to recover or enforce any mortgage upon or set aside any transaction affecting, any property which-

- i. In the case of fraud has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had committed; or
- ii. In case of mistake, has been purchased for valuable consideration after the transaction in which the mistake was made by a person who did not know or have reason to believe that the mistake has been made”.

18. I agree in the Defendant’s submissions that it is not clear from the plaint when the plaintiffs discovered that the suit property had been fraudulently transferred to the defendant.
19. The plaintiffs urge this court to find that time started running from 2012 when the plaintiffs were granted letters of Administration to the estate of Soromeeti Kapore (Deceased).  
They also stated that they were only able to get a death certificate seven years after the deceased disappeared in 1978. This means that by 1985 they had been issued with a death certificate. The delay in obtaining grant of letters of administration has not been explained.
20. I find that the plaintiffs have not pleaded that they and/or Soromeeti Kapore (Deceased) could not have discovered the alleged fraud within reasonable diligence for more than forty five (45) years.
21. The upshot of the matter is that I find merit in the preliminary objection and the same is upheld.
22. Consequently the suit herein is struck out for being time barred with costs to the defendant.

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

**L. KOMINGOI**

**JUDGE**

**In the presence of:**

Ms. Ngotho for the Plaintiffs.

Mr. Githuka for the Defendant.

Court Assistant – Mutisya.

