



REPUBLIC OF KENYA



**Sautet v Kombei & 5 others (Environment & Land Case 6 of 2022)  
[2023] KEELC 21615 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21615 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 6 OF 2022  
MN GICHERU, J  
NOVEMBER 20, 2023**

**BETWEEN**

**GLADYS NKINA SAUTET ..... PLAINTIFF**

**AND**

**SAMUEL PARAPIPI KOMBEI ..... 1<sup>ST</sup> DEFENDANT**

**PARMERETA PARARANG ..... 2<sup>ND</sup> DEFENDANT**

**NTINANOI SAMERI ..... 3<sup>RD</sup> DEFENDANT**

**LONTE SIPIRONIK ..... 4<sup>TH</sup> DEFENDANT**

**KOLE RAWUA TUMPERE ..... 5<sup>TH</sup> DEFENDANT**

**KITAMWES TUMPERE ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of preliminary objection dated February 28, 2023. The objection which is by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendant is based on three grounds.
  - i. The suit is time barred by dint of section 7 of the *Limitation of Actions Act*.
  - ii. By reasons of the aforesaid provisions of law, the suit is misconceived, incompetent, an abuse of the court process and a complete nullity.
  - iii. Further, by reason of the aforesaid, this court lacks jurisdiction to entertain the suit and the entire proceedings herein which should be struck out with costs to the defendants.
2. Further to the notice, the counsel for the five defendants has filed written submissions dated May 5, 2023 in which he identifies six undisputed facts.



3. The preliminary objection is opposed by the plaintiff whose counsel has filed grounds of opposition dated April 27, 2023. It is urged in the said grounds that preliminary objection does not meet the legal threshold and it is vexatious, misconceived and a waste of court's time.

Secondly, the suit is not time barred as alleged and the preliminary objection is a delaying tactic which should be dismissed. The Plaintiff's counsel also filed Written Submissions on the same date.

4. I have carefully considered the preliminary objection in its entirety including the grounds in support, those in opposition, the submissions by learned counsel for the parties and the law cited therein. I have also perused the entire record. I find that the preliminary objection has no merit for the following reasons.

5. Firstly, it is not correct to say that there are some undisputed facts. As for now, we do not know what is disputed and what is not disputed because the defendants have not filed any defence, witness statements or documents. Without such pleadings we cannot tell which part of the plaintiff's claim is undisputed by the defendants. We need to see their response to the plaintiff's claim to know what they dispute and what they do not dispute.

6. Secondly, the defendants' preliminary objection is not anchored on any pleadings. The only pleadings on record are those by the plaintiff. After the service of the defence, the plaintiff will still have a right to file a reply to the defence.

7. Finally, it is not correct to say that the plaintiff is seeking to recover land. What she is seeking is the eviction of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants from part of the land. From her pleadings especially paragraph 10, it is clear that she and her family live on the suit land.

For the above stated reasons, the preliminary objection dated February 28, 2023 is dismissed. Costs in the cause.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**M.N. GICHERU**

**JUDGE**

