



**Njuki v Mungai & another (Environment & Land Case 41 of 2015)
[2023] KEELC 22463 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 41 OF 2015
JO OLOLA, J
DECEMBER 15, 2023**

BETWEEN

LOISE MUTHONI NJUKI PLAINTIFF

AND

HENERY N MUNGAI & ANOTHER RESPONDENT

RULING

1. By the Notice of Motion dated 26th April 2023, Loise Muthoni Njuki (the Applicant) prays for an order that Plot No. Inoi/Kerugoya/250/261 be vested and registered in her name. The application is supported by an affidavit sworn by the Applicant wherein she avers at the relevant paragraphs 2 to 4 thereof as follows:
 - “2. That on the 7th day of April 1995, the judgment was entered in my favour that Plot No. Inoi/Kerugoya/250/261 was illegally alienated by the 2nd Defendant from me and I annex herewith a copy of the decree marked “LMn 1”
 3. That as per the said judgment it was established that the second defendant allocated to me their unsurveyed Plot No. 41 A which after surveying became plot No. Inoi/Kerugoya/250/261 which the second defendant unlawfully and wrongfully allocated to one Kenneth Kinyua who later sold it to the first defendant; and
 4. That it is mete and just that the said now surveyed Plot No. Inoi/Kerugoya 250/261 be vested in and be registered in my name.”
2. By her further Supporting Affidavit sworn and filed herein on 26th July 2023, the Applicant avers that while the decree issued to herself on 22nd March 1999 may now be stale, the court should consider her rights as an elderly person aged 80 years requiring protection under the *Constitution*.



3. The application was served upon the Advocate formerly representing the parties. None of the parties filed anything in response.
4. I have carefully perused and considered the application before me including the supporting affidavits and annexures thereto. What comes out clearly is that by this application, the applicant intends to execute the judgment that was delivered in her favour against the two Respondents. While the Applicant asserts that the said judgment was delivered on 22nd March 1999, the only judgment I came across from a perusal of the court file was in fact the one delivered by the Honourable Justice Mary Ang'awa of 7th April 1995.
5. It was also apparent from my perusal of the record herein that the Respondents were dissatisfied with the judgment and that they instituted Nyeri Court of Appeal Civil Appeal No. 122 of 1998. The said Appeal apparently ran into some difficulties and on 21st May 2009, the same was withdrawn on the request of the Respondents' counsel with costs to the Applicant.
6. It was also further apparent that thereafter, no action was taken in regard to the matter until some 14 years later when this present application was filed by the Applicant. In respect to judgments and their enforcement, section 4 (4) of the Limitation of Actions Act, Cap 22 of the Laws of Kenya provides as follows:

“4(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due”
7. Considering the above provisions, what I understand the law to be saying is that once a judgment has been tendered, execution thereof must be commenced within 12 years. In other words, one cannot obtain a judgment, sit on it and after the expiry of 12 years seek to execute the same. While I sympathize with the Applicant given her advanced age, this court cannot turn a blind eye to the express provisions of the said section 4 (4) of the Limitation of Actions Act.
8. It follows that the Motion dated 26th April 2023, is incapable of being granted. I strike out the same with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF DECEMBER, 2023.

In the presence of:

No appearance for the Applicant

No appearance for the Respondents

Court Assistant: Millicent

J. O. OLOLA

JUDGE

