

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ORIGINATING SUMMONS NO 37 OF 2016 (OS)

IN THE MATTER OF LAND PARCEL NO. ABOOTHUGUCHI/GAITU/2897

REGISTERED IN THE NAMES OF SACINTA KINYA GITUMA

SAMSON MBAABU NKARICHIA.....PLAINTIFF

VERSUS

SACINTA KINYA GITUMA.....DEFENDANT

R U L I N G

This ruling is in respect of the preliminary objection filed on 22.06.16 by defendant, where it is stated;

“TAKE NOTICE that the defendant herein shall at the earliest opportunity raise a preliminary objection on a point of law seeking to have the entire suit herein struck out with costs as, even if the plaintiff were in actual possession which is not the case herein, time for purposes of adverse of adverse possession would in any event run from 19/10/15, being the date the plaintiff lastly acknowledged the defendant’s title to the suit land, under paragraph 6 of the agreement dated 19/10/15, under Section 23(1)(a)(i) of the limitation of Actions Act, Cap 22 which is hardly 8 months to date as opposed to the Limitation period of 12 years under Section 7 thereof”.

On 13/7/ 2016, directions were given for the Preliminary Objection to be canvassed by way of written submissions. Both sides complied.

I have weighed all the arguments raised herein. As rightly submitted by the plaintiff’s counsel a preliminary objection should raise pure points of law; see Mukisa **Biscuit Manufacturing Co .Ltd V. West End Distributors and Nganga Kahuha vs. Munyi H.C.C 702 of 2003.**

Plaintiff’s assertions are that time should run from 1992. Defendant states the time should run from October 2015. These are issues that raise arguments. It is necessary for each party to adduce evidence to buttress their case and this means that the matter cannot be finalized through the present Preliminary Objection.

As such I find that the preliminary objection is unmerited. The same is dismissed with costs to plaintiff.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 27TH DAY OF SEPTEMBER, 2017.

CA: Janet

Miss Njenga for Plaintiff present

Otieno C. H/B for Mwenda Mwarania for Defendant

Hon. L. N. MBUGUA

JUDGE