



Kibugi v Embu County Government (Environment and Land Appeal E002 of 2024) [2025] KEELC 3673 (KLR) (29 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

AK BOR, J

APRIL 29, 2025

BETWEEN

ELIUD KINYUA KIBUGI APPELLANT

AND

EMBU COUNTY GOVERNMENT RESPONDENT

JUDGMENT

1. The Appellant instituted Siakago PM ELC Case No. 41 of 2022 seeking a declaration that the Respondent was registered as the owner of land parcel number Evurore/Nthambu/880 (the suit land) on behalf of the plaintiff and the Mukiria family. It was his case that the suit land originally belonged to his great grandfather, Mukiria Gituva who had been allocated the land by the Njeru family of the Ngithi clan and that it was registered in the Respondent's name to hold in trust for the clan. He contended that Mukiria Gituva set apart the suit land to be a market for his Mukiria household but that the Respondent unprocedurally allocated the suit land to itself and was now allocating stalls on the suit land to people who did not belong to the Mukiria household.
2. The Respondent's defence was that the Appellant required to take out letters of administration in order to institute the suit on behalf of the estate of Mukiria Gituva who he alleged was the owner of the suit land and that without the letters of administration, he lacked the locus standi to institute the suit. The other point taken up by the Respondent was that the suit was time barred because the Respondent was registered as the owner of the suit land in 1993 yet this this suit was filed in 2022.
3. Contemporaneously with the filing of the defence, the Respondent filed a notice of preliminary objection raising the issues of locus standi and the contention that the suit being statute barred. The other ground was that the court did not have jurisdiction to adjudicate over the suit since the Appellant had not demonstrated a bona fide legal interest or right in the suit land in his own capacity as a beneficiary for the reason that he had not obtained court orders from a competent court to that effect.



- Lastly, the Respondent claimed that the suit contravened Order 9 (2) (a) of the [Civil Procedure Rules](#) because it was instituted subject to the court's approval of any person holding powers of attorney.
4. The preliminary objection was canvassed by the trial court through written submissions and in the ruling delivered on 17/11/2022, Hon E.N Wasike, Principal Magistrate upheld the preliminary objection and struck out the suit. That is what led to the filing of this appeal. The trial court found that the Appellant had not adduced any letters of administration or limited grant for purposes of instituting the suit and that he therefore lacked capacity to bring the suit. Regarding bona fide legal interest in the land, the trial court held that that did not fall within the ambit of a preliminary objection because it would require the production of evidence.
 5. The trial court relied on the green card which formed part of the Appellant's documents and showed that the Respondent was registered as the owner of the suit land in 1993. The court found that the suit offended Section 7 of the [Limitation of Actions Act](#) and went further to analyse the Appellant's contention that the suit was not statute barred because it was based on a trust. The court found that despite the Appellant stating that the Respondent was holding the suit land in trust for the Mukiria family of which he was a member, he had failed to produce any evidence to substantiate that claim. The court was therefore satisfied that the suit was time-barred. The court dismissed the assertion that the suit offended Order 9(2) (a) of the [Civil Procedure Rules](#).
 6. The main issues for determination in this appeal are whether the Appellant had the *locus standi* to institute the suit, and whether the Appellant's suit was time barred as the trial court concluded. The trial court found that the Appellant lacked locus standi because he had not obtained grant of letters of administration to sue on behalf of the estate of Mukiria Gituva. From the plaint, it is apparent that the Appellant brought the claim in his personal capacity while claiming beneficial interest in the suit land as a member of the Mukiria family and not on behalf of the Estate of Mukiria Gituva as the trial court concluded. Letters of administration were therefore not a prerequisite to afford him *locus standi* (See [Isaya Theuri M'Lintari & Another v George Mbiti Kiebia & Another](#) [2009] KEHC 1292 (KLR)). The trial court should not have struck out the suit on the basis of lack of locus standi.
 7. The trial magistrate also held that the suit was time barred under Section 7 of the [Limitation of Actions Act](#), since the Respondent was registered on 2/6/1993 as proprietor of the suit land and the suit filed on 28/4/2022 almost 29 years later. The Appellant pleaded in the plaint that the Embu County Council unprocedurally got itself registered as the owner of the suit land in 1993 and reserved the land for use as a market. He sought a declaration that the Embu County Council was registered as the proprietor of the suit property on behalf of the Mukiria family which includes the Appellant.
 8. Section 20 (1) of the [Limitation of Actions](#) provides that none of the periods of limitation prescribed by that Act apply to an action by a beneficiary under a trust, which is an action either in respect of fraud or fraudulent breach of trust to which the trustee was a party or privy; or to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
 9. That position was affirmed in the case of [Macharia Kihari v Ngigi Kihari](#) [1994] KECA 108 (KLR) where the court stated that it was unable to accept Mr Thiongo's contention that the suit was time-barred. Further, that the limitation prescribed in section 20(2) of the [Limitation of Actions Act](#), would not apply to a trust coming into existence under customary law. The court elaborated that under customary law, that even after the right of action had accrued, the land was held in trust even for decades before any step was contemplated for a formal transfer or division and that limitation did not apply in customary law.



10. Whether or not a trust exists is a question of fact and not law that must be proven by evidence. Some of the issues which the Appellant will need to prove are the claims that his great grandfather owned the suit land and how he set it apart for use as a market by his clan members. The Learned Magistrate therefore erred in determining the issues at the preliminary stage and making a conclusive finding on the non-existence of a trust without a full trial.
11. The court allows the appeal. The ruling of the trial court is set aside. The matter shall be remitted back to the Magistrate's court for hearing and determination on its merits.
12. The Appellant will have the costs of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 29TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. W. Kamochu holding brief for Ms. M. Ndeke for the Appellant

Ms. R. Omamo holding brief for Mr. H. Wamwea for the Respondent

Diana Kemboi-Court Assistant

