



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

ELC NO. 485 OF 2013

PAUL CHEBII CHELIMO

PAUL KENDAGOR

ANTHONY CHEMWENO

WILLIAM CHEPTILE

STANLEY TOTORITICH

FRANCIS KWAMBAI

DAVID SUTER

BANJAMIN CHELIMO

SYLVESTER CHESIR

JOHN CHELIMO

WILLAIM RUTTO

LUCIA CHERUIYOT

FRANCIS BARUS

MARIKITA KANDA

RONALD KOSGEI

CHRISTOPHER KIPRONG Suing on behalf of;

KABUSWO/KATKOK COMMUNITY.....PLAINTIFFS

-VERSUS-

A.I.C KAPTABUK.....1ST DEFENDANT

KATKOK PRIMARY SCHOOL.....2ND DEFENDANT

LAND REGISTRAR ELGEYO MARAKWET COUNTY.....3RD DEFENDANT

RULING:

1. This is a ruling in respect of a preliminary objection by the 2nd and 3rd Defendants based on the following grounds:-

1. That the suit is time-barred pursuant to section 7 of the Limitation of Actions Act.
2. That the Plaintiffs are guilty of laches as the amended amended plaint is filed after an inordinate and unreasonable time.
3. That the amended amended plaint is incompetent and untenable as the Plaintiffs lack locus to institute these proceedings.
4. That the suit is an abuse of the Court process.

2. The Plaintiff M/s Chelimo Seroney filed a suit on 16th October, 2013 against AIC Kaptabuk seeking the following reliefs:-

- i. A declaration that the entire parcel of Land known as E/Marakwet/1895 is the property of Katkok Primary School.
- ii. A permanent injunction do issue against the Defendants barring them from alienating, subdividing, interfering or in anyway dealing with parcel of land E/Marakwet/1895.
- iii. A survey be done to determine the remaining Public land allocated by the Community.
- iv. Boundaries be determined between the allocated public land and the remaining community and or private land.
- v. Costs of this suit.
- vi. Any other relief.

3. When the matter came up before Justice Munyao for hearing of application dated 16th December, 2013, the Judge observed that the Defendant who had been sued had indicated in its pleadings that it had no interest in the suit property. The Judge then asked the Advocates for the parties to consider mediation. The proposal by the Judge was accepted by the parties. The matter was then referred to mediation under the Chairmanship of the Deputy County Commissioner, Marakwet West Sub-County.

4. The Deputy County Commissioner convened a meeting with clan elders of Kaptul and Kapmok. During the meeting, it was found necessary to engage the service of a surveyor to determine the acreage of land occupied by Katkok Primary School. A report was filed in Court which showed that the school occupied 5.7 hectares on the ground against 5.60 hectares shown on the title. The surveyor however observed that the difference was negligible and was within the limit allowed.

5. This report generated differences between those for the report and those against. The Plaintiffs initially thought that the School was occupying 25 acres when the elders had surrendered 5.60 hectares. When it dawned on the Plaintiffs that the School did not have any excess land as they thought, they amended the plaint in which they now sought the following reliefs:-

IA) Declaration that the Plaintiff and the members of Kabuswo/Katkok Community are the rightful owners of the suit land and that the title for land parcel No. **E/Marakwet/1895** was issued illegally thus the same is invalid.

IB) An order directing the Land Registrar, Elgeyo Marakwet County to nullify and cancel the purported title for land parcel No. **E/Marakwet/1895**.

ii) A permanent injunction do issue against the Defendants barring them from alienating, sub-dividing or in anyway dealing with parcel of Land **E/Marakwet/1895**.

iiA) An order of permanent injunction as per paragraph 8B.

iiB) An eviction order from the suit Land against the Defendants as per Paragraph 8A.

iii) Survey be done to determine the remaining public land allocated by the Community.

iv) Boundaries be determined between the allocated public land and the remaining community.

v) General damages.

Vi) Costs of this suit.

Vii) Any other relief.

6. The parties were directed to file written submissions in respect of the preliminary objection. The 2nd and 3rd Defendants filed their submissions dated 9th December 2020. The 1st Defendant indicated that it was not filing any submissions but would rely on the submissions by the 2nd and 3rd Defendants. The Plaintiffs did not file any submissions.

7. I have considered the submissions by the 2nd and 3rd Defendants. Though the 2nd and 3rd Defendants argue that the Plaintiffs have no locus to bring this suit, I do not see the basis of such a submission. The amended plaint is clear that the Plaintiffs are alleging that their Community land was fraudulently registered in the name of the 2nd Defendant. This is what the Court would have interrogated if the matter had gone to full trial. I therefore find that the plaintiffs have locus standi to move the Court to determine whether the land which was initially Community land was fraudulently registered in the 2nd Defendant's name.

8. The fact that the amended amended plaint was filed late does not amount to a ground which can be argued as a preliminary issue. This suit had had not been heard. A party is at liberty to bring amendments before hearing is concluded as long as the amendments do not prejudice the opposite party or if the claim being introduced is statute barred.

9. I will therefore address the issue of limitation. In the amended amended plaint, the Plaintiffs are seeking to recover land which is registered in the name of the 2nd Defendant. The meeting which was convened by the Deputy County Commissioner found out that demarcation of land where the suit property is situated began in 1973. Between 1982 and 1983, the land held by the 2nd Defendant was set aside. The land had been donated by the neighbouring clans. The land was therefore set aside for the 2nd Defendant. On 14th September, 2011, the 2nd Defendant was issued with a title deed. The school had been given about 10 acres which on demarcation became 5.60 hectares which is about 13 acres.

10. When the Plaintiffs first filed their claim in 2013, the argument was that the 1st Defendant who was the sponsor of the 2nd Defendant had occupied 25 acres for the school when the school had only been given 5.60 hectares. When a surveyor went to the ground, he found out that the 2nd Defendant was occupying 5.7 hectares. This was 0.2 acres more than what was in the title. It is after this that the Plaintiffs amended their plaint in 2019 to claim that they became aware of the school having land in 2008. They then alleged that the land was taken fraudulently from the Community. This was a shift of mind in an attempt to go round the limitation period by claiming that the fraud was discovered in 2008.

11. The fact remains that the school land was set aside in 1983 when the survey was carried out. The cause of action therefore accrued to the Plaintiffs in 1983. If the Plaintiffs wanted to recover land held by the school, they should have filed their suit latest by 1996. They filed their suit in 2013 after three decades (30 years). This claim is therefore statute barred.

12. In the case of *IGA –vs- MAKERERE UNIVERSITY (1972) EA 65* Mustafa J A held as follows:-

“A plaint which is barred by limitation is a plaint “barred by law”. Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court “shall reject” his claim. The Appellant was clearly out of time, and despite opportunity afforded by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought.

...the effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, the Plaintiff must be rejected.”

13. From the above analysis, it is clear that this suit is statute barred. I uphold the preliminary objection on the ground that the suit is statute barred. I proceed to strike out the suit with costs to the Defendants.

It is so ordered.

Dated, signed and delivered at Eldoret on this 24th day of February, 2022.

E. OBAGA

JUDGE

in the virtual absence of parties who were aware of the date of delivery of ruling.

Court Assistant –Albert.

E. OBAGA

JUDGE

24TH FEBRUARY, 2022