



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 2365 OF 2007

MATHEW NJOROGE KABETU.1ST PLAINTIFF

VERSUS

KIAMBU DANDORA FARMERS CO. LTD.....1ST DEFENDANT

THE COMMISSIONER OF LANDS.....2ND DEFENDANT

PETER KIRUMBI KEINGATI.....3RD DEFENDANT

JOSEPH NDUATI NGENDO.....4TH DEFENDANT

KARIUKI NJOROGE.....5TH DEFENDANT

RAYMOND MWANGI WAWERU.....6TH DEFENDANT

RULING

Coming up before me for determination is the Preliminary Objection dated 25th October 2012 filed by the 1st, 3rd to 6th Defendants raised on the ground that the suit was filed out of time and is time barred under the Limitation of Actions Act.

This suit was filed by Plaintiff dated 21st December 2007 filed in court on the same date. According to that Plaintiff, the Plaintiffs were seeking that judgment be entered against the Defendants as follows:

- a. A permanent injunction restraining the 1st Defendant from transferring the Plaintiff's Plot Nos. 1576-1587 in L.R. No. 11379/3 to any other person.
- b. An order prohibiting the 2nd Defendant from entering the names of any other person or persons other than the Plaintiffs in the register.
- c. A Declaration that the Plaintiffs are entitled to the plots aforesaid.
- d. An order for specific performance directed to the 1st and 2nd Defendants commanding them to allocate the Plaintiffs the suit properties and to process the title documents in favour of the Plaintiffs.
- e. Damages for breach of contract.
- f. Mesne profits as would be assessed by the court.

- g. Costs of the suit
- h. Any other or further relief as this Honourable court may deem fit to grant.

Briefly, the facts of this suit are that the Plaintiffs claim to be shareholders of the 1st Defendant, which was a public land buying company. The said land buying company carried on the business of buying land and distributing it to its shareholders, including the Plaintiffs. The Plaintiffs claimed that sometimes in March 2000, they entered into an agreement with the 1st Defendant for the sale of parcels of land described as Plot Nos. 1576-1587 being portions of the 1st Defendant's land described as L.R. No. 11379/3 situated along Kangundo Road within Nairobi measuring 40 feet by 80 feet per plot. The Plaintiffs further claimed that it was an express term of the said agreement that the Plaintiffs' would buy each plot at the rate of Kshs. 100,000/- only. The Plaintiffs further claimed that on or about 24th May 2000, they paid the 1st Defendant the full purchase price of Kshs. 1,200,000/-. The Plaintiffs then claimed that instead of allocating them the plots they had paid for, the 1st Defendant allocated them different plots as a result of which they had suffered loss hence this suit.

In their submissions dated 4th October 2013, the 1st, 3rd to 6th Defendants contended that the application seeks to enjoin a party to a suit whereof time for filing suit has lapsed and that the entire suit is already fatal, having offended the Limitation of Actions Act. They cited the case of **Nyambura Kamunyu versus Douglas John Francis and Another (2001) eKLR** where the High court allowed an application to strike out a suit where the amended plaint had enjoined a party when already time barred.

In their submissions dated 19th March 2014, the Plaintiffs argued that their claim is based on breach of contract and recovery of land. They further argued that in the year 2007, they discovered that the 1st Defendant had breached the terms of the contract and transferred the suit properties to 3rd Parties. They argued that the cause of action therefore arose in the year 2007 and this suit was filed in January 2008, a few months after the cause of action accrued. They submitted that the 1st Defendant's argument that time starts running from the date of signing the agreement is not only misleading but false. They submitted that it is trite law that time for purposes of filing a suit starts running from the date of material breach of the agreement for sale and that the issue of limitation of times does not therefore occur.

The Plaintiffs' claim against the Defendants is solely based on an Agreement for Sale dated 29th March 2000 for the purchase of 12 Plots on L.R. No. 11379/3. According to that Agreement, the Plaintiffs agreed to buy the said 12 Plots at a fixed price of Kshs. 1,200,000/- which was payable forthwith at the time of executing the Agreement. The purchasers being the Plaintiffs were according to clause 6 of the said Agreement, entitled to take immediate possession of the plots upon payment of the purchase price. Based on the Plaintiffs' own confession, payment of the entire purchase price was done on or about 24th May 2000. On that date, the Plaintiffs became entitled to possession of the suit properties and to have the same transferred into their names. I find that the cause of action in this suit arose on that date when the Plaintiffs effected payment for the suit properties.

The cause of action in this suit is the breach of the Agreement for Sale by the Defendants. The cause of action is therefore breach of contract. **Section 4(1) of the Limitation of Actions Act Cap 22** provides as follows:

Actions of contract and tort and certain other actions

1. **The following actions may not be brought after the end of six years from the date on which the cause of action accrued-**
 - a. **Actions founded on contract;**
 - b. -

This legal provision is very clear and cannot be ignored. It is quite categorical that actions founded on contract must be brought to court before the end of 6 years from the date the cause of action arose. As I have noted above, the cause of action in this suit arose on 24th May 2000. Accordingly, this suit, which is

founded on contract, should have been brought within 6 years from that date. The suit therefore became time barred on or about 23rd May 2006. Accordingly, I find that when this suit was filed on 21st December 2007, the suit was already time barred.

In light of the foregoing, I hereby dismiss this suit. Each party shall bear their own costs.

DELIVERED AND SIGNED IN NAIROBI THIS 23RD DAY OF MAY 2014

MARY M. GITUMBI

JUDGE