

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 841 OF 2013

GRACE WAMBUI KABIRAPLAINTIFF

VERSUS

THE HON. THE ATTORNEY GENERAL..... DEFENDANT

RULING

Coming up before me for determination is the Originating Summons dated 12th July 2013 in which the Applicant seeks for leave to file suit against the Attorney General after the limitation period and that costs of this application abide the results of the intended suit.

The Application is premised on the grounds appearing on the face of it together with the annexed Supporting Affidavit of Grace Wambui Kabira, the Applicant herein. In her Supporting Affidavit sworn on 12th July 2013, the Applicant averred that she is the registered proprietor of L.R. No. 209/7259/217 I.R. 45874/75 in Eastleigh Nairobi (hereinafter referred to as the “suit property”). She produced a copy of the Lease and Beacon Certificate issued to her by the City Council of Nairobi (as it then was). She further stated that she had constructed commercial premises on the suit property worth about Kshs. 30 million which was giving her a rental income of Kshs. 259,500/- per month. She further stated that sometime in November 2011, the Government through the Permanent Secretaries of the Ministries of Defence, Internal Security and the Kenya Airforce completely demolished the commercial premises on the suit property and took possession of the suit property without compensation, thereby impoverishing her. She further stated that the delay to file suit has been occasioned by her ill health which she suffers from and also due to her advanced age of 80 years. It is on this basis that the Applicant seeks for leave to file the suit out of time.

The Attorney General was duly served with the pleadings herein but did not file any response thereto.

The issue I am required to determine is whether I should grant the Applicant leave to file her suit against the Attorney General out of time. However, the first question I should answer is when the cause of action arose and whether, given the provisions of the law on limitation, the Applicant is out of time in the first place.

The statute dealing with the issue is the **Limitation of Actions Act (Cap. 22 Laws of Kenya)**. The intended suit being one for recovery of land, the relevant provision includes **section 9(1)** which provides as follows:

“Where the person bringing an action to recover land ... has been in possession of the land and has while entitled to the land been dispossessed or discontinued his possession, the right of action accrues on the date of the dispossession or discontinuance.”

Applying this provision to the case in hand, it would appear that the Applicant had possession of the suit property up until November 2011 when she was dispossessed of the same. Her right of action therefore accrued in November 2011.

The next question to answer is when that right of action expired if at all. The relevant legal provision on this point is **section 7** of the **Limitation of Actions Act** which provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him...”

As I have said before, in this case, the right of action accrued in November 2011. Going by the above legal provision, the time within which the Applicant may file suit for recovery of the land or compensation therefore is 12 years from November 2011. This takes us all the way to the year 2023. Hence, the Applicant is not out of time but has up to October 2023 to file suit against the Attorney General. Accordingly, it is not true that the Applicant is out of time. There is therefore no need to grant any leave for filing the suit out of time.

Arising from the foregoing, the Applicant may proceed and file suit.

DELIVERED AND SIGNED AT NAIROBI THIS 25TH DAY OF JULY 2014.

MARY M. GITUMBI

JUDGE