



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

ELC CASE NO. 113 OF 2019

JOSEPH KOECH.....1ST PLAINTIFF

MARK KUTO.....2ND PLAINTIFF

-VERSUS-

THE COUNTY GOVERNMENT OF UASIN GISHU.....1ST DEFENDANT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT

THE COUNTY LAND REGISTRAR, UASIN GISHU.....3RD DEFENDANT

THE UASIN GISHU ARTS SOCIETY OF ELDORET....4TH DEFENDANT

RULING

1. This is a ruling in respect of a Preliminary objection by the 1st, 2nd and 3rd Defendants which is based on the following grounds: -
 1. The Plaintiffs' suit against the 1st, 2nd and 3rd Defendants is time barred under the provisions of Sections 3 (1) of the Public Authorities Limitations Act, CAP 39.
 2. The Plaintiffs' suit against the 1st, 2nd and 3rd Defendants is time barred under the provisions of Section 4(2) of the Limitations of Actions Act, CAP 22.
 3. This Hon. Court lacks jurisdiction to entertain the instant suit as against the 1st, 2nd and 3rd Defendants.
 4. The Plaintiffs herein have no locus standi to bring or maintain this suit since they have no legal or possessory title to ELDORET MUNICIPALITY BLOCK 13/22.
 5. The suit is frivolous, vexatious and otherwise an abuse of Court process, waste of judicial time and bad in law.
2. The Plaintiffs filed a suit based on the tort of trespass against the 1st and 4th Defendants in respect of LR No. Eldoret Municipality Block 13/22 (suit property). The suit property had been leased to the 4th Defendant for a period of 49 years with effect from 1959. When the lease expired, the suit property reverted to the Government.
3. The Plaintiffs applied for allocation of the suit property. The suit property was allotted to the Plaintiffs on 9th October, 2009. The Plaintiffs paid rent and stand premium together with other charges amounting to Kshs 378,508/= as required in the letter of allotment. On 6th October, 2010, the defunct Municipal of Eldoret wrote to the Director of Surveys indicating that there was no objection to preparation of a registry index map (RIM) in respect of the property to enable the Plaintiffs develop the suit property.
4. On 21st January, 2016 the Plaintiffs came across an advertisement in the Standard Newspaper in which the County Government of Uasin Gishu indicated its intention to acquire title over the suit property for Public purposes. It called for comments from the Public. It is after this that the Plaintiffs learned that the 4th Defendant had filed Judicial Review Applications over the suit property. The Plaintiffs applied to be enjoined in the Judicial Review proceedings but it later changed its mind and filed the current suit as the issue of ownership could not be ventilated in a Judicial Review application.

5. The parties were directed to dispose of the preliminary objection by way of written submissions. The 1st, 2nd and 3rd Defendants filed their submissions on 5th October, 2021. The Plaintiffs filed their submissions on 15th November, 2021. I have gone through the submissions by the parties. The only issue for determination is whether this suit is statute barred.

6. The 1st, 2nd and 3rd Defendants argue that the cause of action accrued to the Plaintiff in January, 2016. This suit was filed on 4th October, 2019. The 1st, 2nd and 3rd Defendants therefore argue that the suit is time barred both under section 3(1) of the Public Authorities Limitation Act and section 4(2) of the Limitation of the Actions Act Cap 22 Laws of Kenya.

7. Section 3(1) of the Public Authorities Limitation Act states as follows:-

“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”

8. Section 4(2) of the Limitation of Actions Act Cap 22 Laws of Kenya states as follows:-

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

9. The above quoted sections provide for a time frame of twelve months and 3 years respectively within which an action for tort ought to be filed. Prima facie one would say that the Plaintiffs’ suit is statute barred under both Acts. This is so because if the cause of action accrued to the Plaintiffs in January 2016 and the suit was filed on 4th October, 2019 the suit would be out of time of twelve years under the former Act and out of 3 years under the latter Act. However, it should be noted that the Plaintiffs are suing based on trespass which is continuing.

10. Black’s Law Dictionary 10th Edition defines trespass as follows:-

“an unlawful act committed against the person or property of another; especially wrongful entry on another’s real property.”

11. Clerk and Lindsell on Torts 16th Edition Paragraph 23-01 defines continued trespass as follows:-

“Every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues.”

12. In the case of Gladys Koskey -vs- Benjamin Mutai (2017) eKLR the Court held as follows:-

“On the first issue, the suit is founded on trespass which is a tort. Under section 4 of the Limitation of Actions Act, an action founded on a tort must be instituted within three years. However, as the Plaintiff indicates, the trespass is continuous and the Limitation of Actions Act does not come into play. This is supported by the case of Nguruman Limited V Shompole Group Ranch & 3 Others Civil Appeal No 73 of 2004 reported in 2007 KLR. Citing Clerk and Lindsell on Torts 16th Edition, paragraphs 23-01 the Court of Appeal stated that:

“Every continuance of a trespass is a fresh trespass in respect of which a new cause of action arises from day to day as the trespass continues.”

13. The particulars of the trespass in the Plaintiffs’ claim are clear that the 1st and 4th Defendants have entered the suit property and have remained on the same and have denied the Plaintiffs entry to the same. It is therefore clear that the trespass is a continuous one which cannot be barred either by the Public Authorities Limitation Act or the Law of Limitations Act.

14. Ground 4 and 5 of the preliminary objections are not pure points of law which can be treated as preliminary points of law. I therefore find no merit in the 1st, 2nd and 3rd Defendants’ preliminary objection which is hereby dismissed with costs to the Plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 10TH DAY OF MARCH, 2022

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Karuga for MS. Chesoo for 1st Defendant.

Court Assistant –Albert

E. OBAGA

JUDGE

10TH MARCH, 2022