



*No.49/2014*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ELC CASE NO.28 OF 2014**

**SILANTOI ENE NKOIPIYIA..... 1<sup>ST</sup> PLAINTIFF**

**KAPIRANYA OLE SANTA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NATASHA ENE SANTA NGOPIA ..... DEFENDANT**

**RULING**

1. By a Plaint dated 7.4.2014, the Plaintiffs filed suit on 10.4.2014 seeking the following reliefs.

- a. Eviction orders from suit land
- b. Permanent injunction against Defendant over the suit land
- c. General damages and costs.

2. On paragraph 5 of the Plaint the Plaintiffs plead that the Defendant entered suit land on February, 2011 and constructed permanent house without their permission and has refused to vacate despite demand. Upon service with summons the Defendant filed Defence and counter claim essentially challenging the acquisition of suit land by the Plaintiffs and seeking the registration to be nullified and title cancelled.

3. The Defendant did on paragraph 9 plead that the claim is time barred. On 15.10.2014 the Defendant filed a preliminary objection dated 8.10.2014 parading 3 grounds to the effect that:-

1. The suit is time barred
2. The suit is defective
3. The suit is frivolous

4. On 15.10.2014 the parties agreed the P.O. to be disposed by way of written submissions, however by the lapse of the agreed time of filing and service of the submissions, only the Plaintiffs had filed and served the same. The court thus fixed ruling date without the Defendant written submissions. The Plaintiff has filed submissions dated 6.11.2014 and filed on 6.11.2014. On ground 1 the Plaintiff relied on Section 7 of Cap 22 Laws of Kenya and the authority of **NYERI CIVIL APEAL 286/02 EDWARD MUGAMBI VS. JASON METHIU** which are to the effect that an action to recover land is barred after

12 years from the date when the cause of action accrued.

5. From the Plaintiff filed, the cause of action accrued in February 2011 when the Defendant entered suit land and constructed therein. The period of 12 year is far from being covered by the time span in the instant suit. Ground No.1 therefore has no merit and is rejected.

6. Ground No.2 is also rejected as it does not disclose the defects in suit which would render suit fatal. The Defendant ought to have specified the legal ground to warrant consideration of the defect. Ground No.3 alleges that the suit is frivolous. In NAIROBI HCC 67/2007 NYATI (2002) KENYA LTD. VS. KRA LESIIT J relying on *Ringera J.* in MPAKA ROAD DEVELOPMENT VS. KANJI (2004) IEA held inter alia “*A pleading is frivolous if it lacks seriousness*”.

7. The Plaintiff before the court avers that the Plaintiffs are the owner of the subject matter and the Defendant has trespassed and erected a permanent building without their permission and thus seek to evict her. How can such a pleading lack seriousness? The ground No. 3 is also rejected.

8. The court therefore, rules that the P.O. has no merit and dismisses the same with costs to the Plaintiff.

**Signed and Delivered at Machakos this 19<sup>th</sup> day of December, 2014.**

**CHARLES KARIUKI**

**JUDGE**