



**Nyagah v Nyaga & 2 others (Environment and Land Miscellaneous Application
E009 of 2022) [2022] KEELC 3203 (KLR) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E009 OF 2022**

BM EBOSO, J

MAY 23, 2022

BETWEEN

LUCY JEMIMA NYAGAH APPLICANT

AND

ANNE NJERI NYAGA 1ST RESPONDENT

LAND REGISTRAR, KIAMBU COUNTY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. On or about 3/2/2022, Lucy Jemima Nyagah moved this court through an exparte notice of motion expressed as dated 22/2/2022 [sic]. The date of the notice of motion was subsequently amended to read 1/2/2022. Through the exparte application, the applicant invited the court to grant her leave to file a suit out of time.
2. The application was supported by the applicant's affidavit expressed as sworn on 22/2/2022 [sic]. The applicant deposed that on 6/7/2007, she entered into a sale agreement with the 1st defendant for purchase of Land Reference Number 2072/200 comprised in Title Number IR 84454. Both parties were represented by the firm of D. Ndungu Advocates. She paid the full purchase price and the 1st defendant surrendered to the said Advocates the signed transfer instrument together with the relevant completion documents, including the original title. It was her case that the title is yet to be conveyed into her name because Mr D Ndungu was struck off the Roll of Advocates and his whereabouts are unknown. She added that the 1st defendant is unwilling to procure a provisional title because she duly surrendered the original title to their mutual Advocates.
3. On 7/2/2022, the court directed the exparte applicant to file brief written submissions on the application and cite the relevant law under which she was inviting the court to extend the limitation period. Subsequently, the exparte applicant filed written submissions dated 11/4/2022 through the



firm of M. W Muli & Co Advocates. Counsel for the applicant cited Sections 7, 26 and 27 of the [Limitation of Actions Act](#) and submitted that the exparte applicant's failure to initiate proceedings earlier was a consequence of a mistake in that she was under the mistaken belief that she would be able to trace their mutual advocate who was in possession of the completion documents. Counsel argued that Sections 26 and 27 of the [Limitation of Actions Act](#) gives this court powers to enlarge time. Counsel relied on the decision in [David Akongo Obilo v Bipen Hasmukhlal Faldu](#) [2022] eKLR and [Rawal v Rawal](#) [1990] KLR 275.

4. I have considered the application together with the submissions presented in support of the application. Two questions fall for determination in the application. The first question is whether this court is seized of jurisdiction to extend time under Section 26 and/or 27 of the [Limitation of Actions Act](#) in the circumstances of this application. The second question is whether the applicant has satisfied the relevant criteria under which our courts exercise jurisdiction to enlarge time.
5. Jurisdiction to enlarge time for bringing an action is donated by [the Constitution](#), the statute or the relevant rules. Where [the Constitution](#), statute or rule has prescribed a limitation period for bringing action and has not vested in the court jurisdiction to enlarge the limitation period, the court cannot purport to enlarge the limitation period beyond what [the Constitution](#), statute or rule has prescribed. Indeed, the Court of Appeal emphasized this principle not too long ago in [Kenya Airports Authority v Shadrack Abraham Kisongochi](#) [2016] eKLR.
6. In the present application, the applicant contends that her current predicament is a consequence of a mistake in that she was under the mistaken belief that she would be able to trace their mutual advocates. She invites the court to enlarge time under Section 26 of the [Limitation of Actions Act](#). Does Section 26 of the Act grant this court jurisdiction to enlarge time? My interpretation of Section 26 of the Act is that it does not grant the court jurisdiction to enlarge time. All that the section does is to automatically extend the prescribed limitation period by prescribing the point at which the cause of action is deemed to have accrued. For a claim founded on fraud or mistake, Section 26 provides that the limitation period [time] does not begin to run until the plaintiff discovers the fraud or mistake or is reasonably deemed to have discovered the fraud or mistake.
7. Section 27 of the [Limitation of Actions Act](#) on the other hand grants the courts jurisdiction to enlarge time only in claims relating to torts where the contemplated action is for damages for negligence, nuisance or breach of duty and the contemplated damages are in respect of personal injuries of a person. [See [Mary Osundwa v Nzoia Sugar Company Limited](#) [2002] eKLR]. Section 27 does not grant the court jurisdiction to extend limitation period in respect of land claims.
8. For this court to grant the leave sought, there must be clear jurisdiction donated by [the Constitution](#), the statute or the relevant rules. The Supreme Court of Kenya emphasized this point in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR in the following words:

“A court's jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by [the constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where



the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

9. Counsel for the exparte applicant placed reliance on Order 50 of the *Civil Procedure Rules*. In my view, the *Civil Procedure Rules* cannot be interpreted to confer powers upon a court in situations where the *Limitation of Actions Act* has prescribed a limitation period and has deliberately not granted the court powers to extend the prescribed limitation period.
10. Consequently, it is the finding of this court that it has no jurisdiction to enlarge limitation period in the circumstances of this application. Having made that finding, the second issue becomes moot. The result is that the application under consideration is declined. There will be no order as to costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 23RD DAY OF MAY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Gaya for the Exparte Applicant

Court Assistant: Ms Lucy Muthoni

