



REPUBLIC OF KENYA



Ngugi v Maina & 15 others (Environment and Planning Civil Case E002 of 2024) [2025] KEELC 3445 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3445 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND PLANNING CIVIL CASE E002 OF 2024**

MN GICHERU, J

APRIL 7, 2025

BETWEEN

REGINA MUTHONI NGUGI PLAINTIFF

AND

MICHAEL KANGETHE MAINA 1ST DEFENDANT

MAINA NDUNGU MACHARIA 2ND DEFENDANT

DAVID MWANGI MACHARIA 3RD DEFENDANT

CHARLES WAMAE NDUNGU 4TH DEFENDANT

PERIS WAITHIRA IKUHA 5TH DEFENDANT

SAMUEL MURIGI 6TH DEFENDANT

BENSON WACHIRA MUTHUI 7TH DEFENDANT

PATRICK MACHARIA WANDERI 8TH DEFENDANT

MARY WANJIKU MUNGAI 9TH DEFENDANT

ROSE WANGUI MWANIKI 10TH DEFENDANT

HARRISON MAINA MWANGI 11TH DEFENDANT

NANCY WANGUI KAROMBIA 12TH DEFENDANT

CHURCH COMMISSIONERS OF KENYA 13TH DEFENDANT

LAND REGISTRAR, MURANG'A 14TH DEFENDANT

JASON WACHIRA WANJAU 15TH DEFENDANT

KINYUA KABAU 16TH DEFENDANT



RULING

1. This ruling is on the notice of motion dated 22-11-2024. The motion seeks the following residual orders.
 - (b) The Court to order that the further amended plaintiff dated 9-10-2024 be struck out of the record.
 - (c) That in the alternative and without prejudice to prayer (b) above, the court be pleased to strike out the suit as against the 11th Defendant for being time barred
 - (d) That the costs of this application be borne by the Plaintiff.
 - (e) Any other order that the Court may deem fit.
2. The motion is based on thirteen grounds and is supported by an affidavit sworn by the 11th Defendant dated 22-11-2024 which has five annexures. The gist of the above material is as follows. One, the plaintiff herein was filed on 26-4-2024 and relates to L.R. Nos. Loc.11/Maragi/3537-3540 which the Plaintiff says were a subdivision of L.R. No. Loc.11/Maragi/1492. Two, the Plaintiff amended the plaintiff and filed an amended plaintiff dated 14-5-2024 which brought in the 15th and 16th Defendants. Three, the Plaintiff has filed a further amended plaintiff dated 9-10-2024 which has sought to introduce properties known as Loc.11/Maragi/10393-10396 which are a result of the subdivision of L.R. No. Loc.11/Maragi/4232. Four, in the initial plaintiff, the cause of action was in respect to the alleged fraudulent subdivision of L.R. No. 11/Maragi/1492 and transfer of the resultant parcels. Five, in the further amended plaintiff, the Plaintiff sought to introduce a new cause of action being the illegal subdivision of L.R. No. Loc.11/Maragi/4232 and alleged illegal transfer of the resultant parcels, without giving the particulars of the illegality. However, the alleged illegalities can be deduced from the Plaintiff's affidavit dated 9-1-2024 which alleges that the transfer was in 1997 when the deceased owner was said to have been so sick that he could not transact. Six, it is clear that the further amended plaintiff seeks to introduce a new cause of action which is incompatible with the cause of action in the initial plaintiff and this fundamentally changes the suit before the court. Seven, the further amendment was done without leave of the court which is improper and it is an underhand scheme to defeat the 11th Defendant's application dated 6-7-2024. Eight, the Plaintiff admits through the affidavit dated 9-10-2024 that the property known as Loc.11/Maragi/4232 was transferred from the deceased owner, Lawrence Ngugi Njuguna, in the year 1997 which is approximately 27 years ago and thus the claim is time barred. Finally, the further amended plaintiff is only for striking out. For the above and other reasons, the 11th Defendant prays that the motion dated 22-11-2024 be allowed as drawn.
3. The motion is unopposed because the Plaintiff did not file any response thereto. I am not sure that the Plaintiff was served because I do not see any affidavit of service on record. Be that as it may, I will proceed to determine the motion as it is, more so because even though the Applicant's counsel had promised to file brief submissions, I cannot see them on record either.
4. I will frame the issues as follows.
 - a. Whether failure to seek leave to file a further amended plaintiff is fatal to the suit.
 - b. Whether introducing a new cause of action renders a suit incompetent.
 - c. Whether the suit is time barred just because the alleged fraud occurred in 1997.



5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the annexures and the entire record. I make the following findings on the three issues above.

On the 1st issue, I find that failure by the Plaintiff to seek leave to amend the plaint a second time is not fatal to her suit. The 11th Defendant has not shown what prejudice he will suffer as a result of the 2nd amendment. He himself has not filed a defence within the period stipulated by the law especially Order 7 rules 1 and 5 of the Civil Procedure Rules.

Order 7 rule 1 Civil Procedure Rules provides as follows.

“Where a Defendant has been served with a summons to appear he shall, unless some other or further order be made by the court, file his defence within 14 days after he has entered appearance in the suit and serve it on the Plaintiff within fourteen days from the date of filing the defence and file an affidavit of service.

“Subrule (5) The defence and counterclaim filed under rule 1 and 2 shall be accompanied by-

- a. an affidavit under Order 4 rule 1 (2) where there is a counterclaim;
- b. a list of witnesses to be called at the trial;
- c. written statement signed by the witnesses except expert witnesses;
and
- d. copies of documents to be relied on at the trial.”

There is an affidavit of service dated 3-6-2024 which is to the effect that all the Defendants were served within summons to enter appearance on 27-5-24 at 10.30am at the Chief's office Mjini. The summons to enter appearance required the Defendants to enter appearance within 15 days. The Defendants ought to have filed their defences by end of July. None of the Defendants can therefore cast any stone upon the Plaintiff because they themselves are not clean.

6. A Court should sustain a suit rather than dismiss it. Dismissal of a suit that can be cured by whatever means is a draconian move that derogates on the right to a fair hearing enshrined in Article 50(1) of *the Constitution* which guarantees that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body.
7. On the second issue, I find that introducing a new cause of action, does not render a suit incompetent especially because the Defendants have not filed their defences. Under Order 8 rule 5 of the Civil Procedure Rules, amendment can be at any stage so long as the real question in controversy between the parties is identified and captured in the pleadings. The Defendants are at liberty to defend the suit as they wish and they are not limited in such defence.
8. Regarding the third and final issue, I find that the suit is not time barred just because the alleged fraud occurred in the year 1997.

Section 26 (a) of the Limitation of Action Act provides as follows.

where, in the case of an action for which a period of limitation is prescribed, either –

- a. the action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent; or



b. andThe period of limitation does not begin to run until the Plaintiff has discovered the fraud or
c, mistake or could with reasonable diligence have discovered it”

In this case, the Plaintiff says that she discovered the fraud in February 2016. That is when time started running. The time envisaged in Section 7 of the same Act has not lapsed. It will lapse 12 years from 2016 which will be the year 2028.

For the above stated reasons, I find no merit in the motion dated 22-11-2024. I dismiss it in its entirety. Costs in cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 7TH DAY OF APRIL, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Miss Wanjiru h/b

Counsel for 1st, 2nd, 4th, 5th, 6th, 7th, 12th, 13th, 15th and 16th Defendants – Mr. Kariuki

Counsel for the 8th Defendant – Absent

Counsel for the 11th Defendant – Mr Denis Maina

Counsel for the 12th Defendant – Absent

