



**Njuguna v Njuguna (Environment & Land Case E017 of 2024)  
[2025] KEELC 3264 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3264 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E017 OF 2024**

**JM ONYANGO, J**

**APRIL 7, 2025**

**BETWEEN**

**ANDREW KURIA NJUGUNA ..... PLAINTIFF**

**AND**

**TERESIA WANJIKU NJUGUNA ..... DEFENDANT**

**RULING**

1. The Plaintiff initiated this suit through a plaint dated 6th February 2024. His case is that he is the bona fide owner of Land Parcel Number Ruiru East Block 5/130 (hereinafter referred to as “the suit property”) having purchased it from one Margaret Njeri Gachiri on 6th July 2006.
2. He contended that he erected a building on the suit property where he also hosted the Defendant (his mother) and her husband. Sometime in 2007 he entrusted the Defendant with the title to the suit property for safe keeping being that she is his mother. He further contended that on 23rd March 2007, the Defendant fraudulently transferred the suit property into their joint names without his consent. He added that the Defendant has since harassed him and the tenants and caused the construction on the suit property to stall.
3. Prior to the filing of this suit, the Plaintiff had filed Thika Civil Appeal No. E071 of 2022 in this court. The said suit was between the same parties and was related to the subject matter in this suit. The said suit was heard and a judgment delivered by Eboso J on 15th November 2023 when he gave the following orders:
  - i. The ruling of the lower court rendered on 22nd July 2022 in Kiambu CMC Civil Case No. 454 of 2018 is wholly set aside and is substituted with an order setting aside the ex parte judgment rendered on 13/9/2021 alongside the irregular interlocutory judgment that had been entered in the suit on 15/7/2019 and the irregular formal proof proceedings.
  - ii. The Defendant in the said suit shall be at liberty to file her pleadings within 15 days from today.



- iii. Parties shall bear their respective costs of this Appeal.
4. This ruling is in respect of the Defendant's Preliminary Objection dated 25th July 2024 in which she raises the ground that the Plaintiff's suit is statute barred pursuant the provisions of section 7 of the [Limitation of Actions Act](#) Cap 22 of the Laws of Kenya and hence the same should be struck out.
5. Upon being served with the Notice of Preliminary Objection, the Plaintiff filed Grounds of Opposition dated 30th August 2024 through which he opposed the Preliminary Objection on the following grounds:
  - i. That the P.O is pre mature, misconceived, lacks merit, frivolous and abuse of the court process.
  - ii. That section 7 of the [Limitation of Actions Act](#) is not applicable as there is provision for extension of the limitation period as provided for under Section 26 of the said Act for reasons that the right of action was concealed by the Plaintiff's (sic) fraudulent conduct/activities.
  - iii. That the Plaintiff has moved the honourable court with unclean hands as they are estopped from raising the preliminary objection by dint of their conduct moreso the outcome of ELC Civil Appeal No. E071 of 2021.
  - iv. That it is in the interest of justice and fairness that the instant Preliminary Objection be dismissed with costs.
6. The Preliminary objection was canvassed by way of written submissions and both parties filed their submissions.

#### **Defendant's Submissions**

7. Counsel for the Defendant relied on Section 7 of the [Limitation of Actions Act](#) and the decision in the cases of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors [1969] EA and Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014]eKLR to submit that the Plaintiff has sat on his claim for more than 12 years and has only sought to pursue it when statute barred. Counsel further submits this suit is an abuse of court process given that the Plaintiff previously filed Thika CMCCN No. 549 of 2011, Kiambu CMCC No. 454 of 2018 and Thika Appeal No. E071 of 2022, which are on the same subject matter, between the same parties and on similar issues for determination.
8. On the issue of costs, counsel relied on the decision in the case of Republic vs Rosemary Wairimu Munene, Ex-parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd. Counsel faulted the Plaintiff for failing to consider the limitation of time when filing the suit. Counsel argued that the Plaintiff should therefore be held accountable for the difficulties the Defendant faced in filing her Defence. Counsel urged this court to strike out the suit and award the Defendant the costs of the suit.

#### **Plaintiff's Submissions**

9. On the other hand, learned counsel for the Plaintiff identified the following issue for determination: whether the preliminary objection should be dismissed.
10. Counsel relied on Section 7 of the [Limitation of Actions Act](#) to submit that the Defendant wrongly presumed that 12 years had lapsed since the right of action accrued to the Plaintiff. Counsel further submitted the matter has been actively litigated and that the latest court decision being the orders given by Eboso J in Thika ELC Court Civil Appeal No. E071 of 2022.
11. Counsel further relied on Section 26 of the [Limitation of Actions Act](#) to submit that the fraud on the part of the Defendant necessitated the filing of this suit. Counsel contended that given that Section 26



of the *Limitation of Actions Act* provides for extension of limitation period in cases of fraud, then this suit is exempted from provisions of Section 7 of the *Limitation of Actions Act*.

12. Counsel argued that allowing the P.O would be akin to holding a mini trial on the facts of the case which is bound to result in miscarriage of justice. Counsel urged this court to be guided by the aforementioned decisions and to dismiss the P.O with costs.

### **Issues for determination**

13. Having considered the Preliminary Objection, Grounds of Opposition and rival submissions the issue for determination is:
  - i. Whether the suit offends the mandatory provisions of section 7 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya.

### **Analysis and Determination**

14. Before delving into the merits of the Preliminary Objection it is important to examine whether the P.O meets the definition of a P.O as set out in the case of *Mukisa Biscuit Company Ltd v West End Distributors Limited (1969) E.A 696*. In the said case the court held as follows:

“...A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of Preliminary objections does nothing but unnecessarily increase the costs and occasions confusion of the issues. This improper practice should stop.”

15. In the instant case the Defendant has raised the question of the suit being time-barred as it offends the mandatory provisions of Section 7 of the *Limitation of Actions Act*, which is a pure point of law. It was submitted for the Defendant that the Plaintiff had sat on his claim for more than 12 years and only began to pursue it after it was time barred. The Defendant added that the Plaintiff was engaging in abuse of the court process given that he had previously filed similar suits over the same issues, same subject matter and between the same parties. That is: Thika CMCCN No. 549 of 2011, Kiambu CMCC Case No. 454 of 2018 and Thika Appeal No. E071 of 2022.
16. In response, the Plaintiff stated that the Defendant wrongly presumed that 12 or more years had lapsed since the cause of action accrued to him. He added that he had been actively pursuing his claim in court and that the latest decision over his claim was given on 15th November 2023 in Thika ELC Civil Appeal No. E071 of 2022.
17. Even though copies of the pleadings in Thika CMCCN No. 549 of 2011, Kiambu CMCC Case No. 454 of 2018 and Thika Appeal No. E071 of 2022 have not been provided by either of the parties, this court takes note that the allegation made by the Defendant over the existence of the said suits was not rebutted by the Plaintiff. In fact, the Plaintiff seemingly confirmed the same when he stated that he had been actively pursuing his claim in court.



18. Time for purposes of suits premised on fraud begins to run when the fraud is discovered. It is not clear when the fraud was discovered by the Plaintiff. However, it was stated that it occurred in 2007. Assuming that the fraud was discovered in 2007, then the period of 12 years would lapse in 2019. This means that time had not lapsed by the time the Plaintiff was filing either Thika CMCCN No. 549 of 2011 or Kiambu CMCC Case No. 454 of 2018 which culminated into Thika Appeal No. E071 of 2022. This court is not aware of the status of Kiambu CMCC Case No. 454 of 2018 or why the Plaintiff chose to file a fresh suit in this court. Nonetheless, the court finds that this suit is not time barred.
19. The upshot is that the Preliminary Objection dated 25th July 2024, lacks merit and it is hereby dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF APRIL 2025.**

.....  
**J. M ONYANGO**

**JUDGE**

In the presence of:

Mr. Ochieng for the Respondent

No appearance for the Applicant

Court Assistant: Hinga

