



REPUBLIC OF KENYA



KENYA LAW
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Maina & 2 others v Ngini & 2 others (Environment & Land Case 84 of 2016) [2022] KEELC 3466 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 84 OF 2016**

**JO MBOYA, J
JULY 28, 2022**

BETWEEN

MATHEW NDEGWA MAINA 1ST PLAINTIFF

DOUGLAS MUREITHI MAINA 2ND PLAINTIFF

VIRGINIA WANJA (SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE MOSES MAINA NDEGWA (DECEASED)) 3RD PLAINTIFF

AND

AGNES WANGUI NGINI 1ST DEFENDANT

VICTOR NGUNI MACHARIA 2ND DEFENDANT

EMBAKASI RANCHING CO. LTD. 3RD DEFENDANT

RULING

Introduction and Background:

1. Vide the Notice of Motion Application dated the 17th March 2022, the 1ST and 2ND Defendants/Applicants herein have approached the court seeking for the following Reliefs;
 - i.(Spent).
 - ii. This Honourable Court be pleased to order that it has no Jurisdiction to hear and determine the instant Suit for reasons that the same is Statutorily Time Barred having been filed out of time without Leave of the court.
 - iii. This Honourable Court be pleased to Strike out the suit herein for being an Abuse of the Court Process.
 - iv. The Plaintiffs' be Condemned to pay the Costs of this Application and the suit.



2. The subject Application is premised and/or anchored on the Grounds which have been enumerated at the foot thereof and same is further supported by the Affidavit of Victor Nguni Macharia, sworn on the 17th March 2022, and to which same has attached one document.
3. Upon being served with the subject Application, the Plaintiffs/Respondents herein filed Grounds of Opposition dated the 19th May 2022 and in respect of which same contended that the subject Application was inter-alia, frivolous and/or otherwise an abuse of the Due Process of the court.
4. On the other hand, the 3rd Respondent filed a Replying Affidavit sworn by one, Walter Kigera Waireri and which Replying Affidavit was sworn on the 25th May 2022.

Depositions by the parties:

i. 1st And 2nd Defendants 'case:

5. Vide Supporting Affidavit sworn on the 17th March 2022, one Victor Nguni Macharia, hereinafter referred to as the deponent, has averred that same is the 2nd Defendant and hence conversant with the facts pertaining to and/or concerning the subject matter.
6. Further the deponent has also averred that same has been authorized and/or mandated to swear the subject affidavit on behalf of the 1st Defendant/ Applicant.
7. The deponent has averred that the 1st Defendant/Applicant and himself entered into a Land Sale Agreement with one, Terry Muthoni Gachoka, over and in respect of L.R No. Nairobi Block 105/1617, hereafter referred to as the suit property.
8. Besides, the deponent has further averred that the Sale Agreement, details in terms of the preceding paragraph, was duly reduced into writing on the 18th June 2001 and thereafter same was signed by the respective Parties.
9. Other than the foregoing, the deponent has further averred that upon entry into and execution of the Sale Agreement, over and in respect of the suit property, the vendor thereof granted to and in favor of the 1st Defendant and the deponent, vacant possession in respect of the suit Property.
10. On the other hand, the deponent has further averred that the suit property was thereafter transferred to and registered in the Joint names of the 1st Defendant/Applicant and himself on the 13th November 2001 and thereafter same commenced development of the suit property.
11. Further, the deponent has averred that having entered into and taken possession of the suit property, same assumed ownership and remained in occupation thereof, without any interference and/or disturbance from any quarters, whatsoever.
12. Be that as it may, the deponent has averred that on or about the 3rd February 2016, one Moses Maina Ndegwa, now Deceased, filed and/or lodged the subject suit, claiming to be the lawful owner and/or proprietor of the suit property.
13. Nevertheless, the deponent has averred that by the time the subject suit was being filed and/or lodged by the Deceased the 1st Defendant/Applicant and himself, had been the registered owners and or Proprietors thereof for a duration in excess of 12 years, w.e.f 13th November 2001, when the suit property was transferred in the names of the 1st Defendant and himself.



14. Premised on the foregoing, the deponent has averred that by the time the subject suit was being filed and/or lodged, the statutory duration for recovery of Immovable property, namely, the suit Property had long lapsed and/or extinguished.
15. Consequently, the deponent has averred that the suit herein, which was lodged on the 3rd February 2016, was therefore Statute barred and hence the Plaintiffs/Respondents claim to and in respect of the suit property was rendered sterile , otiose and redundant.
16. In a nutshell, the deponent has therefore averred that to the extent that the suit is time barred, this Honourable Court is divested of the requisite Jurisdiction to hear and/or entertain the subject suit.
17. Owing to the foregoing, the deponent has therefore sought to have the suit struck out and the Plaintiffs/Respondents herein be condemned to bear the Costs of the proceedings, inclusive of the Application herein.

ii. Respons by the plaintiffs'/respondents':

18. Upon being served with the subject Application, the Plaintiffs/Respondents filed Grounds of Opposition dated the 19th May 2022 and whereby the Plaintiffs/ Respondents have averred inter-alia, as hereunder;
 - a. The Preliminary Objection on Limitation and Jurisdiction is improperly raised. The facts are contested and based on denied facts which have to be ascertained at the trial.
 - b. The Suit is not time barred as alleged since the Plaintiffs' suit is based on fraud and the Plaintiffs have stated the Particulars thereof in their Amended Plaint dated the 30th December 2021.
 - c. Section 7 of the Limitations of Actions Act, Chapter 22, Laws of Kenya, is not applicable in the circumstances as alleged as there is a provision for extension of the limitation period for reasons that the right of action was concealed by the Defendants' fraud.
 - d. The Period of limitation did not begin on the 18th June 2013 or 13th November 2013 before the Plaintiffs filed the suit as alleged. To the contrary, the period of limitation did not begin until the Plaintiffs' discovered the fraud or would have with reasonable diligence have discovered it.
 - e. The Question as to when the Plaintiffs discovered the Fraud or Concealment of the Right of action against the Defendants is a matter to be ascertained at the trial.
 - f. The Provisions of Order 37 Rule 7 of the Civil Procedure Rules, 2010, is not relevant in the circumstance as it provides for an extension of limitation period incase of ignorance of material facts in action for negligence which the Plaintiffs have not pleaded.
 - g. This Court is vested with Jurisdiction to hear Environment and Land Matters and have fixed the suit for hearing on the 9th June 2022 after the case management has been done.
 - h. This Court ought to consider the Pleadings and Evidence before a determination is made that the Plaint as drawn is vexatious, frivolous and scandalous.
 - i. The Application requires the Court to make a determination on facts which are in dispute which can only be done after the hearing of the Parties.
 - j. In principle, where allegations of Fraud have been pleaded, the suit should be set down for Hearing.



- k. The Court should not allow the 1st and 2nd Defendants to hide under Section 7 of the [Limitation of Actions Act](#) and benefit from their Fraudulent acts.
- l. Having filed a suit against the Deceased Proprietor, Moses Maina Ndegwa vide ELC 608 of 2017, which has since been consolidated with this suit, the 1st and 2nd Defendants is are Estopped from invoking the Provisions of Section 7 of the Limitations of Actions Act, Chapter 22, Laws of Kenya.
- m. The Application as filed Ostensibly aims to Burden and delay the finalization of the Plaintiffs otherwise straight forward suit against the Defendants.
- n. The Application has been brought in Bad faith, vexatious and an abuse of the Due Process of the Court.

C. Response by the 3rd defendant:

- 19. Vide Replying Affidavit sworn by one Walter Kigera Waireri, same has averred that he is a Director of the 3rd Defendant and therefore conversant with the facts pertaining to and or concerning this subject matter.
- 20. On the other hand, the Deponent has averred that the 3rd Defendant herein was the Original owner and/ or Proprietor of the suit property which was thereafter allotted to one Terry Muthoni Gachoka.
- 21. Further, the deponent has averred that having allotted the suit property to the said Terry Muthoni Gachoka, same thereafter sold and transferred her Interest to and in respect of the suit property to the 1st and 2nd Defendants herein. In this regard, the deponent has averred that the 1st and 2nd Defendants are thus the lawful proprietors and/or owners of the suit property.
- 22. Other than the foregoing, the deponent has averred that the subject suit has been filed after the expiry of the requisite statutory period, namely, 12 years from the accrual of the Cause of action.
- 23. Premised on the foregoing, the deponent has therefore contended that the subject suit is therefore barred by the Limitations of Actions, Chapter 22, Laws of Kenya, and hence same ought to be struck out.

Submissions by the parties:

- 24. The 1st and 2nd Defendants'/Applicants' filed their written submissions dated the 14th June 2022 and in respect of which same raised two Pertinent issues.
- 25. First and foremost, Learned counsel for the 1st and 2nd Defendants have submitted that the suit property was hitherto registered in the names of one Terry Muthoni Gachoka on the 8th September 2000. Thereafter the said previous registered owner sold and transferred the suit property to the 1st and 2nd Defendants vide Sale Agreement entered into and executed on the 18th June 2001.
- 26. It was the 1st and 2nd Defendants' further submissions that following the entry into and execution of the Sale agreement, the suit property was transferred and registered in the names of the 1st and 2nd Defendants on the 13th November 2001.
- 27. On the other hand, Learned Counsel has further submitted that subsequent to the transfer and ultimate Registration of the suit property in the names of the 1st and 2nd Defendants herein, same entered upon and took possession of the suit property and that the 1st and 2nd Defendants remained



in occupation of the suit property, without any interruption and or disturbance, up to and including, when the subject suit was filed.

28. Premised on the foregoing, Counsel for the 1st and 2nd Defendants have therefore submitted that the suit was filed outside the 12 year period for recovery of vacant possession. Consequently it has been contended that the suit is time barred by dint of the Provisions of the Limitations of Actions Act, Chapter 22, Laws of Kenya.
29. Secondly, the Learned Counsel for the 1st and 2nd Defendants have further submitted that the Deceased, who was the original Plaintiff generated a complaint dated the 6th February 2017 wherein same alluded to the fact that the suit property was erroneously re-allocated to one Mrs. Terry Muthoni in the year 2000.
30. Based on the contents of the letter dated the 6th February 2017, counsel for the 1st and 2nd Defendants has therefore contended that the re-allocation, allocation and/or otherwise allotment of the suit property to Mrs. Terry Muthoni, who thereafter sold the suit property to the 1st and 2nd Defendant, was within the knowledge of the deceased as at the year 2000.
31. To the extent that the Deceased was aware and/or knowledgeable of (sic) the re-allocation of the suit property, in terms of the Letter dated the 6th February 2017, it was submitted that a claim founded and/or anchored on Fraud, would similarly, be time barred.
32. In support of the foregoing submissions, Learned Counsel for the 1st and 2nd Defendants has relied on various decisions, inter-alia, *Harun Onyanche versus National Police Service Commission & Another* (2017)eKLR, *Marth Kawirwa Antony versus Barclays Bank Ltd* (2019)eKLR, *Gathoni versus Kenya Co-operative Ltd* (182)eKLR, *Kimani Ruchine & Another versus Swift Rutherford & Company Limited* (1980), *Dickson Ngige Ngugi versus Consolidated Bank Ltd and Another* (2020)eKLR and *Edward Moonge Lengusuranga versus James Lanaiyara & Another* (2019)eKLR.
33. On behalf of the Plaintiff's/Respondents,' written submissions were filed on the 23rd June 2022 and same have similarly, raised two (2) Pertinent issues.
34. It is the Plaintiffs' submissions that this court is seized and/or possessed of the requisite Jurisdiction to hear and entertain the subject suit and hence it would be contrary to the Rule of Law and Interest of Justice, to terminate the subject suit on the basis of technicality, premised on limitation.
35. Secondly, the Plaintiffs/Respondents' have further submitted that the subject suit is not time barred insofar as computation for purposes of determining limitation, would be dependent upon when the Cause of action was discovered.
36. Consequently and in respect of the subject matter, the Plaintiffs/ Respondents have averred that the cause of action herein was never discovered in the year 2013, either as alleged or at all.
37. In any event, the Plaintiffs have further submitted that the issue of limitation cannot be determined, where the facts of the case are in dispute and therefore requiring Plenary investigations by the Court.
38. Finally, the Plaintiffs/ Respondents have submitted that the subject Application is otherwise an abuse of the Due Process of the Court and is merely intended to enable the 1st and 2nd Defendants to benefit from their Fraudulent actions, relating to the acquisition of the suit Property.
39. Based on the foregoing, the Plaintiffs/ Respondents have therefore implored the Honourable Court to find and hold that the subject Application is devoid of merits and thus same ought to be Dismissed.



40. In support of the foregoing submissions, the Plaintiffs/ Respondents herein have relied on various Decisions in the cases of *Petra Developemnt Services Ltd versus Ever Green Marine (Singapore PTE Ltd & Another* (2014)eKLR, *Kericho County versus Kenya Forest Service & 8 Others* (2015)eKLR, *James Maina Mwangi & 3 Others versus Land Registrar of Mbeere & Another* (2022)eKLR, *Chemitei Kendagor versus Job Kipnandi Chebon & 4 Others* (2021)eKLR, *Kenya Ports Authority versus Timberland Kenya Ltd* (2017)eKLR and *Joseph Mwaniki Muchira versus Godfrey Muchangi* (2018)eKLR.
41. The 3rd Defendant filed written submissions dated the 27th June 2022 and in respect of which same raised only one issue for determination. For clarity, it was contended that the 1st and 2nd Defendants' having entered into the Sale Agreement in the year 2001 and thereafter caused the suit Property to be transferred and registered in their names on the 13th November 2001, the subject suit is evidently time barred.
42. Further, the 3rd Defendant has also contended that by virtue of being a suit for recovery of vacant possession, the Plaintiffs/ Respondents were obliged to file and or commence the subject suit within the stipulated duration, as provided for, vide Section 7 of the *Limitation of Actions Act*, Chapter 22, Laws of Kenya.
43. Based on the foregoing, Learned Counsel for the 3rd Defendant has therefore submitted that the suit beforehand, is Incompetent, Misconceived and Statute barred. Consequently, the 3rd Defendant, has similarly implored the Court to strike out the Suit herein.

Issues for Determination:

44. Having reviewed the Application dated the 17th March 2022, the Supporting Affidavit thereto, as well as the Responses filed in opposition thereof; and having similarly considered the written submissions filed by the Parties, the following issues are pertinent and are thus germane for Determination;
 - a. Whether the suit by and/or on behalf of the Plaintiffs is premised on Fraud and if so, Whether same is time barred by dint of Section 4 of the *Limitation of Actions Act*, Chapter 22, Laws of Kenya.
 - b. Whether the suit herein is for Recovery of Vacant possession and if so, Whether same is barred vide Section vide Section 7 of the *Limitation of Actions Act*.

Analysis and Determination:

Issue Number 1:

Whether the suit by and/or on behalf of the Plaintiff is premised on Fraud and if so, whether same is time barred by dint of Section 4 of the *Limitation of Actions Act*, Chapter 22, Laws of Kenya.

45. The original Plaint in respect of the subject matter was filed and/or lodged in court on the 3rd February 2016, whereby the Plaintiff, now deceased contended that the 3rd Defendant herein had fraudulently and without his knowledge allocated Plot number 1/127 to the 1st and 2nd Defendants.
46. Though the original Plaintiff had impleaded fraud, vide the original Plaint, it is however common ground that same did not supply and/or plead particulars of (sic) Fraud, either as required vide the provisions of Order 2 Rule 4 of the Civil Procedure Rules 2010.



47. On the other hand, it is also evident that the original Plaintiff also did not state in the body of the Plaintiff, when the fraudulent actions complained of occurred and/or over discovered.
48. Be that as it may, the Plaintiff was thereafter amended vide Amended Plaintiff dated the 9th March 2016, but yet again no Particulars of Fraud were pleaded and/or supplied. Besides, the original Plaintiff also did not speak to when same discovered the fraudulent actions pertaining to and/or concerning the transfer of the suit Property to and in favor of the 1st and 2nd Defendants.
49. Other than the foregoing, it is also worthy to point out that the Plaintiff was further amended vide the Further Amended Plaintiff dated the 30th December 2021 and in respect of which the Plaintiffs' herein have pleaded and/or supplied particulars of fraud as against the Defendants, jointly and/or severally.
50. Nevertheless, despite pleading and availing particulars of fraud, it is still evident that the Plaintiffs herein have not pleaded and/or stated in the body of the Further Amended Plaintiff, when the fraud complained of arose or was discovered.
51. Be that as it may, the Plaintiffs have made some pertinent Statements/ Averments, which are relevant and thus worthy of re-production;
52. For convenience, Paragraphs 11 A and 12 A of the Further Amended Plaintiff are reproduced as hereunder;
11A:
The Plaintiffs aver that in total breach of its duty and obligation to the deceased to process the title documents in favor of the deceased for plot number 1/127 9Nairobi/Block 105/1617) the 3rd Defendant fraudulently caused the title Block Number 105/1617 (Original Plot 1/127) to be registered in the names of the 1st and 2nd Defendants.
12A:
As a result of the refusal to issue the deceased with title documents over the suit land, Block Number 105/1617 (Original Plot 1/127), the deceased and now the Plaintiffs have been denied rightful ownership of the suit property and have been exposed to loss and damage.
53. From the contents of the Pleadings filed by and/or on behalf of the Plaintiffs, dating back to the original Plaintiff, it is evident that the Plaintiffs were/are aggrieved with the transfer and registration of what comprises the suit property to and in favor of the 1st and 2nd Defendants.
54. Based on the foregoing, it is therefore imperative to ascertain when the suit property was transferred to and registered in the names of the 1st and 2nd Defendants and upon such ascertainment, to proceed and compute the time for purposes of commencement of a suit premised and/or anchored on fraud.
55. In respect of the foregoing, it is worthy to recall that the 1st and 2nd Defendants stated that the suit property was transferred to and registered in their names on the 13th November 2001. Consequently, if it is the transfer and registration of the suit property in favor of the 1st and 2nd Defendants, which constitutes the fraud, then it behooved the original Plaintiff and by extension the current Plaintiffs to file and or commence any intended proceedings within three years of the accrual of the cause of action.



56. Other than the foregoing, the 1st and 2nd Defendants have also exhibited a letter dated the 6th February 2017, which was authored by the deceased Plaintiff. Vide the letter under reference, the Deceased Plaintiff stated inter-alia as hereunder:

“In the process of waiting for the title deed from Embakasi Ranching Company, I found out that the same property had been grabbed and a title issued in the name of a third party. We further realized that in the year 2000, Embakasi Ranching Company erroneously re-allocated the same plot to Mrs. Terry Muthoni who letter processed a title deed for Block Number 105/1617 (Original Plot 1/127) and sold the same to Mrs. Agnes Wangui Nguni in the year 2001.

57. From the Letter under reference, it is apparent and discernable that the original Plaintiff became aware of the erroneous re-allocation of the suit property to Mrs. Terry Muthoni in the year 2000 and by extension the sale of the suit property to the 1st Defendant in the year 2001.

58. Yet again, it is evident that the incidents of fraud, which is complained against by the Plaintiffs herein was indeed known to the original Plaintiff, now Deceased, as at the year 2001.

59. To the extent that the impugned actions and/or omissions, were known to the original Plaintiff, as at the year 2001, the original Plaintiff was obligated to file, mount and or commence the subject suit, premised and/or founded on fraud within three years.

60. In this regard, it suffices to take cognizance of the provisions of Section 4(2) of the [Limitation of Actions Act](#), Chapter 22 Laws of Kenya, which provides as hereunder;



4.	<p>Actions of contract and tort and certain other actions</p> <p>(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued —</p> <p>(a) actions founded on contract;</p> <p>(b) actions to enforce a recognizance;</p> <p>(c) actions to enforce an award;</p>
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(actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by



		any other written law.
(a)	actions founded on contract;	
(b)	actions to enforce a recognizance;	
(c)	actions to enforce an award;	
(d)	actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;	
(e)	actions, including actions claiming	



	equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
(2)	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



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(1)	<p>The following actions may not be brought after the end of six years from the date on which the cause of action accrued—</p> <table border="1"> <tr> <td data-bbox="555 1211 635 1402">(a)</td> <td data-bbox="635 1211 836 1402">actions founded on contract;</td> </tr> <tr> <td data-bbox="555 1402 635 1626">(b)</td> <td data-bbox="635 1402 836 1626">actions to enforce a recognizance;</td> </tr> <tr> <td data-bbox="555 1626 635 1883">(c)</td> <td data-bbox="635 1626 836 1883">actions to enforce an award;</td> </tr> <tr> <td data-bbox="555 1883 635 1975">(d)</td> <td data-bbox="635 1883 836 1975">actions to</td> </tr> </table>	(a)	actions founded on contract;	(b)	actions to enforce a recognizance;	(c)	actions to enforce an award;	(d)	actions to
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	<p>recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;</p>
(e)	<p>actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.</p>
(a)	actions founded on contract;
(b)	actions to enforce a recognizance;



(c)	actions to enforce an award;
(d)	actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
(e)	actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
(2)	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.

61. At any rate, what was important to facilitate the commencement and/or filing of the requisite proceedings was the discovery of the erroneous re-allocation, transfer and registration of the suit property. Consequently, the moment the original Plaintiff discovered the error, which premises the Fraud, same ought to have precipitated the subject suit.
62. To buttress the foregoing observation, it is appropriate to restate and endorse the holding of the Court of Appeal vide the case of *Javed Iqbal Abdul Rahman And Another vs Bernard Alfred Wekesa Sambu And Another*, Civil appeal No.11 of 2001 at Nairobi, where the Court stated as hereunder;
- “The Plaintiff’s claim against the Defendants was based on the tort of fraud. The court held that the suit should have been filed within three years from the time when the plaintiffs realized that the suit land had been sold and transferred in a manner which they thought was fraudulent”.
63. As concerns computation of time, it is worthy to note that time runs from the discovery of the act complained of and in this case, tabulation of time would be reckoned from when the original Plaintiff became aware of the re-allocation, transfer and registration of the suit property in favor of the adverse Parties.



64. To vindicate the foregoing, it is sufficient to adopt and quote the holding in the case of *Edward Moonge Lengusuranga v James Lenaiyara & Another* (2019)eKLR, where the Court stated as hereunder;

42. If we decide to tabulate the limitation time from the period when the 1st Defendant was put into possession of the suit land, to when the suit was filed, the time sums up to nineteen years. On the other hand if we tabulate the limitation from the time the suit land changed title, we would be looking at 14 years, either way the Plaintiff's case would be statutorily time barred.

65. In my considered view, if the Plaintiffs claim is premised and/or anchored on fraud, whose particulars were subsequently impleaded vide the Further Amended Plaint, then it was obligatory upon the Plaintiffs and their predecessors, to have filed the subject suit within 3 years w.e.f 2001.

66. Consequently, I come to the conclusion that by the time the original Plaint dated the 3rd February 2016 was filed, the suit founded on fraud, was statute barred and therefore same was rendered redundant.

Issue Number 2:

Whether the suit herein is for Recovery of vacant possession and if so, whether same is barred vide Section vide Section 7 of the Limitation of Actions Act.

67. Other than the fact that the suit herein was premised and/or anchored on Fraud, there is also a flip side of the suit, which touches on and/or concerns Recovery of immovable property, namely, the suit property.

68. To the extent that the subject suit also touches on Recovery of vacant possession, it is also imperative to consider and/or ascertain whether the subject suit was filed within the stipulated duration.

69. Before venturing to deal with and/or answer the second question herein, it appropriate, to take cognizance of the provisions of Section 7 of the Limitation of Actions Act, Chapter 22 Laws of Kenya, which provides as hereunder;

7.	Actions to recover land An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
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70. From the foregoing provisions, it is discernable that any person seeking to recover vacant possession in respect of land, is obliged to file and/or commence the intended proceedings within 12 years from the accrual of the cause of action and/or acts complained off.

71. In respect of the subject matter, the 1st and 2nd Defendants have contended that same bought and/or purchased the suit property from one Terry Muthoni Gachoka vide Sale Agreement dated the 18th June 2001.

72. On the other hand, the 1st and 2nd Defendants have proceeded to and stated that subsequent to the purchase, acquisition, transfer and ultimate registration of the suit property in their names, same entered upon and took possession of the suit property on even date, that is, 18th June 2001.



73. Notwithstanding the foregoing, it has also been stated that the suit property was transferred and registered in their names on the 13th November 2001 and thereafter a Certificate of title was duly issued.
74. Regardless of whether time is computed from the 18th June 2001, when the suit property was sold to the 1st and 2nd Defendants or on the 13th November 2001, when same was transferred and registered in their names, the 12-year period for filing a suit for Recovery of land stood extinguished on or about the 12th November 2013.
75. Consequently, if the original Plaintiff was keen and or desirous to commence the suit for Recovery of the suit Property, which same believed to have been lawfully his, same ought to have filed the suit within the stipulated duration.
76. Nevertheless, it is evident that the subject suit was never filed and/or lodged until the 3rd February 2016, by which time the statutory duration stipulated vide Section 7 of the *Limitation of Actions Act*, had lapsed and or expired.
77. In the premises, it is my finding and conclusion that even if the primary cause of action was for Recovery of land, same was yet again extinguished upon the lapse of the 12-year period, provided for and/or underlined by the law.
78. Essentially, the Plaintiffs claim pertaining to and or concerning ownership and recovery of vacant possession of the suit property ceased to exist, long before the filing and/or commencement of the subject suit.
79. To my mind, limitation of action has the import and effect of negating and/or extinguishing a cause of action and thereafter the claimant becomes divested of the right to approach a court of law, for purposes of enforcing a cause of action, that has otherwise been rendered sterile and or extinct by operation of law.
80. Simply put, where a cause of action is barred by virtue of the Limitation of Actions, the claimant becomes permanently non-suited and hence divested of the requisite capacity to sue and/ or approach the Court for enforcement of (sic) the Extinguished Claim.
81. To underscore the import, tenor and significance of Limitation of Actions, it is sufficient to refer to the holding of the Court in the case of *Moffat Muriithi Muchai (suing on behalf of the Estate of the Late Milka Njoki Muchai (Deceased)) v Wanjiru Wanjohi Gatundu & 2 others* [2019] eKLR, where the court stated as hereunder;
34. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the Plaintiff's mother having bought the suit land in the 1990's and thereby claiming ownership in the same, he could seek to recover it from the 1st Defendant, but only if he did so within twelve years from the date on which the right of action accrued to him.
35. There is no doubt that a period of about sixteen years have lapsed from the date on which the right of action accrued to the date when this suit was filed. No leave for extension of time to file the suit outside the twelve-year period has been exhibited before this court. The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. It follows therefore that by the time he filed this suit, the claim was statute barred.



82. In a nutshell, the Plaintiffs claim anchored on recovery of vacant possession, as pertains to and concerns the suit property, similarly stood extinguished, prior to the commencement of the suit.

Final Disposition:

83. Having duly considered, evaluated and analyzed the pertinent issues underlining the subject matter, as well as the applicable law, it must have become obvious and/or apparent that the subject suit was/is barred by dint of Section 4(2) and 7 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.

84. Consequently, I come to the inescapable and irresistible conclusion that the Plaintiffs' suit is not only misconceived and Bad in Law, but statute barred by dint of the Limitations of Actions Act, Chapter 22, Laws of Kenya.

85. In the premises, the orders that commend themselves to me are as hereunder;

- i. The Notice of Motion Application dated the 17th March 2022 be and is hereby allowed.
- ii. The Plaintiffs' suit vide (sic) Amended Amended Plaint dated the 30th December 2021 be and is hereby struck out.
- iii. To the 1st and 2nd Defendants be and are hereby awarded cost of the suit and the Application.
- iv. The 3rd Defendant shall however be entitled to cost of the suit only.

86. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2022.

HON. JUSTICE OGUTTU MBOYA,

JUDGE,

In the Presence of;

Joan Court Assistant

Mrs. Wanyoike h/b for Mrs Ndungu for the Plaintiffs/Respondents

Mr. Owang for the 1st and 2nd Defendants/Applicants

Mr. Ngata Kamau for the 3rd Defendant

