



Kimuge v Mumberes Estate Committee Limited (Environment and Land Case Civil Suit 362 of 2017) [2022] KEELC 2895 (KLR) (14 July 2022) (Judgment)

Neutral citation: [2022] KEELC 2895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE CIVIL SUIT 362 OF 2017**

LA OMOLLO, J

JULY 14, 2022

BETWEEN

CHEBET ARAP KIMUGE PLAINTIFF

AND

MUMBERES ESTATE COMMITTEE LIMITED DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff instituted this suit by way of a plaint dated 27th September, 2017. He avers that he is the lawful owner of 20 acres of land parcel known as Mumberes Parcel No. B/N 652.
2. The Plaintiff has gone to great lengths to set out his claim. The plaint runs to 29 paragraphs and this introduction contains a summary of it.
3. It is his averment that he acquired the 20 acres under two separate transaction. The first 10 acres were purchased by him directly from the Defendant and the other 10 acres he purchased from one Richard Toroitich.
4. He avers that his claim is to have the Defendant evicted from his parcel of land and an order of injunction restraining them from entering, remaining, dealing or interfering with the suit land.
5. The Plaintiff prays for judgement against the Defendant for:
 - a) An eviction order be issued to remove the Defendant by itself, its agents and servants from the Plaintiff's parcel of land known as Mumberes Parcel No. B/N 652 measuring 20 acres.
 - b) A declaration that the Plaintiff herein is the legal owner and is entitled to Mumberes Parcel No. B/N 652B measuring 20 acres.



- c) A permanent order of injunction restraining the Defendant by itself, its agents, its servants and all other persons acting under it from entering, remaining or dealing with or in any way interfering with the Plaintiff's parcel of land known as Mumberes Parcel No.B/N 652 measuring 20 acres.
 - d) Costs of this suit be borne by the Defendant.
6. The Defendant filed its Amended Statement of Defence amended on 21st November, 2019 where it averred without prejudice that the Plaintiff is a land grabber and vexatious litigant whose interest is to reap where he has not sown.
 7. It also states that the Plaintiff's suit is time barred and that the Defendant shall raise a preliminary objection at the earliest opportune time to have the suit struck out and/or dismissed for having been filed out of time and without leave of the court.
 8. The Defendant denied all other allegations in the Plaintiff.

Plaintiffs Evidence.

9. At the hearing, Musa Chebet Kimuge testified as PW1. He produced his witness statement dated 27th September, 2017 which the court adopted as part of his evidence. He also produced a list of documents dated 27th September, 2017 which the court adopted as part of his evidence. The documents were produced in the following order:-
 - 1) Receipt dated 21/12/1976 Exhibit P1
 - 2) Receipt dated 21/7/1974 Exhibit P2
 - 3) Receipt dated 27/12/1976 Exhibit P3
 - 4) Receipt dated 28/3/1981 Exhibit P4
 - 5) Minutes of 18/2/2015 Exhibit P5
 - 6) Minutes of 4/8/2015 Exhibit P6
 - 7) Minutes of 10/2/2016 Exhibit P7
 - 8) Letter dated 5/2/2015 Exhibit P8
 - 9) Letter dated 13/2/2015 Exhibit P9
 - 10) Letter dated 4/8/2015 Exhibit P10
 - 11) Letter dated 17/2/2016 Exhibit P11
 - 12) Letter dated 22/3/2016 Exhibit P12
 - 13) Letter dated 1/4/2016 Exhibit P13
 - 14) Letter from NLC dated 7/10/2016 Exhibit P14
10. PW1 testified that he is the owner of land parcel B/N 652. He explained that he bought 10 acres from one Richard Toroitich while the other 10 acres he bought from Mumberes Estate Committee Limited.



11. He states that that in 1990, he attended a meeting convened by the Defendant. He stated that the meeting which was for subdivision of land and when he got to the meeting, the chairman of the Defendant one, Joseph Sambu took his receipts.
12. PW1 went on to testify that he was then arrested and put in a land rover and informed that the said receipts were forged. It was his evidence that he was in custody for 3 days after which he was released and ordered to go back after 8 days.
13. It his testimony that that after he was released, he went to look for Richard Toroitich, the person who sold him the land and took him to the police station. At the station, it was his evidence that Richard Toroitich confirmed that he sold the land to the Plaintiff.
14. He further testified that on 25th August, 2015 they had a meeting at the District Commissioner's office Kabarnet where the Plaintiff showed him the receipt and the District Commissioner directed that he would be given the land.
15. It was further his evidence that the said meeting revealed that the Plaintiff's name was on the master roll but it had been cancelled and replaced with that of Kiprono Chemogisich and that the cancellation was in respect of the 20 acres.
16. It was his testimony that the records show that Samson Kipsang sold the land to Richard Toroitich (deceased) who sold it to Kiprono Chemogisich. It was also his evidence that the family of Kiprono was called to the meeting and they indicated that the land which the Plaintiff bought was 60 acres and they didn't know about land parcel B/N 652.
17. It was further his testimony that the District Commissioner decided that the Plaintiff be given B/N 855 belonging to "Kiprono Sigei" after he did his investigations and established that Kiprono Sigei was a non-existent member. PW1 testified that the District Commissioner called the Defendant for a meeting so that the Plaintiff could be allocated the 855 but the Defendant did not show up.
18. It was also the Plaintiff's evidence that he was not given land parcel No. B/N 652 nor 855.
19. He concluded his oral testimony by praying that the court orders that land parcel No. B/N 652 be returned to him.
20. In his witness statement dated 27th September, 2017 and filed on 28th September, 2017 the Plaintiff also states that on 17th February, 2016 the District Commissioner wrote a letter to the chairman of the Defendant's company directing that should "Mr. Kiprono Sigei" not produce himself after a public Notice is done, then B/N 855 should be registered in the Plaintiff's name.
21. PW1 states that the 30 days' Notice lapsed and he did not receive any communication from the Defendant's chairman bearing in mind that there had been no objection to the Notice.
22. In his written statement PW1 states that the District Commissioner directed the Defendant to record minutes confirming that the Plaintiff's name had been inserted to indicate that he was the new owner of B/N 855 and the Defendant responded via a letter dated 22nd March, 2016 denying availability of a vacant share/entity No. B/N 855.
23. The Plaintiff in his statement states that he has been to the District Commissioner's office and the National Land Commission and has therefore exhausted all avenues in an attempt to have the matter resolved.
24. On cross examination, PW1 confirmed that he bought shares worth 10 acres from Toroitich and the other 10 acres from the Defendant company to which he was a member.



25. He admitted that when he bought the land from Toroitch, he was never shown its location. PW1 was referred to Exhibit P3 where he confirmed that his name had been cancelled and replaced with another adding that the CID confirmed that the receipt was valid.
26. He testified that the persons who prepared the alleged fake receipts were Edward Kiptanui and Job Kitilit.
27. He admitted that he didn't know that Mumberes Estate Committee Limited and Mumberes Estate Limited are two different companies.
28. On re-examination he confirmed that he is a member of Mumberes Estate Limited and he had bought the land from one Richard Toroitch.
29. Job Kimetto Kitilit testified as PW2. He adopted his witness statement dated 27th September, 2017 as part of his evidence.
30. He testified that he is 90 years old and that he knows the Plaintiff and Richard Toroitch as members of Mumberes Estate Limited. He added that he was a manager of the Defendant between 1960 and 1985.
31. He stated that he was present when Richard Toroitch sold land to the plaintiff. He explained that Richard Toroitch was the first purchaser and he bought the land for Kshs. 3000 and that he subsequently sold it to the plaintiff for Kshs. 10,000.
32. He testified that as a manager, his duties were to supervise the people cultivating land and how they were living as well as receive monies and issue receipts to persons who bought land.
33. It was his testimony that he witnessed Richard Toroitch sell land parcel No. B/N 652 to the Plaintiff which sale was recorded in a book. It was his evidence that the parcel of land No. B/N 652 belongs to the Plaintiff.
34. In his witness statement dated 27th September, 2017 and filed on 28th September, 2017 he states that the deceased Richard Toroitch brought the Plaintiff to his office in 1976 and the purpose of the visit was to sell his shares.
35. He states that after the transaction, he personally rectified the main register which comprised of over 1200 members. He explained that Richard Toroitch was member number B/N 652 in the main Register.
36. He states that Mumberes Estate was divided into 6 blocks and Richard Toroitch was in block 6 and owner 10 acres which is equivalent to 1 share.
37. In his statement he states that after witnessing the transaction he deleted the name of Richard Toroitch from the main register and replaced it with the name of the Plaintiff.
38. He states that he also rectified the main original receipt of kshs. 3000 issued on 2nd July, 1974 by deleting the name of Richard Toroitch and replacing it with the name of the Plaintiff-Chebet Arap Kimunge and countersigned on the face of the receipt. He stated that the fact of deletion and name replacement and counter signing was done on 21st December, 1976.
39. Pw2 in his statement stated that he retired from the Defendant in 1983 and went back to teaching.
40. Pw2 in his statement explains that the Plaintiff did not fraudulently impose himself as a member of the Defendant. He states that the CID took the Plaintiff's original receipt and have never returned them to the Plaintiff.



41. PW2 in his written states that the Plaintiff owns a total of 20 acres being 2 shares comprised in block 6 of Mumberes Estates. He reiterates that the Plaintiff is a genuine member and shareholder.
42. On cross examination he confirmed that his duties entailed issuing receipts for purchase of shares and that the Plaintiff bought the land from Richard for Kshs. 10,000. He also confirmed that he did not know that the suit land was previously amalgamated.
43. He was referred to Exhibit P2 where he testified that the first purchaser bought the land for Kshs. 3,000 and that he did not have receipts for Kshs. 10,000 because when the Plaintiff and Richard paid each other, he only got Kshs. 3,000.
44. He also testified that the Kshs. 3,000 was for 10 acres of land and after receiving Kshs. 3,000, he changed the shares to the Plaintiff's name.
45. He testified that the he is not aware of the receipts taken by the CID and added that he did not know the acreage of B/N 652 as survey was not done.
46. He further testified that he only knows of 10 acres bought from Toroitich and that the rest of the information would be in the receipt or members register which he didn't have.
47. On re-examination, he testified that 1 share is equivalent to 10 acres.
48. He stated that the Plaintiff bought 10 acres from the Defendant and paid Kshs. 3,000 to Richard Toroitich.
49. He added that before this transaction, the plaintiff had no share with the defendant and that he never issued ant fake receipts during the time the he was manger.
50. Harun Chebet testified as PW3. He stated that he is 72 years old and prayed that his witness statement dated 27th September, 2017 be adopted as part of his evidence.
51. In his oral testimony he stated that he is a relative of the plaintiff and that he witnessed the transaction relating to parcel No. B/N 652. He stated that the Plaintiff and Toroitich met him and requested that they go to Mumberes Limited.
52. He further testified that they met with the chairman Mr. Kitilit and Toroitich informed Mr. Kitilit that he wanted to sell his shares to the Plaintiff being 10 acres for Kshs. 3,000.
53. It was his evidence that he was the only witness to the transaction and that Toroitich gave the receipt to Kitilit while the Plaintiff gave the money to Toroitich.
54. It was also his evidence that Kitilit took the receipt, cancelled the name of Toroitich and replaced it with that of the Plaintiff.
55. He testified that the sale between the Plaintiff and Richard Toroitich was proper and legal.
56. On cross examination he confirmed that the Plaintiff was his blood brother and further confirmed that he witnessed the sale adding that it was for 10 acres.
57. He confirmed that he was the only witness to the sale agreement.
58. He also confirmed that Kitilit was the manager and that he witnessed the transaction and cancelled the receipt after which the Plaintiff's name was put in the master roll.
59. Edward Kiptanui testified as PW4. He adopted his witness statement dated 11th May, 2018 as his evidence.



60. In his oral testimony, he stated that he is 87 years old and lives in Rongai.
61. He testified that he knew the Plaintiff as a farmer at Mumberes Estate adding that he (pw4) was the chairman at Mumberes Estate from 1968-1988.
62. He explained that as chairman, his duties entailed calling meetings, ensuring loans were paid and ensured smooth running of the farm.
63. It was his evidence that Mr. Kitilit was the Manager and that they took a loan of Kshs. 2,000,000 from bank of Baroda to buy Mumberes Estate which was formally Equator Estates.
64. It was also his evidence that they repaid the loan and the farm was later subdivided after he left his position as chairman in 1988.
65. He testified that the Plaintiff is a member of Mumberes Estate.
66. On cross-examination, he confirmed that he was chairman of Mumberes Estate Limited. He testified that he was among the directors and that he could not remember the other directors.
67. He further testified that Mumberes Estate Committee Limited was formed after he left office. He also testified that the two are related as the latter was formed from processing milk produce and farm inputs.
68. On re-examination, he testified that he was the chairman of Mumberes Estate Limited which later changed but had a relationship with the first company.
69. This marked the close of the Plaintiffs case.

Defendant's Case.

70. Joseph Sambu hereinafter referred to as DW1 testified as one of the witnesses for the Defendant.
71. He testified that he is a farmer and does not know Mumberes Estate Committee Limited.
72. It was his testimony that he has 2 shares equivalent to 20 acres at Mumberes Estate Limited.
73. It was also his testimony that he has never been an official at Mumberes Estate Committee and does not know what the Defendant Company is all about.
74. He testified that he does not know the Plaintiff and has never entered into any transaction with him.
75. On cross examination he confirmed that he does not know the Defendant nor the Plaintiff herein.
76. He admitted that he did not take receipts from the Plaintiff.
77. He admitted further that he has shares and now a parcel of land he got from Mumberes Farm in 1973.
78. He also admitted that they bought shares from directors at Mumberes Farm who then left after the sale.
79. He further admitted that in 1990s surveyors came to the farm.
80. He stated that he got summons to attend court and that was his reason for attending court. He stated that he does not know the Defendant.
81. David Tanui testified as DW2. He testified that he does not know the Defendant or how it runs its business.
82. He testified that he is not an official of the Defendant but a member.



83. He further testified that the chairman of the Defendant Company is Kiptanui while the secretary is Kitilit. It was his evidence that he never had any transaction with the Plaintiff.
84. On cross-examination, he testified that there are many members at Mumberes and admitted that he saw the Plaintiff once when he was brought by the District Commissioner to the Chief's office.
85. He testified that he bought 10 acres in 1970 and that he knew Mr. Kitilit in the year 1970. He further testified that he is not aware of this case or that the Plaintiff bought shares from Toroitich.
86. He confirmed that he is not an official but only has shares.
87. DW2 testified that Mumberes was initially a company and that in 1982 converted to a Co-operative Society.
88. He testified that he is not aware of the contents of his statement. He was then referred to his witness statement which he confirmed that it had his signature.
89. He further confirmed that he does not know the Plaintiff or whether he bought the land or made any payments to the directors.
90. On re-examination he testified that the Defendant Company ceased to exist in 1982 and that the chief had called them as elders to hear the Plaintiff's complaints.
91. He further testified that the chairman was Edward Tanui and Kitilit was the secretary.
92. The Defendant closed its case.
93. Parties were directed to file and exchange their written submissions.

Plaintiff's Submissions.

94. The Plaintiffs in their submissions identified the following issues for determination:
 - a. Whether the Plaintiff is a bona fide purchaser for value without notice.
 - b. Whether the Plaintiff acquired valid title to Mumberes Parcel No. B/N 652 measuring 20 acres
95. On the first issue, the Plaintiff relied on the case of *Falcon Global Logistics Co. Limited Vs Management Committee of Eldama Ravine Boarding Primary School* [2018] eKLR and submitted that the Plaintiff is a bona fide purchaser for value without notice and that the Defendant only seeks to deny him his lawfully acquired rights to the suit property.
96. He submits that they have attached documents that show that the plaintiff bought 10 acres directly from the company and another 10 from Richard Toroitich.
97. The Plaintiff places a lot of importance in the receipts produced in evidence.
98. The Plaintiff also submits on the illegal and unlawful cancellation of the Plaintiff's name in the master roll and also submits on the series of meetings that the Plaintiff had with the Defendant.
99. On the second issue, the Plaintiff relied on Section 26 of the *Land Registration Act* which states that a certificate of title is to be held as conclusive proof of ownership.
100. The Plaintiff also makes reference to section 24 of the *Land Registration Act* which speaks to the interest conferred by registration.



101. On this second question, the Plaintiff has referred to the decision in *Wreck Motor Enterprises v Commissioner of Lands & 3 Others* [1997] eKLR. The relevance of this decision, according to the Plaintiff, is that the plaint does not disclose any fraud on his part and therefore he is a Bonafede purchaser for value without notice. He submits that his title is therefore supreme.
102. The Plaintiff further submit that he has discharged his burden of proof as is required of him under section 107(1) of the *Evidence Act*.

Defendant's Submissions.

103. The Defendant in his submissions gave the background of the matter, a summary of the Plaintiffs and Defendant's case and identified the following issues for determination:
- a. Whether the Plaintiff is the owner of 20 acres of land.
 - b. Whether the Plaintiff was a member of Mumberes Estate Limited.
 - c. Whether Mumberes Estate Limited and Mumberes Estate Committee Limited are separate entities.
 - d. Whether the suit is statute barred.
 - e. Whether the Defendants are liable.
104. On the first and second issue, the Defendant submits that the Plaintiff attempted to acquire the said land illegally and unprocedurally.
105. The defence submits that the Plaintiff failed to show receipts or proof of membership of the company.
106. The defence quotes section 24, 26 of the *land Registration Act*. According to it, the Plaintiff was issued with fake receipts by Job Kitilit, who was the manager between 1969-1982. They submit that the Plaintiff attempted to acquire the suit parcel fraudulently, illegally and through a corrupt scheme. In support of this, they make reference to the decision in *Elijah Makeri Nyagw'ra Vs Stephen Mungai Njuguna & Another* 2013 eKLR.
107. On whether the Plaintiff was a member of Mumberes Estate Limited the Defendant submitted that there was no evidence presented to show that the Plaintiff was a member of Mumberes Estate Limited. The Defendant submits that the Plaintiff has not produced a share certificate or a master roll.
108. On whether the suit is statute barred the Defendant relied on Section 7 of the *Limitation of Actions Act* and submitted that the same is time barred since the Plaintiff was indolent until the limitation period passed and only became vigilant in 2017.
109. The Defendant submits that an action for recovery of land may not be brought after the lapse of 12 years from the date the right of action accrued to the Plaintiff. The Defendant states that the Plaintiff bought land in 1976 and only woke up in the year 2017 to file the suit.
110. The Defendant refers to the decisions in *Mehta v Shah* [1965] EA 321, *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104 and *Iga Vs Makerere university* [1972]
111. On whether Mumberes Estate Limited and Mumberes Estate Committee Limited are different entities the Defendant submits that Mumberes Estate Company Limited existed before as a land buying company before "it went under". It submits that Mumberes Estate Company was involved in the selling and allocation of titles in respect of Mumberes Farm adding that it is the Directors and officials of the said company who were dealing in the business of buying and selling land.



112. The Defendant submits that Mumberes estate Committee Limited has not been registered and it is an informal entity whose object is to deal with farm produce and was formed by members.
113. The defence submits that the witnesses who were summoned to attend court were not involved in any transactions relating to Land. They submit that PW2 and PW4 should be made liable- as they were the officials of Mumberes Estate Limited.
114. On whether the Defendant is liable the Defendant relied on the Court of Appeal case of *Amin Akberali Manji & 2 Others v Altaf Abdulrasul Dadani & Another* [2015]. In this case, the judges of Appeal cited the decision of Foss v Harbottle in which it was decided that the proper Plaintiff in any proceedings or action in respect of wrong done to the company is the company itself.
115. The defence submitted that Mumberes Committee Limited is not a land buying company and was never involved in the transactions that the Plaintiff made in 1976 in relation to the suit property.

Analysis and Determination

116. I have perused the pleadings in this matter, heard witnesses testify, read submissions and judicial decisions cited. I have also perused all the documents produced as evidence in this suit and all documents forming part of the court record and have taken them into consideration in making my determination.
117. It is my considered view that the issues for determination are:
 - a. Whether this suit is time barred.
 - b. Whether the Defendant is a legal person capable of suing and being sued.
 - c. Whether a declaration should issue that the Plaintiff herein is the legal owner and is entitled to Mumberes Parcel No. B/N 652B
 - d. Whether an eviction order should issue against the Defendant by itself, its agents and servants from the Plaintiff's parcel of land known as Mumberes Parcel No. B/N 652.
 - e. Who should bear the cost of the suit and interest thereon?
 1. I will address the first issue which is a question of law. Should I find in the affirmative, it shall not be necessary to determine the remaining questions.
119. Limitation of action is a jurisdictional issue. This means that the power of courts to hear matters is either provided for in statute or in the constitution. If a party claims that a matter is statute barred, I am of the view that this should first be determined before the court proceeds further.
120. This was held in *South Nyanza Sugar Co. Ltd v Dickson Aoro Owuor* [2017] eKLR. The learned Judge specifically stated as follows;

“Limitation of action when correctly raised goes beyond being a mere technicality and hinges on the jurisdiction of the Court since a Court can only deal with what either the Constitution or the statutes has given it to so handle. Once such an issue is raised a court must deal with it before proceeding further.”

A. Whether this suit is time barred.

121. The preliminary objection was not dealt, as is the norm, before the hearing of the suit. The Defendants seem to have chosen to deal with it at the submission age.



122. The Plaintiff has not addressed it and it therefore does not form part of his submissions.
123. It is regrettable that this court has to deal with the preliminary objection after the conclusion of a trial especially considering that a bar of limitation touches on jurisdiction.
124. The decision in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 offers useful insights on what comprises of a preliminary objection. It is stated as follows;

“So far as I am aware, 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 may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

125. The Defendant in its amended statement of defence at paragraph 14 states that the suit is time barred and that it shall at the earliest opportunity raise a preliminary objection to have the struck out and/or dismissed for having been filed out of time without leave of the court and that this is in contravention of the provisions of Section 7 of the *Limitation of Actions Act*, CAP 22, Laws of Kenya.

126. Section 7 of the Limitation of Action Act provides as follows;

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.

127. The plaint, at paragraph 5, discloses that the cause of action arose in 1990. The Plaintiff explains that the Defendant was undertaking survey and sub-division and when he presented certain receipts for verification, the officials of the Defendant confiscated them alleging that they were fake and/or forged.
128. Subsequent to confiscation of receipts, criminal investigation, arrests and clearance of the Plaintiff of any criminal activity, the Plaintiff at paragraph 15, 16 and 17 of his Plaint avers that he was financially strained and did not peruse the matter of the suit land till the year 2014. He avers that in the year 2014 he visited the office of the Land registrar Eldama Ravine and did not find his name in the register. This was already 24 years.
129. The present suit was filed in 2017; 27 years after the cause of action arose.
130. In *Dickson Ngige Ngugi v Consolidated Bank Ltd (Formerly Jimba Credit Corporation Limited & another* [2020] eKLR, the learned Judge cited with approval the decision in *Gathoni v Kenya co-operative Creameries Ltd* [1982] KLR 104 wherein Potter, JA stated the rationale of the Law of Limitation as follows: -

“The law of limitation of actions is intended to protect Defendants against unreasonable delay in bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

131. The learned Judge in *Rawal v Rawal* [1990] KLR 275 cited with approval the holding in *Melita Vs Shab* (1965) EA 321 Wherein it was held as follows;

“The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand and on the other hand protect a Defendant after he had lost evidence for his defence from being disturbed after a long lapse of time.” (emphasis is mine)



132. In the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR, the Learned Judges of Appeal explain the reason for limitation of time for land claims. They state as follows:

Limitation of time for land claims as with claims of any other nature exist for three main reasons which are:

- i. A Plaintiff with a good cause of action ought to pursue it with reasonable diligence (equity does not aid the indolent);
- ii. A Defendant might have lost evidence over time to disprove a stale claim; and
- iii. Long dormant claims have more cruelty than justice in them (Halsbury's Laws of England, 4th Edition.)

B. Who should bear the costs of the suit?

133. Having found that the suit is time barred, the next question for determination is costs.

134. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21).

135. In the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* SC. Petition No. 4 of 2012: [2014] eKLR. The Supreme Court held that costs follow the event and that the Court has the discretion in awarding such costs.

Disposition.

136. In the final analysis, I uphold the preliminary objection.

137. I find that this suit is statute barred and I strike it out with no order as to costs.

138. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF JULY, 2022.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Kariuki for the Plaintiff.

Mr. Nyagaka for the Defendant.

Court Assistant; Ms. Jeniffer Chepkorir

