



**Sankok v Sananka & 4 others (Environment & Land Case E002 of 2022)
[2022] KEELC 13404 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13404 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E002 OF 2022
CG MBOGO, J
SEPTEMBER 22, 2022**

BETWEEN

KAPOLONTO OLE SANKOK PLAINTIFF

AND

NAINGEEJ OLE SANANKA 1ST DEFENDANT

MERITEI OLE LANKE 2ND DEFENDANT

**METUI OLE NKURUNA (SUED AS THE OFFICIALS OF NKAIRAMRAM
GROUP RANCH) 3RD DEFENDANT**

MARY NAITU LOLCHOKI 4TH DEFENDANT

DISTRICT LAND REGISTRAR 5TH DEFENDANT

RULING

1. Before this court for determination is a notice of motion application dated 15th March, 2022 and two notice of preliminary objections 11th April, 2022 and 8th June, 2022 respectively.
2. The notice of motion dated 15th March, 2022 is expressed to be brought under Sections 3A and 6E of the Civil Procedure Act and Order 51 of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That pending hearing and determination of this suit, this honourable court be pleased to issue a permanent order of injunction restraining the 4th defendant, her agents, personal representatives, servants, assigns or anyone acting under her instruction from trespassing upon, remaining upon, selling, developing, alienating, leasing in any other manner dealing with all that parcel of land known as Cis Mara/Oleleshwa/276.



4. That pending hearing and determination of this suit, this honourable court be pleased to restrain the 5th defendant from registering any instruments of transfer, lease or otherwise and or forbid any dealings or further registration of entries over all that parcel of land known as Cis Mara/Oleleshwa/276.
5. That costs be borne by the defendants.
3. The application is premised on the grounds on the face of it and more particularly in the supporting affidavit of the applicant sworn on 23rd March, 2022. The applicant deposed that he is a bonafide member of Nkairamram Group Ranch and that upon demarcation he was allotted plot number 276 and that further he has been presenting transfer forms to the officials of the group ranch to be signed so as to be registered as the proprietor but the officials have refused to sign the same.
4. The applicant further deposed that he was shocked to find a structure erected on his land which prompted him to carry out a search and realised that the 1st respondent had been registered as the proprietor and transferred the same to another person. Further, that there are no adjudication records that informed the 5th defendant to register and issue certificate of title to the 1st respondent thereby disinheriting him of his rightful share of the suit land. Further, that the 1st respondent in cohorts with the 2nd, 3rd and 5th respondents fraudulently registered and obtained title deed for the suit land and sold the same to a third party with the aim of defeating justice. Also, that the 1st respondent is a land grabber who has a habit of defrauding innocent citizens of their land and the 5th respondent being the custodian of all land records has been acting with impunity. The applicant further deposed that he learnt from a reliable source that the 4th respondent has found a new purchaser and is apprehensive that he stands to suffer irreparably if this court does not come to his aid.
5. The 4th respondent, in opposition to the application, filed a replying affidavit sworn on 11th April, 2022. The 4th respondent deposed that her deceased husband acquired the suit land in the year 2003 and took possession immediately. Prior to this, the suit land was registered in the name of three different proprietors and as such, her husband could not have been part of a fraudulent scheme. Further, that she is unable to verify the contents of paragraph 2 and 3 of the supporting affidavit as there is no document of ownership other than a list which is illegible.
6. The 4th respondent further deposed that her deceased husband occupied the suit land for over a period of 19 years and a claim for recovery of land must be brought within a period of 12 years and during this period her husband was not privy to any fraud. Further, even if the applicant's claim was valid, her late husband became the registered owner by way of adverse possession. Also, that the applicant has not established any right that is capable of being protected by issuing an injunction without violating her interest in land.
7. The 4th respondent filed a notice of preliminary objection dated 11th April, 2022 seeking the suit to be struck out on the grounds that: -
 - a) The suit is incompetent, bad in law and that the same should be struck out with costs to the respondents on account of limitation of actions.
 - b) The suit does not disclose any cause of action against the 4th defendant/respondent.
8. The 1st respondent filed a replying affidavit in opposition to the application sworn on 8th June, 2022. The 1st respondent deposed that the applicant and himself were bonafide members of the Nkairamram Group Ranch and that the applicant sold him his portion of land in the year 1997 and since the place was a forest then, he visited the plot together with the applicant and with the help of



- a Surveyor, the beacons were identified and thereafter, they entered into a Sale Agreement that was drafted by Wainaina-Advocate of Wainaina & Co. Advocates. The 1st respondent further deposed that he presented the Sale Agreement to the group officials and on 8th October, 1997, he was issued with a title deed. Further, he went on ahead and sold the suit land to another party and the process of buying and selling the suit land is legitimate and that is why the applicant has never raised any complaint to the group ranch officials or to the police since 1997 to date and the applicant cannot bring a claim to recover land 25 years down the line as he is statute barred.
9. The 2nd respondent filed a replying affidavit in opposition to the application sworn on 8th June, 2022. The 2nd respondent deposed that the applicant and the 1st respondent were bonafide members of Nkairamram Group Ranch and they gave every member 45 acres and a plot of land at the designated trading centres they had set then and they showed the applicant his portion of the plot which he immediately sold to the 1st respondent and since 1997 to date, the 2nd respondent has never filed any complaint either oral or written.
 10. The 1st, 2nd and 3rd respondents filed a notice of preliminary objection dated 8th June, 2022 challenging the suit on the following grounds: -
 1. That the plaint and accompanying documents violates the provisions of the Limitation of Actions Act Cap 22 Law of Kenya.
 2. That the suit is incompetent and bad in law and the same should be struck out with costs to the respondents.
 11. The applicant filed a further affidavit sworn on 22nd August, 2022. The applicant deposed that he has been guarding his property by fencing and grazing livestock until early this year when the 4th respondent forcefully entered and constructed a temporary structure therein and upon enquiry, she produced a copy of the title deed and that is when he realised that the suit land had been fraudulently transferred by the 1st respondent to the 4th respondent with the aid of the 5th respondent who kept the register under lock and key. The applicant further deposed that he erected a fence in the year 2000 with the help of his sons and that the 2nd 3rd defendants being officials of the group ranch refused to sign the transfer forms to facilitate registration of the suit land into his name.
 12. The applicant further deposed that the 4th respondent cannot obtain a better title than the seller as the title was fraudulently obtained and hence obtained a defective title. Further that the limitation period of 12 years starts running when the person discovers fraud which he discovered early in the year 2022 when the 4th respondent forcefully built a temporary structure. Also, that a claim for adverse possession cannot apply in this circumstance since the 4th respondent has not met the principles guiding adverse possession.
 13. The applicant further deposed that the 2nd and 3rd respondents in disregard of the members allocated themselves larger portions of the land and that they have also not provided evidence of a sale agreement between him and the 1st respondent.
 14. The applicant filed written submissions dated 22nd August, 2022. The applicant raised two issues for determination namely: -
 - a. Whether the plaintiff's claim is barred by the limitation of action.
 - b. Whether the preliminary objection is sustainable.
 15. On the first issue, the applicant submitted that he has strongly brought out in his pleadings that he discovered the fraud in July, 2021 when the 4th respondent erected temporary structures on the suit



- land and that Section 26 (c) of the [Limitation of Actions Act](#) supports the averments and provides for extension of limitation period in case of fraud or mistake. The applicant relied on the case of [Justus Tureti Obara v Peter Koipeitai](#) [2014] eKLR.
16. The applicant further submitted that the preliminary objection is not purely a point of law as it is based on disputed facts which require proof by way of adducing evidence. The applicant relied on the case of [Attorney General of the Republic of Kenya v Independent Medical Unit](#), East Africa Court of Justice in Appeal No. 1 of 2011 and [Nedim Mohamed Ibrahim v Abdulbasit Saleh Muhsin & Another](#) [2015] eKLR.
 17. The 1st, 2nd and 3rd respondents filed written submissions dated 18th July, 2022. The 1st, 2nd 3rd respondents raised two issues for determination as follows: -
 - I. Whether the plaintiff's suit is statutory barred by virtue of [Limitation of Actions Act](#).
 - II. Whether the plaintiff's suit discloses any reasonable cause of action against the 2nd and 3rd defendants.
 18. On the first issue, the 1st, 2nd and 3rd respondents submitted that the applicant's suit is fatally before the court as it contravenes the provisions of Section 7 of the Limitations of Actions Act and this court should safeguard its integrity and dismiss the applicant's suit. The 1st, 2nd and 3rd respondents submitted that no plausible explanation has been given to excuse the long delay in instituting the suit since entry of the 1st respondent as the registered proprietor of the suit land was made on 8th October, 1997. They placed reliance on the case of [Damaris Kondoro v Gachanja Gitare & Others](#) [2005] eKLR and [Beatrice Wambui Kiarie & 2 Others v Beatrice Wambui Kiarie & 9 Others](#) [2018] eKLR.
 19. The 4th respondent filed written submissions dated 22nd June, 2022. The 4th respondent raised two issues for determination: -
 - a) Whether the plaintiff's claim against the 4th defendant is barred by limitation of actions.
 - b) Whether the suit fails to disclose any cause of action against the 4th defendant.
 20. On the first issue, the 4th respondent submitted that paragraph 4 of the applicant witness statement implies that the applicant became aware of the 1st respondent acquisition of the title in 1997 and this fact not being contested has exceeded the 12-year period in the which the cause of action arose. The 4th respondent relied on the case of [Mildred Akoth Warrakah v Mwafumbiri Hamisi Mwatsami](#) [2020] eKLR and [Dickson Ngige Ngugi v Consolidated Bank Ltd \(formerly Jimba Credit Corporation Limited\) & Another](#) [2020] eKLR. The 4th respondent submitted that the suit was instituted in the year 2022, 24 years after the 1st respondent had the suit land registered in his name is proof that the claim is statute barred by Section 7 of the [Limitation of Actions Act](#). Even if the allegation of fraud was true, the same could have taken place in the year 1997 and against the 1st, 2nd, 3rd and 5th respondents. As such Section 26 of the [Limitation of Actions Act](#) cannot aid the applicant on extension of limitation period in case of fraud or mistake.
 21. On the second issue, the 4th respondent submitted that the plaint does not mention her as a participant of the fraud claimed and as such, there is no reasonable cause of action against her. The 4th respondent relied on the case of [Dickson Ngige Ngugi](#) (supra) and submitted that for the applicant to succeed with a claim against the 4th respondent, his pleadings must meet the conditions set out in Section 80 of the [Land Registration Act](#). Finally, that the applicant cannot escape the statute bar by being vague, whereas he has not annexed documents that identify when his interest was extinguished by registration.



22. I have carefully analysed and considered the application, the notice of preliminary objections and the written submissions filed and the issue for determination is whether the suit is time barred by Section 7 of the Limitations of Actions Act.

23. The threshold for preliminary objections is now well settled and there would be no reason to reinvent the wheel. Courts have held that a preliminary objection deals with purely points of law and where facts are not disputed. Where the court has to look outside the case for evidence to establish the facts presented, then this falls under a case where a full hearing has to be conducted to disprove certain facts. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, the court stated as follows: -

“So far as I’m 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.”

This was followed up by the judgment of Sir Charles Newbold in the same case:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”

24. In the case of *Lemitei Ole Koros & another v Attorney General & 3 others* [2016] eKLR, Munyao J. stated as follows:

‘Where facts are not contested, the court is able to make a determination of law on the preliminary objection, but where facts are in contest, then automatically, the issue falls out of the ambit of a preliminary objection. It would be improper for a court to make a contested determination of fact within a preliminary objection.’

25. Section 7 of the *Limitation of Actions 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.”

26. The purpose of the Law of Limitation was stated in the case of *Mehra v Shah* [1965] E.A 321, 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 has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”



27. In the case of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104 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.”

28. The question of limitation is a question that go to the jurisdiction of this Court. It is a clear point of law, which if argued as preliminary point may dispose of the suit. In the case of *Bosire Ongero v Royal Media services* [2015] eKLR, the Court stated that the question of limitation touches on the jurisdiction of the Court, which means that if a matter is statute barred, the Court would lack jurisdiction to entertain it. I, therefore, find and hold that the Preliminary Objection raised in the instant case is on a point of law, and the same is validly and properly taken.

29. In the instant case, the applicant averred that he was member of Nkairamram Group Ranch and upon being allotted the suit property, he presented transfer forms to the Group Ranch Officials who have refused to sign and therefore denied him ownership of the property. Further, that he constructed a fence on the suit property and has been grazing his livestock and was shocked to find a structure erected on the same which prompted him to carry out a search. The applicant has laid out claims which only remain as such. No evidence whatsoever has been placed before this court to prove this claims save for an illegible list of members of the group ranch. The applicant has annexed copies of search documents which indicate that the register for the suit property was first entered in the year 1997 and the 1st respondent was the registered owner.

30. Even if this court were to believe the applicant, what steps did he take to protect his interests. If at all the group ranch officials were uncooperative, why didn't he report the same to the relevant agencies. The 1st respondent on the other hand averred that upon purchase of the suit property from the applicant, they immediately presented the sale agreement to the group ranch officials who then issued a title deed to the 1st respondent. If this claim was false, then the applicant would have sought for redress and protection of his interests then. It is my humble view that indeed the cause of action arose in the year 1997 when the 1st respondent became the registered owner.

31. The applicant has not demonstrated the cause of action he has against the 4th respondent. The fact that the 4th respondent is the current holder of the title does not necessarily mean that there is a reasonable cause of action against her. The applicant has failed to prove so.

32. The applicant has claimed and submitted that the 1st, 2nd, 3rd and 5th respondents committed fraudulent acts depriving him of the suit property. The applicant therefore pleaded protection of Section 26 of the *Limitation of Actions Act* that allows extension of the limitation period where fraud is pleaded.

33. Section 26 of the *Limitation of Actions Act* provide 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) The right of action is concealed by the fraud of any such person as aforesaid; or



(c) The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”

34. The applicant has again failed in this test, he claims that he became aware of fraudulent acts sometime in the year 2021. Again, he does not state what steps he took to protect his interests. I find the claim unsubstantiated and therefore cannot hold.
35. Arising from the above, the notice of preliminary objections dated 11th April, 2022 and 8th June, 2022 are upheld. The notice of motion application dated 15th March, 2022 is hereby dismissed. The plaint dated 15th March, 2022 is hereby struck out. The order issued on 30th May, 2022 is hereby vacated. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAROK ON THIS 22ND DAY OF SEPTEMBER, 2022.

HON. C.G. MBOGO

JUDGE

22/9/2022

In the presence of: -

CA:Chuma

Mr Karia holding brief for Mrs Karia for the plaintiff

Mr Kariuki holding brief for Mr Odhiambo for the 4th defendant

Mr Masikonde for the 1st to 3rd defendants

