



REPUBLIC OF KENYA



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**Yegon v County Government of Kericho & 3 others (Environment & Land  
Case 45 of 2020) [2022] KEELC 4890 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4890 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 45 OF 2020  
MC OUNDO, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**WILSON MALAKWEN YEGON ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KERICHO ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**REGISTRAR OF TITLES ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Coming before me for determination is a Notice of Preliminary Objection dated the December 18, 2020 wherein the 1<sup>st</sup> Defendant has intimated that the Plaintiff's suit herein was statutory time barred and therefore unsustainable under the provisions of Sections 7 of the *Limitation of Actions Act*, the cause of action having been committed more than 12 years before the filing of the suit. That secondly, the suit was also fatally and incurable defective for want of a legal Plaintiff, the Plaintiff herein having brought suit on his behalf when the subject property namely LR No. Kericho/Kipchimchim/1068 is registered to a deceased person to whom no letters of Administration had been procured.
2. The said grounds of opposition are premised on the Plaint dated the September 11, 2020 and filed by the Plaintiff in person, as well as a subsequent Defence dated the September 18, 2020. There were no responses filed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants who did not even file their memorandum of Appearance.
3. The application was disposed of by way of written submissions pursuant to the court's directions of February 22, 2022 to which only Plaintiff complied. Although there was no compliance by the Respondents yet the Grounds of objection raised by the 1<sup>st</sup> Defendant were so mundane and could



not be wished away by virtue of the fact that the 1<sup>st</sup> Defendant did not file their submissions. I say so because the said opposition had sought to oust the jurisdiction of this court in determining the Plaintiff's suit. Jurisdiction as is trite law, is so vital to a case to the effect that should the court find that it lacked the same, then it would have no other alternative than to down its tools and take no further step. See *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1.

4. In his submission, dated the May 6, 2022, the Plaintiff gave a brief history of the matter in question to the effect that he was a son of the deceased Tabelga W/O Kirui who was the registered proprietor of the suit land namely LR No. Kericho/Kipchimchim/1068 and who died on January 5, 1970. That after her death, the suit land was transmitted to him and two other administrators on the July 23, 1984. That in 1986, the Plaintiff and the other beneficiaries had then started noticing an encroachment onto parts of the suit land by the County Council of Kipsigis and other strangers.
5. That subsequently he had complained to the Solicitor General *vide* a letter dated the October 14, 1986 and the Municipal Council of Kericho wherein after, he had pursued the issue, on the boundary dispute touching on the said land since 1986, with various institutions including the Ministry of lands and Settlement, The Hon Attorney General, Ministry of Lands and Housing, Office of the Ombudsman, the Lands Commission, the County Government Kericho and the Kericho County Management Board. It had been through these avenues that it had been found that he had a legitimate claim as a beneficiary of the deceased's estate wherein he had been advised by representatives of the Ministry of Lands and Physical Planning to seek court orders to have him registered as the proprietor of the disputed portion. This culminated into the filing of the present suit on the September 11, 2020. That he since had procured letters of Administration ad Litem.
6. That the suit was not time barred as the same had begun as a boundary dispute between him and his siblings against the County Council of Kipsigis which dispute was a preserve of the Land Registrar. That the matter had subsequently become a land claim when the Plaintiff had been, *vide* a letter dated the June 26, 2013, advised to file suit and that was when time started to run. The suit was therefore not time barred.
7. On the second issue, it was the Plaintiffs submission that since he was the Administrator of the deceased's estate and had taken out the letters of administration ad litem, he was a proper party to the suit. That the preliminary objection sought to deny him his constitutional right to own property contrary to the provision of Article 40(1) of *the Constitution* and therefore the same ought to be dismissed.

#### **Determination.**

8. I have given due consideration to the preliminary objection herein raised as well as the Plaintiff's submission in response, I find that the 1<sup>st</sup> Defendant has raised weighty issues which go to attack the jurisdiction of the Court.
9. Applying the principles in *Mukisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Ltd.* (1969) EA 696 to wit that an objection must consist of a point of law which if argued as a preliminary objection is capable of disposing of the suit, the 1<sup>st</sup> Defendant herein has argued that the Plaintiff cannot bring a suit against them because the same is time barred by virtue of the provisions of Section 7 of the *Limitation of Actions Act* and secondly that the Plaintiff has no *locus standi* to bring suit against them.
10. I therefore find the matters that arise for determination as being:



- i. Whether the Plaintiff's claim for the recovery of LR No. Kericho/Kipchimchim/1068 is time barred.
  - ii. Whether the Plaintiff has the locus standi to file suit on behalf of the estate of Tabelga W/O Kirui (now deceased).
  - iii. Whether the said Preliminary Objection has merit and should be upheld.
11. Before I analyze my finding, I wish to point out that pursuant to the service of the Notice of Preliminary Objection upon the Plaintiff, he filed his grounds of opposition to the preliminary objection, a supporting affidavit as well as his submissions all dated the May 6, 2022 challenging the Preliminary Objection.
  12. On the first issue raised in the objection to the effect that the Plaintiff's suit was time barred, I have considered the Plaintiff's submissions as well as his pleading's herein filed in the Plaint dated September 11, 2020 ,and more so paragraphs 5 and 6 wherein the Plaintiff stated as follows:
 

“That sometimes in the early sixties the county council of Kipsigis requested for a portion of 2.35 acres from the occupant of the person in question that is Mr. Kibiegon Arap Kirui and another two adjacent plots to set up Kapkugerwet market.

That upon acquisition of the land and upon registration, the county council of Kipsigis acquired title No. Kericho/Kipchimchim/1058 but upon drawing mutation forms it emerged that there was encroachment unto (*sic*) LR No. Kericho/Kipchimchim/1068.”
  13. The Plaintiff's pleading was to the effect that pursuant to the county council of Kipsigis encroaching on to the suit parcel of land, it had proceeded to allocate plot numbers 22270, 22271, 22272, 1067, 34a, 34b, 1269, 1270, 1305 and 665 to some strangers. He therefore sought for orders that there be cancellation of the registration of these parcels of land so that the same could be reverted back to him.
  14. From the Plaintiffs pleadings, it is not in contestation that the cause of action had occurred in the 1960's when the County council of Kipsigis allegedly encroached on the suit land and therefore he was seeking to recover the same.
  15. The 1<sup>st</sup> defendants' opposition is that the cause of action having been committed more than 12 years before the filing of the suit, the suit was time barred.
  16. A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings suit.
  17. Section 7 of the *Limitation of Actions Act* provides:
 

“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
  18. 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 1<sup>st</sup> Defendant having allegedly encroached onto the Plaintiff's land LR No. Kericho/Kipchimchim/1068 in the 1960's, the Plaintiff could sue to recover it from the 1<sup>st</sup> Defendant, but only if he did so within twelve years after the said encroachment.



19. Quite clearly the Plaintiff's claim is for the recovery of land after the prescribed period of 12 years had lapsed. The Court of Appeal in *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR held that:

“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”

20. 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 the Plaintiff filed this suit, the claim was already statute barred.
21. In the case of *Bosire Ongero vs Royal Media Services* [2015] eKLR the court had held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.
22. The *locus classicus* on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S”* (*supra*) where Justice Nyarangi of the Court of Appeal had held as follows

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

23. On the second issue raised in the preliminary objection, the 1<sup>st</sup> Defendant's concern was that the Plaintiff had brought suit on his behalf when the subject property namely LR No. Kericho/Kipchimchim/1068 was registered to a deceased person to whom no letters of Administration had been procured.
24. Again I have gained sight of the Plaintiff's pleadings at paragraph 2 of the Plaint wherein he confirmed that the suit was filed by him in his capacity as “one of the administrators of the estate of Tabelga W/O Kirui (now deceased)”. I have gained sight of the Plaintiff's grounds of opposition to this limb of the preliminary objection wherein he had deponed to have been a proper party to the suit having had taken out letters of Administration ad Litem for the Estate of Kipyegon Arap Kirui. I have further gained sight of the documents attached to the Plaintiff's plaint and in particular the green card to land parcel No. LR No. Kericho/Kipchimchim/1068 and find that the same had been registered to Tabelga W/O Kirui on the April 1, 1971, that it had then been transferred through transmission to Sammy Kiprono Yegon, Reuben Kipkemoi Yegon, and the Plaintiff Wesley Malakwen Yegon on the July 23, 1984 wherein it had been subsequently closed upon its subdivision into parcels of land No. 1777, 1778, 1779, 1780 and 1781 on the July 5, 1984.
25. I have also gained sight of the letters of Administration dated the December 15, 2020 issued to the Plaintiff in the Chief Magistrates Court Kericho in Succession Cause No. 135 of 2020 in the Matter of the Estate of Kipyegon Arap Kirui as well as the letters of Administration ad litem issued on the



December 11, 2020 by the Kericho High Court *Ad litem* Cause No 44 of 2020 in the Matter of the Estate of Kipyegon Arap Kirui.

26. Of importance to note is that the said letters of Administration ad litem was limited to:

“seeking compensation by way of mediation with and or filing of a suit in the honorable court against Unilever Tea Kenya limited (formerly Kenya Tea Company Limited) for portions of land registered as Kericho/Kipchimcim/1058 and 1068 that Unilever Tea Kenya limited (formerly Kenya Tea Company Limited) compulsorily acquired under minute 40/56 of the meeting of May 9, 1956 between the then Kenya Tea Company Limited (currently Unilever Tea Kenya Limited) on land exchanges in 1956 without compensation.”

27. From the above, it is my findings that the Land parcel LR No. Kericho/Kipchimchim/1068 having been registered to Tabelga W/O Kirui on the April 1, 1971 as a first registration, the Plaintiff ought to have sought letters of Administration ad litem in respect to her estate, which unfortunately ceased to exist the moment it was subdivided and transferred through transmission. Secondly the letters of Administration ad litem so relied upon by the Plaintiff was specific and clear in what respect it was to be applied and clearly, it was not to be applied in respect to the matter in question. Third it is clear that both the letters of Administration issued in Kericho Succession Cause No. 135 of 2020 and Kericho High Court *Ad litem* Cause No 44 of 2020 were in relation to the Estate of Kipyegon Arap Kirui who was not the proprietor of the suit land and further the same had been issued after the commencement of the suit. The summation of my finding therefore is that the Plaintiff herein lacked the *locus standi* to file the current proceedings on behalf of the estate of Tabelga W/O Kirui (now deceased).

28. In *Alfred Njau & Others v City Council of Nairobi* [1982-88] 1 KAR 229 the Court of Appeal gave meaning to the term locus-standi by stating:

“.....to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

29. Locus standi is a primary point of law almost similar to that of jurisdiction and is therefore within the first principle in the *Mukisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Ltd.* (1969) EA 696 case. It is a point of law capable of disposing a suit.

30. Since the court has found that the Plaintiff lacked the capacity to sue on behalf of the estate of Tabelga W/O Kirui (now deceased), the pleadings herein filed by him render the suit incompetent.

31. Indeed the Court of Appeal authoritatively delivered itself on the issue of *locus standi* in *Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & Another* (1982-99) 1 KAR, *Morjaria v Abdalla* [1984] KLR 490 and in *Trouistik Union International & Another v Jane Mbeyu & Another* Civil Appeal No. 145 of 1990 to the effect that *Locus standi* being a primary point of law almost similar to that of jurisdiction, the lack of capacity to sue or be sued therefore rendered any the suit incompetent.

32. The court therefore finds that since the issue of locus standi is a point of law which goes to the root of any suit whereby its absence renders a suit fatally defective, lack of it cannot therefore be termed as a mere technicality and therefore the provisions of Article 159 (2) (d) of *the Constitution* cannot in such circumstance salvage the suit.

33. In summation thereof I find that the Plaintiff's suit was a nonstarter from the word go, the 1<sup>st</sup> Defendant's Preliminary Objection has merit on the two points herein above captioned and the same succeeds with the result that the Plaintiff's suit is herein struck out with costs to the 1<sup>st</sup> Defendant.



DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 22<sup>ND</sup> DAY OF  
SEPTEMBER 2022

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

