



**Iqbal v Abdulkadir & 2 others (Environment & Land Case
E171 of 2022) [2022] KEELC 14485 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14485 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E171 OF 2022
LN MBUGUA, J
OCTOBER 27, 2022**

BETWEEN

MOHAMED IQBAL A.K.A MOHAMED IQBAL APPLICANT

AND

MOHAMED SHEIKH ABDULKADIR 1ST DEFENDANT

SHEIKH MAHMOOD OSMAN 2ND DEFENDANT

MOHAMMED DAHIR MAALIM 3RD DEFENDANT

RULING

1. This suit was filed contemporaneously with an application dated May 4, 2022 in which the plaintiff/ applicant seeks injunctive orders against the defendants. He contends that in 1974, himself and one Wali Mohamed were the jointly registered proprietors of the suit property plot No 49 in Eastleigh Section I Nairobi (LR No 36/1/49). They had leased out the land and the developments thereon to the 2nd defendant at a monthly rent of Kshs 1000.
2. The applicant avers that the 1st and 3rd defendants assumed the rights and obligations of the 2nd defendant under the lease agreement and have been in occupation of the suit premises Since then. However the said defendants have failed to pay rent since year 1982.
3. The plaintiff also contends that the defendants have caused the land to be illegally registered in the name of the 1st defendant.
4. In response thereof, 1st defendant filed a notice of preliminary objection dated June 27, 2022 averring that: The application is time barred as it offends the provisions of part II, section 4 (1) (a) of the Limitation of Actions Act, that the application offends the provisions of section 8 of the Limitation of Actions Act cap 22 as the distress for the alleged rent arrears have been brought after the end of 6



- years from the date upon which the alleged rent arrears became due and that the application is fatally defective, inordinate and is an abuse of the courts process.
5. I have duly considered the submissions advanced by both the plaintiff and the 1st defendant. A perusal of the material presented before me, particularly the plaint indicates that defendants are the ones in occupation of the suit premises.
 6. The issues falling for determination are: Whether the suit is time barred, Whether the orders of injunction should be issued against the defendants.
 7. The provisions of section 7 of the *Limitation of Actions Act* provide that:

“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”
 8. While section 8 thereof provides that:

“An action may not be brought, and distress may not be made, to recover arrears of rent, or damages in respect thereof, after the end of six years from the date on which the arrears became due”.
 9. The provisions of section 26 of the aforementioned act provides for extension of time in cases of fraud or mistake.
 10. In the Court of Appeal case of *Margaret Wairimu Magugu v Karura Investment Limited & 4 others [2019] eKLR*, the court stated that:

“The issue as to whether the appellant’s claim was barred by limitation is one that was determinable with reference to the pleadings”.
 11. The plaintiff in paragraph 7 of his pleadings contend that:

“The defendants in breach of their obligations as per the lease agreement from May 1982 up to date have neglected, refused and or otherwise failed to pay the monthly rent..”
 12. The claim of the plaintiff based on non payment of rent is certainly time barred.
 13. On fraud, it is pleaded in paragraph 9 of the plaint that the defendants illegally transferred the land to 1st defendant. The applicant has not demonstrated as to when the alleged fraud occurred or when it was discovered.
 14. Of great concern however is the plaintiffs submissions that (see page 4 of the submissions):

“...as the action is founded on fraud, time under section 7 of the *Limitation of Actions Act* could not by dint of section 26 of that act begin to run until the fraud was discovered, and that fraud was not discovered until when she commenced gathering the deceased’s estate for purposes of administration.”
 15. Just who is this plaintiff? Is the person who filed the plaint the same one who is submitting? who is the deceased person referred to in the submissions? Whose estate was she administering? There are no tangible answers into these questions.



16. As rightly submitted by the plaintiff himself, a suit that is time barred is incompetent and fit for striking out; see *Thuranira Karauri v Agnes, Ncheche [1997] eKLR*. And in the instant case, I find that indeed the suit is time barred hence the preliminary objection is merited. In that regard this court will not delve into the merits of the application for injunction.
17. The end result is that the application dated May 4, 2022 and the entire suit are hereby struck out as the suit is time barred. Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-

Kale holding brief for Khan for plaintiff

Muhoro for 1st defendant and estate of 2nd defendant

Court assistant: Eddel

