



REPUBLIC OF KENYA



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**Sakaja v Nyangwesa & 16 others (Environment & Land Case
E007 of 2022) [2022] KEELC 13744 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E007 OF 2022
EM WASHE, J
OCTOBER 25, 2022**

BETWEEN

SAMUEL PANYAKO OLE SAKAJA PLAINTIFF

AND

WILLIAM OCHOMO NYANGWESA 1ST DEFENDANT

CHRISTOPHER B.OSEKO AKUMU 2ND DEFENDANT

NYAOSI NYAMWARO 3RD DEFENDANT

MOMANYI BIYOGO ANUNDA 4TH DEFENDANT

ZACHARIA O.MORIASI 5TH DEFENDANT

ALFRED MAISIBA ONSANDO 6TH DEFENDANT

PETER NYOBENDO MONDA 7TH DEFENDANT

ISAYA OMETE ANCHINGA 8TH DEFENDANT

JOHNSON ONGERI NDUKO 9TH DEFENDANT

ZABLON MASARA NYANGENA 10TH DEFENDANT

ZAKARI MONDA NYANGENA 11TH DEFENDANT

GIDEON NYACHAKI RAGIRA 12TH DEFENDANT

SELLAH WANJIRU KARANJA 13TH DEFENDANT

DANIEL NYANGAU MOKUA 14TH DEFENDANT

LAND REGISTRAR TRANSMARA WEST SUB-COUNTY ... 15TH DEFENDANT

LAND ADJUDICATION & SETTLEMENT OFFICER TRANSMARA

WEST 16TH DEFENDANT



RULING

1. The issue for determination in this Ruling is the Preliminary Objection dated July 20, 2022 (hereinafter referred to as “the Preliminary Objection”) filed by the firm of Ombachi & Company, Advocates who act for the 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Defendants who are also the Applicants in this Preliminary Objection.
2. The grounds pleaded in the Preliminary Objection are as follows; -
 1. The Honourable Court lacks jurisdiction to entertain this suit.
 2. The suit does not disclose any reasonable cause of action against the Defendants.
 3. The Plaintiff’s suit is barred by law of *limitation of Actions Act*.
 4. The Plaintiff’s suit is an abuse of the Court process.
3. The Preliminary Objection has been supported by the Applicants submissions dated August 17, 2022.
4. On the other hand, the Respondent opposed the Preliminary Objection by the submissions filed on the August 26, 2022.

Factual Background

5. The facts giving rise to the Preliminary Objection are that the Plaintiff (hereinafter referred to as “the Respondent”) filed a Plaint dated June 24, 2022 (hereinafter referred to as “the Plaint”) against the Defendant herein.
6. According to Paragraph 6 of the Plaint, the Respondent pleads that he was a bona-fide member of Moyoi Adjudication Section Group Ranch who allocated him a Parcel of Land known as Transmara/moyoi/25.
7. In Paragraph 7 of the Plaint, the Respondent further avers that he was shown the boundaries of the property known as Plot No. 25 within Moyoi Adjudication Section by the Land Adjudication Committee and took possession of the same by occupying it up to date.
8. However, without his knowledge, consent and authority, his property known as Plot No. 25 within Moyoi Adjudication Section was sub-divided and transferred to the 1st – 14th Defendants in the following manner;-
 - i. Transmara/moyoi/239- William Ochomo Nyangwesa (1st Defendant)
 - ii. Transmara/moyoi/394-christopher B Oseko Akuma (2nd Defendant)
 - iii. Transmara/moyoi/198-nyaosi Nyamwaro (3rd Defendant)
 - iv. Transmara/moyoi/240-momanyi Biyogo Anunda (4th Defendant)
 - v. Transmara/moyoi/238-zacharia O Moriasi (5th Defendant)
 - vi. Transmara/moyoi/532- Alfred Maisiba Onsando (6th Defendant)
 - vii. Transmara/moyoi/537-peter Nyobendo Monda (7th Defendant)



- viii. Transmara/moyoi/541-isaya Omete Anchinga (8th Defendant)
 - ix. Transmara/moyoi/487-johnson Onger Nduko (9th Defendant)
 - X. Transmara/moyoi/396- Zablun Masara Nyangea (10th Defendant)
 - Xi. Transmara/moyoi/395-zakaria Monda Nyangena (11th Defendant)
 - Xii. Transmara/moyoi/237-gideon Nyachaki Ragira (12th Defendant)
 - Xiii. Transmara/moyoi/220-sellah Wanjiru Karanja (13th Defendant)
 - Xiv. Transmara.moyoi/510- Daniel Nyangau Moku (14th Defendant)
9. The Respondent pleaded that there was no Objection filed by the 1st to the 14th Defendant during the adjudication process seeking any rights over the property known as Plot No. 25 within Moyoi Adjudication Section which would then warrant the sub-division, alienation and/or transfer of the created portions owned and/or registered in the 1st – 14th Defendants names.
 10. The Respondent further pleaded that the illegal and unlawful sub-division, alienation and/or transfer of the property known as Plot No. 25 within Moyoi Adjudication Section into various portions owned and registered in the names of the 1st to 14th Defendants was undertaken by the offices of the 15th and 16th Defendants.
 11. The Respondent then outlined the Particulars of Interference of his property known as Plot No. 25 within Moyoi Adjudication Section in paragraph 25, the Particulars of Misrepresentation and Irregularity by the 1st to the 17th Defendant in paragraph 26 and the Particulars of Damages Suffered in Paragraph 29 of the Plaint.
 12. In response to the Plaint herein, the Applicants filed their Statement of Defence on the August 17, 2022 (hereinafter referred to as “the Defence”)
 13. In paragraph 3 of the Defence, the Applicants confirmed to be the duly registered owners of the properties known as Transmara/moyoi/394, 198, 532, 537, 541, 396 and 220 respectively.
 14. Paragraph 4 of the Defence further denied that the Respondent herein was a bonafide member of Moyoi Adjudication Section Group Ranch and/or was ever allocated the property known as Plot No. 25 within Moyoi Adjudication Section.
 15. The Applicants pleaded in Paragraph 6 that they had been in occupation of their respective parcels since allocation until the year 2019 when the Respondent forcefully invaded their property.
 16. According to the Applicants, the Respondent’s actions were based on ethnic discrimination emanating from the purported cancellation of titles belonging to two adjudication sections namely Angata Bargo and Moyoi and the ordering of a fresh resurvey by the National Land Commission.
 17. The Applicants indicated that the purported cancellation of the Title Deeds within the two adjudication sections namely Angata Bargo and Moyoi was challenged at the Environment & Land Court in Kilgoris and has not been determined yet.
 18. Nevertheless, the Applicants again repeated in Paragraph 10 of the Defence their allegation that the Respondent’s action of invading their parcels of land as well as instituting this suit was based of ethnic animosity, malice, greed and an outright violation of the Constitution of Kenya, 2010.



19. As appertains the procedure of acquiring the various parcels of land allocated to the Applicants, the Applicants pleaded in Paragraph 15 that all the parcels owned by the Applicants were allocated to them by way of adjudication under the [Land Adjudication Act](#), Cap 284.
20. The Applicants therefore notified the Respondent on their intention to raise a preliminary objection to the entire suit.
21. As at the time of determining this Preliminary Objection, no other Defendant apart from the Applicants had filed any defence.

Analysis & Determination.

22. Before embarking on determining a Preliminary Objection, the Court must always remind itself to the nature of issues which are canvassed by way of Preliminary Objections.
23. In the case of *Mukisa Biscuits Manufacturers Limited-versus- Westend Distributors Limited* (1969) EA, 696, the Court stated as follows; -

“a preliminary objection is in the nature of what used to be called a demurrer. It raises a pure point of law which is urged on the assumption that all the facts pleaded by the other sides are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”
24. Based on the above guiding principles, the Court shall now proceed to analyse and make determination of the issues raised in Preliminary Objection before Court.

Issue No.1- Does the court lack jurisdiction to entertain this suit?

25. The Applicants submit that the Respondent’s Plaintiff herein is seeking to challenge the adjudication process in Moyoi Adjudication Section which gave rise to the Title Documents registered in their names.
26. According to the Applicants, the adjudication of land within Moyoi Adjudication Section was undertaken under the [Land Adjudication Act](#), Cap 284.
27. Under the [Land Adjudication Act](#), Cap 284, Section 29 (1) provides for dispute resolution mechanisms arising out of the demarcation and/or allocation of land to the residents within the said Adjudication Section.
28. Section 30 of the [Land Adjudication Act](#), Cap 284 further prohibit any person from instituting legal proceedings to challenge the adjudication process without the written authority of the Land Adjudication officer prior to the register of that particular adjudication section being finalised.
29. The Applicants submission therefore is that the Respondent cannot now purport to dispute and/or challenge the adjudication process through the Court process yet he did not follow the dispute resolution mechanisms provided under the [Land Adjudication Act](#), Cap 284.
30. The Applicants Preliminary Objection has been supported by The Honourable Attorney General on behalf of the 15th, 16th and 17th Defendants through the submissions filed on the 23rd September 2022.
31. The 15th, 16th and 17th Defendants submissions similarly draw the attention of the Court to the provisions of Section 29 (1) and 30 of the [Land Adjudication Act](#), Cap 284.



32. The 15th, 16th and 17th Defendants submit that the Respondent did not invoke the dispute resolution mechanisms outlined in the [Land Adjudication Act](#), Cap 284.
33. Consequently therefore, if the Respondent was not satisfied with the decision of Adjudication officer or any other officer in resolving any dispute, the proper challenge would be to institute judicial review proceedings thereof.
34. Section 26 of the [Land Adjudication Act](#), Cap 284 did not therefore contemplate the filing of a suit as a way of challenging the decision of the Land Adjudication officer.
35. On this ground, the Applicants seek the Court to declare that it does not have jurisdiction to entertain this suit.
36. The Respondent on the other hand disputes the Applicants submissions.
37. In the submissions filed on the 26th of August 2022, the Respondent states that the Plaintiff is dealing with properties that have already been issued by Title documents.
38. The Title documents relating to all the parties herein have been duly placed before the Court and are part of the Court records.
39. Clearly therefore, the process of adjudication under the [Land Adjudication Act](#), Cap 284 and the provisions of dispute resolution mechanisms are no longer available to the Respondent.
40. The Respondent relied on the cases of *Josphat Karaine Nābatu & Another -versus- Josphat M'nchebere Mithae & Another* (2022) eKLR.
41. In this particular case, the Court made the following finding:-

“ on cases where title deeds have been issued and secondly where issues of fraud, illegalities and collusion have been raised so long as the matter is within the Court’s pecuniary jurisdiction. Once a title deed is issued, the next port of call is the Court and not through a Minister’s Appeal”
42. The Respondent further made reliance on the case of *Japhet Muriungi Rukunga (suing As Legal Representative Of The Estate Of Mitiri Mbirithi M'mbirithi (deceased)- Versus- Stephen Muriuki Baibaya* (2021) eKLR which the Court in Paragraph 37 gave the same interpretation on issues of disputes after issuance of title deeds in an adjudication under the [Land Adjudication Act](#), Cap 284.
43. Lastly, the Respondent submitted that the Plaintiff before Court invoked Section 13 (1) of the [Environment and Land Court Act](#), 2011 which gave jurisdiction to this Court to hear and determine the issues pleaded in the Plaintiff.
44. Having gone through the submissions and authorities placed before the Court, it is clear that the issue of jurisdiction is seriously contested.
45. The Applicants and the 15th, 16th and 17th Defendants firmly believe that the Respondent failed to challenge the adjudication of the parcels registered in the names of the 1st to 14th Defendant within the provisions of the [Land Adjudication Act](#), Cap 284.
46. Consequently therefore, the Respondent is barred from moving this Court by way of a Plaintiff to challenge the ownership and/or issuance of titles to the 1st to 14th Defendants.
47. The Court would wish to revisit the purpose and intent of the [Land Adjudication Act](#), Cap 284 which is provided in the preamble.



48. The preamble of the [Land Adjudication Act](#), Cap 284 reads as follows; -
- “ An act of Parliament to provide for the ascertainment and recording of rights and interests in trust Land, and for purposes connected therewith and purposes incidental thereto.”
49. The Court in line with the above preamble has gone through the provisions of the said Statute in details.
50. The opinion of the Court as regards the provisions of the [Land Adjudication Act](#), Cap 284 is that it deals with the process of ascertaining rights and interests belonging to different claimants during adjudication of Trust Land (now referred to as Community Land).
51. However, once the rights and interests belonging to different claimants are ascertained and recorded, the next step is registration of these rights and interests in a lawful manner.
52. The registration of rights and interests in land is currently being undertaken under the [Land Registration Act](#), No. 3 of 2012.
53. Previously before the enactment of the [Land Registration Act](#), No. 3 of 2012, the registration of rights and interests ascertained under the [Land Adjudication Act](#), Cap 284 were mainly registered under the [Registered Land Act](#), Cap 300.
54. Consequently therefore, once the rights and interests of persons and/or legal entities were registered under the [Registered Land Act](#), Cap 300 (Now Repealed) and/or the [Land Registration Act](#), No.3 of 2012 and the relevant title documents issued, any claim and/or dispute on the legality of the title document should be addressed by the Environment and Land Court.
55. Under Article 162 (1) (2) (b) of the Kenyan [Constitution](#), 2010, the Environment & Land Court has the mandate to hear and determine disputes relating to the environment and the use of land and occupation of, and title to land.
56. In essence therefore, whether or not the Respondent followed the dispute resolution mechanisms during the adjudication process undertaken under the [Land Adjudication Act](#), Cap 284 or any other legislative law regulating adjudication is immaterial after the title documents have been issued and cannot take away the mandate of this Court as provided by Article 162 (1) (2) (b) of the Kenyan [Constitution](#), 2010.
57. The omission to follow the internal dispute resolution mechanisms during the adjudication process can only be part of the grounds of defending the allegations by the Respondent but cannot take away the jurisdiction of the Court.
58. In this present suit, the Respondent has placed before the Court all the titles that it seeks to challenge with a view of cancelling them and have the original property known as Plot No. 25 within Moyoi Adjudication Section reconfirmed as the legal and/or lawful parcel of land registered in his name.
59. In conclusion therefore, the Court finds that it has jurisdiction to hear and determine the suit filed by the Respondent herein.

Issue No. 2- Does the plaint herein disclose a reasonable cause of action against the defendants herein?

60. The second ground in the Preliminary Objection is whether or not the Plaint filed by the Respondent discloses any reasonable ground.



61. According to the submissions filed by the Applicants, their point of view is that the Respondent admits that title documents have already been issued on the parcels they occupy.
62. Consequently therefore, there is no property known as Plot No. 25 within Moyoi Adjudication Section capable of being registered in the name of the Respondent to create a cause of action against the Applicants.
63. The Applicants have placed reliance on Section 26 of the Land Registration Act, No. 3 of 2012 which provides that once a Certificate of Title is issued by a Registrar, the same is taken as prima facie evidence of ownership of the person who is indicated therein.
64. The Applicants relied on the case of Civil Appeal No.312 Of 2012 Emfil Limited-versus- Registrar Of Titles Mombasa & 2 Others (2014) eKLR.
65. In essence, the Applicants are submitting that the Respondent has no legal document and/or title to create any reasonable cause of action against the Respondents and/or their titles.
66. The submissions of the 15th, 16th and 17th Defendants did not address the issue of whether or not the Plaintiff herein demonstrated a reasonable cause of action against them.
67. In the submissions filed by the Respondent, Paragraph 15 refers to the Plaintiff and the Adjudication Record which provided for the property known as Plot.No.25 within Moyoi Adjudication Section in Transmara.
68. The Respondent claim in the Plaintiff is that he was the bona fide beneficiary of the parcel of land known as Plot. No. 25 within Moyoi Adjudication Section and had a legitimate expectation that the parcel of land would be registered in his name and the title documents handed over to him.
69. However, due to misrepresentation and irregularities, the Plot No. 25 within Moyoi Adjudication Section was sub-divided into other parcels of land which were then registered in the names of the 1st to 14th Defendants.
70. The Respondent indeed has placed before the Court the Adjudication Register No. 73425 which relates to Plot.No. 25 within Moyoi Adjudication Section and duly registered in the name of the Respondent.
71. Looking at the Plaintiff filed herein, the witness statements therein and the List of Documents thereof, the Court is clear that the Respondent is challenging the legality of the 1st -14th Defendants title documents.
72. The basic document the Respondent is relying upon is the Adjudication Register No. 73425 which purportedly declared him as the beneficial owner of Plot.No. 25 within Moyoi Adjudication Section.
73. The Respondent's claim is that the parcels and titles issued to the 1st to 14th Defendants were created out of the Plot.No. 25 within Moyoi Adjudication Section without his knowledge and/or authority.
74. In the courts considered view, the different views as relates to the Plot. No. 25 within Moyoi Adjudication Section and the subsequent issuance of the different titles' documents in the names of the 1st to 14th Defendants demonstrates a dispute and or cause of action which should be determined by way of trial.



75. In the *D.T Dobie & Company (kenya) Ltd V Muchina* 1982 K.L.R 1, the late Madan JA (as he then was) held as follows; -

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the Court.

At this stage, the Court ought not to deal with any merits of the case for that is a function solely reserved for the Judge at the trial as the Court itself is not usually fully informed so as to deal with the merits without discovery, without oral evidence tested by cross – examination in the ordinary way.”

76. The late Judge added that: -

“A Court of justice should aim at a sustaining a suit rather than terminating it by summary dismissal. Normally, a suit is for pursuing it.”

77. The Judge then concluded as follows: -

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by

amendment, it ought to be allowed to go forward for a Court of justice ought not to act in darkness without the full facts of a case before it.” Emphasis added

78. In *Crescent Construction Co. Ltd -versus- Delphis Bank Ltd* 2007 eKLR, the Court of Appeal stated as follows on the same issue: -

“However, one thing remains clear, and that is the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the Court must not drive away any litigant however weak his case may be from the seat of justice. This is a time honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.”

79. In conclusion therefore, the Court is of the view that the Respondent has established a Cause of action against the Defendants as required by law.

Issue.no. 3- Is the suit against the defendants herein time barred?

80. The Applicants on this issue submit that the cause of action by the Respondent emanates from the Particulars of Fraud and misrepresentation pleaded in the Plaint.

81. The Applicants further submit that the said actions of Fraud and/or misrepresentation seem to have occurred in the 2001 when the names of the 1st to 14th Defendants were entered in the Green Cards by the Ministry of Lands Officials.

82. According to the Respondents, registration of the 1st to 14th Defendants since 2001 has surpassed the period of Twelve (12) years provided for claims of recovering land as provided in Section 7 of the *Limitation of Actions Act*, Cap 22.



83. The submissions by the 15th, 16th and 17th Defendants have also reiterated the Applicants submissions that once a period of 12 years has lapsed from the time of the purported illegality, then the provisions of Section 7 of the Limitation of Actions Act Cap 22 kicks in and a party is time barred from instituting any recovery proceedings in relation to land.
84. The Respondent in opposition to the Applicants submissions and the 15th, 16th and 17th Defendants submissions states that all the misrepresentation, illegalities and/or fraudulent activities happened only on paper in the offices of the 15th and 16th Defendants.
85. Consequently therefore, there was no physical occupation and/or physical possession to give an indication that such illegal and/or fraudulent activities were taking place.
86. In addition to the above scenario, the Respondent submitted that under Section 26 of the Limitation of Actions Act, Cap 22, the law provided for an extension of time where the cause of action was fraud and/or mistake.
87. The Respondents referred to the case of Justus Tureti Obara-versus- Peter Koipeitai (2014) eKLR and Philip Kimutai Langat-versus- John Kibet Maina Hccc No. 100 Of 2005 (kericho) (UR).
88. In these two cases, the Courts were of the opinion that in instances where the cause of action is fraud and/or misrepresentation, the time does not begin running until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered the same.
89. For avoidance of doubt, this Court fully associates itself with the findings of the Courts hereinabove.
90. Referring to Paragraph 25 and 26 of the Plaint, it is clear that the Respondent has pleaded particulars of interference, misrepresentation and irregularities which are elements of fraud.
91. Section 26 of the Limitation of Actions Act, Cap 22 also provides 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:
- Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—
- i. in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- ii. in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.
92. According to the Applicants, their position is that the time should start running from the year 2001 when the Green Cards were opened and the 1st to 14th Respondents were registered as the owners.



93. The Respondent on the other hand submits that he was not aware of the Defendants actions of sub-division, alienation and/or registration of the 1st to the 14th Defendant until their occupation was interfered with by the Defendants.
94. The net-effect of these two conflicting positions is that an issue for determination arises as to when time began running for purposes of computing the twelve years period under the *Limitation of Actions Act*, Cap 22.
95. The court cannot make a finding of this issue without hearing both parties and exercising its discretion in making this determination.
96. In conclusion therefore, this ground cannot be sustained without a defined and/or agreed date or event which can facilitate the computing of time under the *Limitation of Actions Act*, Cap 22.

Issue No.4- Is the suit an abuse of the court process?

97. On this issue, the Court is satisfied based on the determinations in Issue No. 1, 2 and 3 that this suit is not an abuse of the Court process and rises a number of issues for determination at a hearing.

Issue No.5- Costs

98. It is trite law that costs usually follow the outcome of the application.
99. In conclusion therefore, the Court hereby makes the following Orders as appertains the Preliminary Objection dated 20th July 2022; -
 - A. The Preliminary Objection dated 20th July 2022 be and is hereby dismissed.
 - B. Costs of the Preliminary Objection dated 20th July 2022 shall be borne by the Applicants.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THE 25TH OCTOBER 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: **MR. NGENO/MS. MEMPE**

ADVOCATES FOR THE APPLICANT: **MR. OMBACHI**

ADVOCATES FOR THE RESPONDENT: **MR. SHIRA**

