



Nyangwara & 29 others v Thande (Sued in her capacity as an administrator of the Estate of Solomon Kiragu Thande) & another; Otieno & another (Intended Applicant) (Environment & Land Case 116 of 2019) [2022] KEELC 13632 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 116 OF 2019
BM EBOSO, J
OCTOBER 13, 2022**

BETWEEN

JEREMIAH MATOKE NYANGWARA & 29 OTHERS PLAINTIFF

AND

PAULINE NJERI THANDE (SUED IN HER CAPACITY AS AN ADMINISTRATOR OF THE ESTATE OF SOLOMON KIRAGU THANDE) 1ST DEFENDANT

KARIUKI PETER THANDE (SUED IN HIS CAPACITY AS AN ADMINISTRATOR OF THE ESTATE OF SOLOMON KIRAGU THANDE) 2ND DEFENDANT

AND

ELIZABETH NJERI OTIENO INTENDED APPLICANT

GORDON OTIENO ODUNDO INTENDED APPLICANT

RULING

1. What falls for determination in this ruling is an application by Elizabeth Njeri Otieno and Gordon Otieno Odundo [the applicants], dated January 17, 2022. Through the application, the applicants seek to be joined as plaintiffs in this suit. The application is supported by an affidavit sworn on January 17, 2022 by Elizabeth Njeri Otieno.
2. The applicants contend that in 1999 they jointly purchased plot number 1 from the late Solomon Kiragu Thande. The said plot was a subdivision out of Land Reference Number 11359 comprised in Title Number IR 20293 [the suit property], located in Limuru, Kiambu County. They have exhibited



a sale agreement dated February 2, 1999. They further contend that they learnt about the existence of this suit in December 2021.

3. It is important to observe at this point that Pauline Njeri Thande and Kariuki Peter Thande were sued in this suit as two different defendants. They both were sued in their capacity as administrators of the estate of the late Solomon Kiragu Thande. Whether this is proper or not is not an issue that falls for determination in this application. What has, however, happened as a result of the separation is that whereas the two administrators represent a single corporate unit [estate of the late Solomon Kiragu Thande], they have filed separate statements of defence through different law firms. They are represented by different law firms. I hope the parties concerned will address this issue before this suit proceeds to full hearing.
4. The court record does not bear any response by Pauline Njeri Thande on the application under consideration. Kariuki Peter Thande responded to the application through a preliminary objection dated March 2, 2022. On May 23, 2022, the court directed that the grounds outlined in the preliminary objection were to be canvassed as grounds of opposition to the application.
5. Kariuki Peter Thande's grounds of preliminary objection read as follows:
 - “ 1. That the suit is time barred by virtue of section 7 of the *Statute of Limitations Act* cap 22. The applicable provisions provide as follows:

An action may not be brought by any person to recover land after the end of twelve years for 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.
 2. That the application is an abuse of the court process and should be dismissed.”
6. The application was canvassed through written submissions dated June 20, 2022. Counsel submitted that the applicants were necessary parties because they purchased plot no 1, which is a subdivision out of the suit property, and they have been in occupation of the said plot since then. Counsel added that it was necessary for the applicants to be joined in the suit because the subject matter is the same.
7. On the grounds raised in the preliminary objection dated March 8, 2022, counsel submitted that Solomon Kiragu Thande [the deceased] died on October 19, 2013 and as at that time, the deceased was processing leasehold titles relating to the Plots purchased by the plaintiffs in this suit. Counsel contended that the deceased was ready to give to the plaintiffs and to the applicants titles to the Plots surveyed out of the suit property. Counsel cited sections 45 and 46 of the *Law of Succession Act* and contended that time stopped running for purposes of taking out proceedings against the estate between 2013 when the deceased died and 2017 when his personal representatives obtained a grant. Counsel added that during his lifetime, the deceased was always willing to complete processing of the leasehold titles.
8. Kariuki Peter Thande [hereinafter referred to as “Peter”] opposed the application through written submissions dated July 4, 2022, filed by M/s Judy Thongori & Co Advocates. Counsel submitted that the applicants had not explained why it has taken them 23 years to bring their claim yet there have been “several cases in existence from as early as 2011 when the deceased was still alive.” Counsel contended that time began to run “by the completion date May 30, 1999.” Counsel argued that the applicants ought to have taken action upon realization that the sale was not going to be completed as agreed in the sale agreement. Counsel urged the court not to grant the plea for joinder.
9. I have considered the application, and the response to the application. I have also considered the submissions tendered in support and against the application. Two issues fall for determination in the



application. The first issue is whether the applicants' intended claim as intended co-plaintiffs in this suit is statute barred under section 7 of the Limitation of Actions Act. The second issue is whether the applicants have satisfied the criteria for joinder as plaintiffs under order 1 rule 1 of the Civil Procedure Rules. I will make brief sequential pronouncements on the two issues.

10. In objection to the application for joinder Peter contends that the applicants' cause of action arose in 1999 when the completion date lapsed. On their part, the applicants contend that they were given possession of plot no 1 and they have been in occupation of the plot since then. They further contend that during the lifetime of the deceased, the deceased was always ready and willing to process the leasehold titles, hence they had no cause of action against him up to the time he died. They contend that the deceased's readiness and willingness is demonstrated by his processing of deed plans which are exhibited in this suit. They contest Peter's contention that their claim is statute-barred.
11. The deceased died in 2013. His personal representative obtained a grant in 2017. The applicants contend that they have been in occupation of the suit property since 1999 when they purchased it from the deceased. They contend that it became necessary for them to seek joinder when they discovered in 2021 that the estate of the deceased was contesting the sales which the deceased entered into during his lifetime. Prior to that, there was no contest directed against their ownership and occupation of plot no 1.
12. Given the above circumstances, it cannot be said that Peter has demonstrated the intended claim by the applicant is statute barred. If indeed the intended claim is statute –barred, the estate will be at liberty to put forth that defence by way of pleadings and evidence. At this point, it is speculative and it cannot be a basis for shutting the door to the seat of justice on parties who claim to have purchased land and to have been in possession of the land for the last 23 years. I do not find merit in that limb of objection. My finding on the first issue therefore is that, at this point, there is no conclusive evidence to warrant a finding that the intended claim by the applicants is statute-barred under section 7 of the Limitation of Actions Act.
13. The second issue is whether the applicants have satisfied the criteria for joinder as plaintiffs under order 1 rule 1 of the Civil Procedure Rules. The said framework provides as follows:

“ All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”
14. The plaintiffs in this suit allege that on diverse dates during the lifetime of the deceased, they purchased from the deceased subdivisions plots out of Land Reference Number 11359 comprised in Grant Number IR 20293. They further contend that they paid purchase prices and they were given vacant possession of the subdivisions parcels. They have been in possession since then. They add that all was well until the 1st defendant who was a wife of the deceased instituted a suit against the deceased over the suit property in 2011. They seek orders vesting their respective plots in their names.
15. The applicants in the application under consideration contend that they too are purchasers who bought plot no 1, one of the subdivisions surveyed out of the suit property, from the deceased. They contend that upon paying purchase price in 1999, they were given vacant possession of the plot and they have been in occupation of the plot since then. They too seek vesting orders.
16. It is therefore clear that the applicants' cause of action arises out of the same series of transactions and related to the same subject matter. Even if they were to file a separate suit, common questions of law and fact will arise for determination in the separate suit. Consequently, the court is satisfied that the



applicants have met the criteria for joinder as co-plaintiffs under order 1 rule 1 of the *Civil Procedure Rules*.

17. The result is that the application dated January 17, 2022 by Elizabeth Njeri Otieno and Gordon Otieno Odundo is allowed and the two are joined as plaintiffs in this suit. The advocates on record for the plaintiffs shall amend the plaint appropriately and serve the amended plaint forthwith. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF OCTOBER 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Mwendwa for the 9th and 27th Plaintiffs

Ms Amunga for the other Plaintiffs

Ms Ndirangu for the 2nd Defendant

Court Assistant: Sydney

