



**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Appli 642 of 1991**

1. Land and Environmental Law Division

2. Subject of main suit - Land

i. Original LR1406 Kitengela

now LR Kajiado/Kitendegla/1947

ii. Sale agreement for 20 acres out of 300 acres at a sale price of Ksh.100,000/- to four purchasers.

3. Application notice of motion 2.9.91

i. Application seeking leave to apply to the Land Control Board out of time under Section 8 of the Land Control Board Cap.302 Laws of Kenya.

4. Application notice of motion 2 September 1991 heard and determined by Couldey J (as he then was) (13 October 1991).

i. Leave duly granted to apply Land Control Board.

ii. Clause whereby respondent fails to sign consent the registrar to sign was to first await the respondents refusal or otherwise.

iii. Respondent failed to sign forms

iv. 4 purchasers already in possession of land

v. Decree extracted

vi. Leave for registrar to sign the said forms where respondent has failed to do so. Granted, Ang'awa J (22 March 2007).

vii. Respondent files review.

5. Application chamber summons 8 May 2007

6. i. Seeking for review of orders of 22.3.07 by Ang'awa J

ii. Application time barred when made on 4 December 2006.

iii) Hon court had no jurisdiction to entertain original miscellaneous application of 2<sup>nd</sup> September 1991

by Couldrely J (on 13 October 1991).

7. In reply – applicant/respondent – Matters raised too late.

8. Held: Application – in competent dismissed.

9. Case law: i) Mbuthia Muthami & Another v Kamau Mbuthia Hccc2/1982

ii) Njuguna v Njau (1981) KLR 225.

10. Advocate:

S. Sane for Sane & Co. Advocates for the defendant/applicant

G. Kamonde of Kamonde & Co. Advocates for the plaintiff/Respondent

**MARY WANJIRU NJOROGE**

**SCHOLASTICA MUTHONI WAWERU**

**JOSEPH MURIGI KANYORE**

**PERIS WATIRI.....PLAINTIFF**

**VERSUS**

**KAILO OLE KAASHA .....DEFENDANT**

**RULING**

1: Review of orders made by court on

22 March 2007

A) Background of application

1. There has been no dispute in this miscellaneous application. The four applicants entered into a sale agreement with the defendant to purchase 20 acres out of 300 acres of land that was originally known as LR 1406 Kitengela and now is LR Kajiado/Kitengela/1947.

2. The purchase price shared between the four purchases was Ksh.100,000/-. This agreement was entered into sometime on 10<sup>th</sup> January 1985.

3. Title to the land was not issued until 22 February 1989. The time to appear before the land board had expired. The applicant filed this present application on 16 September 1991 seeking for leave of this court to extend time to apply to the Land Control Board for consent. The matter came up before Couldrely J (as he then was) who heard the matter and in his ruling of 13 October 1992 considered extensively whether the agreement bore any illegality? Whether the four respondents were occupying the land? Whether the consent should be issued or not and time duly extended?

4. He ruled that leave be accordingly granted for the four applicants to apply for extension of time to the Land Control Board. The second limb through, was that in the event the respondent refuses to sign and execute the consent, for the Registrar of the High Court of Kenya would do so. The Hon. Judge was of a view that this in effect be left and the respondent given a chance to comply. Failure to the applicants be at liberty to apply.

5. It seems that the applicant on extracting the decree did not notice that the orders of the registrar to sign, on behalf of the respondent, had not been granted. They in effect came to court on 19 July 2000 before Kuloba J but the Hon. Judge declined to hear the application of 2 September 1991 as Couldrey J had disposed of the same. By application of 4 December 2006, filed six years later, the four applicants prayed that 30 days be granted leave to sign the forms, failure to the Registrar of the High Court of Kenya to do so.

6. The respondent had been duly served. His advocate L.S. Sane informed the court that the respondent had disappeared. The application was duly allowed by this court on 22 March 2007.

## II: Application 8 May 2007

7. The respondent filed this application of 8 May 2007 which is the subject matter of this ruling where by he seeks this courts' orders to review the said orders. The grounds, being that the applicants had been caught up with the Limitation of Actions Act Cap.22 over a period of 14 years. The law requires that this suit before court should have been brought by way of a plaint and not by way of an application. That as the application of 4 December 2006 is statute barred it was made after the expiration of the time allowed by law. The court did not have jurisdiction to entertain the original application of 2 September 1991.

8. What I understand by this application is that Couldrey J had no jurisdiction to hear the application before him. It therefore follows, the order made to apply to have the Registrar of the High Court of Kenya sign the said consent forms is an illegality as not only has this court no jurisdiction the said application was time barred.

## III: Finding

9. When Couldrey J made his decision on this matter and when he took into account whether or not the contract was legal or not the respondent did not appeal against such decisions. The said decision and or order of the court remains so, unless set aside by the court of appeal. At no time did the respondent set these orders aside.

10. Secondly, the 4 applicant took possession of the land and have been occupying the same. It was on this basis Couldrey J in effect allowed the application.

11. In the case law of Mbuthia Muthami & Another v Kamau Mbuthia Hccc2/1982 Ang'awa J and where I relied on case law of Njuguna v Njau 1980, KLR 225, the parties had a finalized judgment. The 12 year period had expired to file a decree. The court of appeal held in that latter case that the respondents had lived on the land for 12 years. If one states that they have no right to the land because the decree had not been extracted before 12 years, the said respondents could in effect claim by way of adverse possession. The application that relied on Limitation of Action Cap 22 was rejected.

12. In this case, the application to apply to court to have the Registrar sign the consent form was occasioned by the delay on the part of the respondent failing to sign the same or, if he objected, would have raised the issue earlier on. The application had not been before opposed by the respondent.

13. I rely on the authority before me. I further find the applicants have been in possession of the said land and all that was left was the consent.

14. I reject the said application for the review of my orders there is no new matters raised. The application is hereby dismissed with costs to the original applicant/respondent.

Dated this 3<sup>rd</sup> day of October 2007 at Nairobi.

**M. A. ANG'AWA**

**JUDGE**

S. Sane for Sane & Co. Advocates for the defendant/applicant

G. Kamonde of Kamonde & Co. Advocates for the plaintiff/Respondent