



**Njeri v Ndirangu & another (Environment & Land Case
E224 of 2023) [2025] KEELC 4217 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E224 OF 2023**

JA MOGENI, J

MAY 29, 2025

BETWEEN

GLADYS NJERI PLAINTIFF

AND

JOHN NDIRANGU 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. Vide a Notice of Preliminary Objection, dated 10/06/2024; the 1st Defendant/ Objector sought an Order for striking out the entire suit on the following grounds:-
 1. That this Court lacks the jurisdiction to hear and determine this suit by virtue of the cause of action being time barred, having been filed after the lapse of the statutory period as set out in Section 4 and 7 of the *Limitation of Actions Act*
 2. That the Plaintiff did not have the requisite locus standi to institute this suit and should therefore be struck out with costs.
 3. The Suit is otherwise incurably defective and bad in Law.
2. On 10/07/2024 when parties appeared before the Court to take a date for hearing of the main suit Counsel for the Plaintiff Ms Irungu informed the Court that whereas they had come to take a hearing date they had been served with a Preliminary Objection. The Counsel for the 1st Defendant Mr Nyangena sought leave to canvass the Preliminary Objection by way of written submissions. The Court directed that the 1st Defendant/ Objector's Notice of Preliminary Objection, be canvassed by way of written submissions as prayed.
3. The 1st Defendant/Objector contends in his submissions dated 17/07/2024 that the Preliminary Objection raises issues on the jurisdiction of the Court, and that the 1st Defendant the Plaintiff lacks the requisite locus standi to institute this suit. That the



action in this suit is time-barred by virtue of Section 4 and 7 of the *Limitation of Actions Act*, having been filed after the lapse of the statutory period as set out and it should therefore be struck out with costs.

4. The Defendant/Objector submit that once the Court's jurisdiction is challenged then it becomes a bridge a Court has to cross before hearing and deciding on a matter as it is in this present Suit. The Objector relied on the cases of *Mukisa Biscuits Manufacturing Ltd. v West End Distributors Ltd.* Civil Appeal No. 9 of 1969 [1969] EA 696; in stating that the Preliminary Objection raises a point of law and that the issue of locus standi is a point of law as was stated in the case of *Law Society of Kenya v . Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, which the Objector relied on. The Objector submits that the Plaintiff lacking locus standi meant that the alleged Letter of Allotment shows the allottee as Margaret Wamuyu Wanjohi and that no ownership document has been filed indicating the Plaintiff as the allottee/owner of Suit Property. Although the Plaintiff alleges to have purchased the suit property from the said Margaret Wamuyu Wanjohi but there is no evidence tendered in support of this averment of the Sale Agreement and or payment of consideration as evidence to demonstrate their interest in the Suit property. Further the Court has to discount these allegations and at same time to be guided by the Law of Contract Section 3(3) where it states that there has to exist a written Sale Agreement for a party to dispose off an interest in Land.
5. The 1st Defendant/Objector relied on the cases of *Macharia & Another v Katua & 4 Others* (Environment & Land Case E205 of 2023) [2024] KEELC 4808 (KLR) (13 June 2024) (Ruling) and *Lamba v National Social Security Fund & Another* (Civil Appeal E168 of 2021) [2023] KECA 124 (KLR) (3 February 2023) (Judgment), *Daudi Ledama Morintat v Mary Christine Karie & 2 Others* [2017] eKLR and *of Okoth v Nyaberi & Another* (Civil Appeal 248 of 2018) [2024] KECA 427 (KLR) (26 April 2024) (Judgment) to bring out the issue of the importance of having a Sale Agreement that is written and also to show that the two parties namely the Plaintiff and Margaret Wamuyu Wanjohi did not enter into a contract that can be implemented as is required under Section 3(3) of the Law of Contract.
6. The 1st Defendant/Objector submits therefore that the Plaintiff lacks Locus Standi and that if a party is found to have no locus standi, then it means they cannot be heard even on whether or not he has a case worth listening to, then the Plaintiff cannot be heard and that point alone may dispose of the suit. That looking at the pleadings alone the present suit can be disposed preliminarily without the Court having to resort to ascertaining the facts from elsewhere.
7. The other issue the Objector raised was on limitation of time the Objector submitted that despite the Plaintiff having discovered in 1993 as she states in her Plaint that there was someone on the suit property. She also realized that the 1st Defendant was in unlawful occupation of the parcel of land but this notwithstanding, the Plaintiff only filed the instant suit in 2023 which is 22 years later. This being the case he submits that the claim by the Plaintiff is time-barred and the Court should strike out the suit. He relied on two cases, the one for *Edward Moonge Lengusuranga v James Lanaiyara & Another* [2019] eKLR and *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104. That the Plaintiff ought to have known after doing her due diligence from 1993 and brought an action much earlier.
8. In her response the Plaintiff filed submissions dated 23/11/2024. She submitted in response to the issue of locus standi that she brought this suit in her capacity as the bona fide/ lawful owner of the suit property, namely Plot Number 330, Jamhuri Estate, Phase 3, Nairobi parcel number LR Nairobi/ Block 63/475. She reiterated her averments in the Plaint on how she acquired the suit property having produced the Allocation Lletter as part of her documents.
9. She submits that from the date of the transfer she has been following up with the defunct City Council of Nairobi and later on with the City County Government of Nairobi the processing of the lease and



the Certificate of Lease of the suit property unsuccessfully. That it was while making this effort that on 27/10/2021, the Plaintiff conducted a search that she was issued with a letter/search confirming her to be the bona fide lawful owner of the suit property which letter is produced as documentary evidence.

10. It is her submission that the letter dated 27/10/2021 which was issued to her confirmed that the title issued to the 1st Defendant/Objector dated 1st October 2001 was fraudulently acquired as the allocating authority is not aware of its existence. That this clearly demonstrates that the Plaintiff has locus standi to challenge the fraudulent acquisition of her property by the 1st Defendant.
11. On the issue of Statute Limitation the Plaintiff submitted that she was granted leave to file this suit out of time through Miscellaneous Civil Application Number ELCMJSC/E134 of 2023 granted by Lady Justice Lucy Mbugua and that the Defendants were directed to raise the issue of Limitation as part of their defence in the main suit and not “in limine” as a Preliminary Objection as the 1st Defendant has sought to do.
12. The Plaintiff has further submitted in reiteration of her averments in the Plaint that she became aware of the existence offending title for the first time on 27/10/2021 when she did an official search with the City County Government of Nairobi.

Analysis and Determination

13. Indeed, this Court had perused the pleadings, and has noted that the Plaintiff has alleged to have been allotted the suit property by the defunct City Council after buying it from the original allottee, Margaret Wamuyu Wanjohi. That the Defendant/ Objector became the registered owner of the suit property fraudulently a fact she discovered as she was inquiring about her Certificate of Title.
14. There are two issues herein for determination being:-
 - a. Whether the suit herein is statute barred by dint of Sections 4(1)(a) and 7 of the *Limitation of Actions Act*;
 - b. Whether the Preliminary Objection is merited.
15. On whether the suit herein is statutory barred, the Court finds that indeed Section 4(1) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya prescribe the limitation period for institution of suits in regard to various causes of action. In regard to causes of action founded on contract, the limitation period is 6 years, whereas in regard to recovery of land, the limitation period herein is 12 years.
16. In order for the Court to determine whether the suit is caught by Limitation of Action, the Court has to consider the cause of action herein. The case of Edward Moonge Lenguuranga v James Lanaiyara & Another [2019]eKLR, defined a cause of action as a set of facts sufficient to justify a right to sue to obtain property or enforcement of a right against a party. For a cause of action herein to be determined, it is important to look at the averments and the prayers sought in the Plaint.
17. There is no doubt that question of Limitation of Action goes to the jurisdiction of the Court. Where a suit is time bared, the Court has no jurisdiction to hear it. See the case of Bosire Ongera v Royal Media Services [2015]eKRL, where the Court stated:-

“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.”



18. Section 4(1)(a), of the Limitation of Action Act, provides as follows;

“(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued-actions founded on contract.”

19. The purpose of Limitation of Actions is to bar stale suits and protect Defendants from unreasonable claims. See the case of *Alba Petroleum Limited v Total Marketing Kenya Limited* (2019) eKLR, where the Court held;

“The law of limitation of actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

20. The Defendant/ Objector has averred and submitted that the Plaintiff's cause of action is the enforcement of the purchase of the suit property from the original allottee, Margaret Wamuyu Wanjohi on 1/03/1993 for valuable consideration. The suit property had been allotted to Margaret Wamuyu by then City Council of Nairobi vide the Allotment Letter dated 20/02/1992. According to the Plaintiff, the sale transaction was consented to and the transfer effected in the Plaintiff's favour by the then City Council of Nairobi. The Plaintiff further states at Paragraph 2 of her witness statement that someone unknown to her and or the 1st Defendant is already in occupation of the Suit Property without her knowledge and or the 1st Defendant's knowledge.

21. From the averments contained in the Plaint, the cause of action accrued from the time the Plaintiff discovered that the suit property has been allotted and title issued to someone else and this was on 27/10/2021. The Cause of Action herein is not the enforcement of the Sale Agreement of 1/03/1993. Therefore, Section 4(1)(a) of the *Limitation of Actions Act*, does not apply herein. This suit is not statutory barred by dint of Section 4(1) (a) of the *Limitation of Actions Act*.

22. The next question is whether the suit herein is also statutory barred by virtue of Section 7 of the *Limitation of Actions Act*, which provides as follows;

“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.”

23. From the above provisions of law, a suit for recovery of land should be brought before expiry of 12 years. See the case of *Sohanladurgadass Rajput and Another v Divisions Integrated Development Programmes Co Ltd* [2021] eKLR where the Court held;

“Section 7 of the *Limitation of Actions Act* provides that an action for recovery of land may not be brought after the lapse of 12 years from the date the right of action accrued to the Plaintiff. Therefore, in regard to the agreement of 8th December, 2007, the limitation period lapsed on 8th December 2019. On the second agreement of 25th January 2008, the limitation period lapsed on 25th January, 2020. Essentially therefore, the Plaintiffs' suit having been filed on 7th July 2020, was filed out of time.”



24. Also in the case of Benson Oketch Okello v Benson Nyandiga Onguru [2019] the Court held as follows;

“It emerges from the foregoing analysis that...That instant suit is barred by dint of sections 4 and 7 of the Limitation of Actions Act (Cap 22) and Sections 6 of the Land Control Act (Cap 302). I concur with the Defendant counsel that the suit is non suited. It discloses no reasonable cause of action and constitutes an abuse of the due process of the Court. Wherefore, I find the Preliminary Objection on points of law cogent and merit. I uphold the same. The Plaintiff’s suit by way of a plaint dated 19th March 2014 is hereby struck out with costs to the Defendants.”

25. The Plaintiff has not sought to recover the land from the Defendant/ Objector, but to be declared as owner, based on the fact that they are allegedly bona fide purchasers therefore, their claim is not barred by dint of Section 7 of the Limitation of Actions Act.

26. Having alleged as she has in her Claim, the Plaintiff should be allowed to avail her evidence and prove her case on the usual standard of balance of probabilities. The Court having granted the Plaintiff leave following the Miscellaneous Application then the Plaintiff is within the time limit for bringing claims for recovery of land.

27. The suit should proceed for hearing and be decided on merit.

28. The Defendant/Objector had also alleged that the suit is incompetent, sham, vexatious and an abuse of the Court process.

29. The Plaintiff has opposed the Objection and urged the Court that it should not shut the Plaintiff out of the seat of justice. The Court has considered the pleadings herein and the previous determinations arising from the dispute herein. It cannot be said that the Plaintiff has no cause of action.

30. Striking out suits preliminarily is a draconian measure, which should be allowed only as last resort and when the suit is so hopeless and cannot be salvaged, even by an amendment. Courts have held that where there is a semblance of cause of action, parties should be allowed their day in Court.

31. In the case of D.T. Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1, the Court held 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 of. 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.”

32. Similarly, in the case of Peter Ngugi Kibiri v Esther Wangari [2015]eKLR the Court of Appeal stated as follows:-

“Practical and substantive justice dictate that it is prudent that the dispute between the parties be resolved and determined through full hearing on the merits.”

33. Further, in the case of Republic of Peru v Peruvian Guano Company 36 Ch Div 489 at pages 495 and 496, the Court held that striking out is a drastic remedy to be invoked only in plain and obvious cases and that such jurisdiction must be exercised with extreme caution.



- 34. Having carefully analyzed the Notice of Preliminary Objection herein and the rival written submissions, together with the cited authorities and relevant provisions of law, the Court finds it not merited. The suit herein should proceed for hearing and be decided on merit.
- 35. The upshot of the foregoing is that the Court finds and holds that the Notice of Preliminary Objection dated 10/06/2024, is not merited and the said Objection is hereby dismissed entirely with costs in the cause.
- 36. Pre-trial Conference on 26/06/2025.
- 37. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF MAY 2025 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

- In the presence of:
- Ms. Irungu holding brief for Mr. Ngata for the Plaintiff
 - Mr. Nyangena for the Defendant/Applicant
 - 2nd Defendant - Absent
 - Mr. Melita – Court Assistant

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**MOGENI J
JUDGE**

