



**Poka Ranch Group Community Based Organization & 3 others v  
County Government of Kajiado & 7 others (Environment & Land Case  
31 of 2020) [2022] KEELC 15429 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15429 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 31 OF 2020  
MN GICHERU, J  
DECEMBER 20, 2022**

**BETWEEN**

**POKA RANCH GROUP COMMUNITY BASED ORGANIZATION .... 1<sup>ST</sup>  
PLAINTIFF**

**POKA GROUP RANCH ..... 2<sup>ND</sup> PLAINTIFF**

**JEREMIAH LEMAKO ..... 3<sup>RD</sup> PLAINTIFF**

**HARRISON TAGO ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... 1<sup>ST</sup> DEFENDANT**

**HON. DAVID OLE SANKORI ..... 2<sup>ND</sup> DEFENDANT**

**GIKENA INVESTMENT LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**ESTHER NDARU MUKURIA (SUED IN HER PERSON CAPACITY AND  
ON BEHALF OF ESTATE OF THE LATE WALTER BERNARD MUKUNDI  
MUKURIA (DECEASED) ..... 4<sup>TH</sup> DEFENDANT**

**SAMUEL MWANGI ..... 5<sup>TH</sup> DEFENDANT**

**BOUYANCY HOLDINGS LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 7<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**



## RULING

1. This ruling is on the fourth defendant's preliminary objection dated February 14, 2022. It reads as follows.

Take notice that the 4<sup>th</sup> defendant shall raise the following preliminary objections in limine and urge this court to strike out the plaintiff's amended suit with costs, on grounds that:-

- (i) The subject matter in this suit relates to the true ownership of the suit properties where the plaintiffs purport that the property known as LR Kajiado/Kaputei-South/888 (the suit property) was unlawfully transferred to the late Walter Bernard Mukundi Mukuria as evidenced in paragraph 29 (vi) of the plaintiffs' amended suit.

Consequently, the present suit is in flagrant breach of sections 4(2), 7 and 8 of the Limitations of Actions Act.

- (ii) The suit is further barred under section 3 (Limitation of Proceedings) of the Public Authorities Limitations Act CAP 39 noting that the proceedings have been instituted against the 7<sup>th</sup> and 8<sup>th</sup> defendants as representatives of the Kenya Government, more than one year since the cause of action arose.

2. The plaintiffs though given sufficient time to respond to the preliminary objection did not do so. They did not even file written submissions even after directions were given on May 31, 2022.

Only the fourth defendant filed written submissions dated July 29, 2022.

3. I have carefully considered the preliminary objection dated February 14, 2022 and I find that it has no merit for the following reasons.

4. Firstly, I find that section 26 of the Limitation of Actions Act extends the running of time to start from the time the mistake or fraud is discovered. In this case, the collusion pleaded in paragraph 24 and the unlawful transaction and dealings pleaded in paragraph 29 of the plaint were only discovered in the year 2018.

If time started running in 2018, then the limitation created by sections 4(2), 7 and 8 of the Limitation of Actions Act does not apply in this case.

Secondly, section 3 of the Public Authorities Limitation Act does not apply in this case. It applies to actions based on torts and contracts.

This case is not based on torts and contract. It is based on breach of trust by trustees. One may say it is based on fraud because fraud is defined as follows in section 2 of the Limitation of Actions Act.

' Fraud includes conduct which, having regard to some special relationship between the parties concerned, is an unconscionable thing for one to do towards the other'

The use of such words as 'privately colluded and without consultation and consent of members of the second plaintiff.' in paragraph 24 of the plaint and 'unlawful transaction and dealings.' in paragraph 29 denote fraud.

For the above stated reasons, the preliminary objection dated February 14, 2022 is dismissed with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022.**



**MN GICHERU**

**JUDGE**

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