



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Suit 177 of 2000

**JOHN MWANGI MATHENGE (Suing as the personal legal representative of the Estate of
GACHARAMU**

KABUTU(DECEASED).....PLAINTIFF

VERSUS

DANIEL NGUGI RAO.....DEFENDANT

RULING

On 21st March, 2003 the defendant raised a preliminary objection to the plaintiff's suit which sought a declaration that the plaintiff was the legal allottee of a parcel of land known as Nyandarua/Sabugo/429 (hereinafter referred to as the "*suit premises*") and cancellation of the title deed issued to the defendant in respect of the suit premises and vacant possession of the same.

The preliminary objection was as follows:-

- (a) That the plaintiff's claim against the defendant is statute-barred and therefore should be struck out with costs.
- (b) That this honourable court has no jurisdiction to hear and determine this suit.

The plaintiff stated in paragraph 5 of his plaint that the defendant obtained a certificate of outright purchase of the suit premises on 10th June, 1987 and that is when the cause of action accrued. The suit was filed on 30th March, 2000 and that was after a period of 12 years, 9 months and 20 days. The defendant's counsel, Mr. Kariuki Mwangi submitted that the deceased's title was extinguished after expiry of 12 years from 10th June, 1987. He therefore submitted that the plaintiff's claim was statute barred in terms of Section 7 of the Limitation of Actions Act Cap 22 and urged the court to strike out the entire suit.

He sought to rely on the Court of Appeal decision in **PETER THUO KAIRU VS KURIA GACHERU** [1988]2 KAR 111 where the court found that at the time when the appellant sought to enter the suit land his title as well as that of his predecessor in title had already been extinguished and therefore dismissed the appeal.

Mr. Mwangi further submitted that since the suit was time barred, the court had no jurisdiction to entertain the suit.

Mr. Orina for the respondent said that the suit was not time barred. He said that it had to be demonstrated

by evidence that the defendant had been in quiet possession and undisturbed for a period in excess of 12 years. He said that the plaintiff had been making effort to remove the defendant from the suit premises. He said that the preliminary objection was premature and could only be raised after evidence had been taken.

Section 7 of the Limitation of Actions Act is clear that:-

“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.”

I have carefully considered the pleadings filed by both parties as well as the submissions made by both counsel and I am inclined to agree with the defendant’s counsel that the plaintiff’s suit is statute barred, the cause of action having arisen on 10th June, 1987 and the suit having been filed on 30th March, 2000. I therefore strike out the plaintiff’s suit and award costs thereof to the defendant.

DATED, SIGNED AND DELIVERED at Nakuru this 15th day of November, 2005.

D. MUSINGA

JUDGE

15/11/2005

Ruling delivered in open court in the presence of Mr. Rabera holding brief for Mr. Orina for the respondent and N/A for the applicant.

D. MUSINGA

JUDGE

15/11/2005