



**Korir v Too & 2 others (Environment and Land Appeal  
E020 of 2023) [2025] KEELC 4088 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4088 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E020 OF 2023**

**EM WASHE, J**

**MAY 23, 2025**

**BETWEEN**

**JULIUS KIPTOO KORIR ..... APPELLANT**

**AND**

**ENOS KIPCHIRCHIR TOO ..... 1<sup>ST</sup> RESPONDENT**

**SHEM KIPRONO TOO ..... 2<sup>ND</sup> RESPONDENT**

**WILSON KIPKURGAT TOO ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Appellant herein filed a Memorandum of Appeal dated 31.10.2023 (hereinafter referred to as “the present Appeal”) against the Ruling and Decree pronounced on the 27.10.2024 (hereinafter referred to as “the Trial Court Ruling”) in the proceedings known as Eldoret Chief Magistrate’s Court Elc Case No. E147 OF 2022 (hereinafter referred to as “the Trial Court proceedings”) by the Hon.C Menya (hereinafter referred as “the Trial Magistrate”) seeking for the following Orders;-
  - a. The Appeal herein be allowed.
  - b. The Preliminary Objection be dismissed and the Appellant be allowed to Amend the Plaint and the case fixed for hearing.
  - c. The Respondents be ordered to pay costs in the Appeal.
2. The Appellant outlined 4 substantive grounds upon which this Court should rely upon in determining the prayers sought herein above which are as follows; -
  - i. That the Learned Trial Magistrate erred in law and fact by declaring this suit statute barred.



- ii. That the Learned Trial Magistrate erred in law and fact in failing to recognise that the Appellant has been in possession and a trust had been created which is not extinguished by the statute of limitation.
  - iii. That the Respondents activities in realisation of the title which the Appellant was a beneficiary and as such statute of limitation did not apply.
  - iv. That the Learned Trial Magistrate erred in law and fact in her final decision by arriving at an unjust finding thereby occasioning injustice to the Appellant.
3. The present Appeal was duly served on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents (hereinafter referred as “the Respondents”).
  4. The present Appeal was then admitted for hearing on the 03.03.2025 and parties directed to write their submissions in support and opposition of the same.
  5. The Appellant filed his submissions dated 14.03.2025 while the Respondents filed their submissions dated 27.01.2025.
  6. The jurisdiction on this Court sitting as the first Appellate Court was discussed in the leading authority of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others* (1968) EA 123 there the Court of Appeal stated as follows-
 

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
  7. Clearly therefore, the 1<sup>st</sup> Appellant Court has a duty to relook at the facts and evidence presented before the Trial Court and exhaustively scrutinise the same with a view of making its own conclusion.
  8. This being the case, this Court will now proceed to the proceedings undertaken by the Trial Court and make its own conclusion thereof before pronouncing itself on whether or not the Trial Court misdirected itself on the facts and the law applicable.
  9. The present Appeal emanates from the Trial Court Ruling pronounced on 27.10.2023.
  10. The Trial Court Ruling was prompted by the filing of a Preliminary Objection dated 17.11.2022 (hereinafter referred to as “the Preliminary Objection”) by the Respondents herein.
  11. The Preliminary Objection raised the issue of Jurisdiction based on the fact that the Claim contained in the Complaint dated 03.11.2022 was Statutory barred.
  12. The Preliminary Objection was duly served on the Appellant herein who expressed his intention to oppose the same.
  13. The Trial Court in determination of the Preliminary Objection directed the parties to prepare, file and serve their submissions.
  14. The Respondents who were the Applicants in the Preliminary Objection filed their submissions on 03.08.2023 while the Appellant who was the Respondent filed his on 03.07.2023 and the Trial Court Ruling was then pronounced on the 27.10.2023.



15. Based on the Preliminary Objection dated 17.11.2022 and the submissions by the parties therein, it is clear that the issues for determination were as follows; -
  1. Issue no. 1- whether the cause of action(s) in the plaint dated 03.11.2022 were statutory barred or not?
  2. Issue no. 2- whether the preliminary objection was merited or not?
  3. Issue no. 3- is the present appeal merited?
  4. Issue No. 4- Who Bears The Costs Of The Present Appeal?
16. The Court having identified the issues above, the same will now be discussed herein below.

**Issue No. 1- Whether The Cause Of Action(s) In The Plaint Dated 03.11.2022 Were Statutory Barred Or Not?**

17. The first issue for determination is whether the causes of action contained in the Appellant's Plaint dated 03.11.2022 are time barred or not.
18. According to the Respondents submissions dated 03.08.2023, the Appellant's Cause of Action is the enforcement of two Agreements For Sale dated 17.11.1990 and 03.06.1993 over a portion of 4 acres on the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379.
19. However, Section 7 of the *Limitation of Actions Act*, Cap 22 provides that such a claim must be enforced within 12 years from the date when the same accrued.
20. Consequently, the Appellant herein ought to have filed any cause of action emanating from the Agreements For Sale dated 17.11.1990 and 03.06.1993 within 12 years of which such period had lapsed by November 2022 when the Plaint dated 03.11.2022 was filed.
21. Due to the lapse of the 12 years provided for under Section 7 of the *Limitation of Actions Act*, Cap 22, this Court did not have jurisdiction to entertain and determine the causes of action pleaded in the Plaint dated 03.11.2022 and the same should be dismissed with costs.
22. Unfortunately, the Submissions by the Appellant regarding the Preliminary Objection were never included in the Record of the present Appeal.
23. However, the Court will still strive to relook at the merit of the Preliminary Objection based on the pleadings on record.
24. Referring to the Plaint dated 03.11.2022 which outlines the said causes of action, it is clear that the Respondents herein were and/or are the registered owners of the property known as Moiben/Moiben Block 2 (Segero)/379 measuring approximately 6.515 Hectares.
25. The Appellant stated that on or about 17.11.1990, he purchased a portion of 2 acres within the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 from its original owner known as Kiptoo Arap Ngososei (Deceased).
26. In addition to the Agreement For Sale dated 17.11.1990, the Appellant further stated that he purchased a second portion of 2 acres based on the Agreement For Sale dated 03.06.1993 thereby making the Appellant's portion to measure 4 acres within the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379.



27. Unfortunately, the original owner of the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 died on the 08.05.2007 before the portion measuring 4 acres was hived off and transferred to the Appellant.
28. Subsequently after the demise of the original owner, the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 was vested in the names of the Respondents herein.
29. The Appellant in the Plaint dated 03.11.2022 sought for an Order compelling the Respondents herein to Transfer the portion of 4 acres within LR.NO.Moiben/Moiben Block 2 (Segero)/379 to the Appellant herein.
30. The Respondents on being served with the Plaint dated 03.11.2022 filed a Statement of Defence dated 17.11.2022.
31. In the Statement of Defence dated 17.11.2022, there was a denial of the existence of the two Agreements For Sale dated 17.11.1990 and 03.06.1993 and the Appellant was put to strict proof thereof.
32. The Respondents further confirmed that the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 belonged to the late Kiptoo Arap Ngososei.
33. Consequently, after the demise of Kiptoo Arap Ngososei, the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 underwent succession and was vested in the names of the Respondents.
34. The Respondents therefore pleaded that they had no privity of Contract in the two Agreements dated 17.11.1990 and 03.06.1993 with the Appellant.
35. Similarly, the Respondents further pleaded that if the Appellant had any lawful rights over any portion of the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379, he should have enforced the same before the demise of the original owner known as Kiptoo Arap Ngososei.
36. The Respondents in conclusion of the Statement of Defence raised an objection on the jurisdiction of the Court and sought the Plaint dated 03.11.2022 to be dismissed with costs.
37. Based on the facts pleaded in the Plaint dated 03.11.2022 and the Defence dated 17.11.2022, the following facts are not in dispute; -
  - a. That the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 belonged to the late Kiptoo Arap Ngososei.
  - b. The person known as Kiptoo Arap Ngososei died on 08.05.2007.
  - c. The property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 was vested on the Respondents on the 24.03.2021 by virtue of the proceedings known as Eldoret Succession No. 3 OF 2018.
38. The Appellant pleaded that he was a purchaser of 4 acres within the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 by virtue of the Agreements For Sale dated 17.11.1990 and 03.06.1993.
39. The relief sought in the Plaint dated 03.11.2022 is the excision and transfer of the 4 acres on the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 in line with the Agreements For Sale dated 17.11.1990 and 03.06.1993.



40. The Respondents submission is that the Appellant had an opportunity to enforce and recover the portion of 4 acres within LR.NO.Moiben/Moiben Block 2 (Segero)/ 379 within 12 years from either 17.11.1990 and/or 03.06.1993.
41. However, the Appellant sought to enforce and/or recover the portion of 4 acres on the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 based on the two Agreements For Sale dated 17.11.1990 and/or 03.06.1993 in the year 2022 which was way past the 12 years provided for Under Section 7 of the Limitation of Actions Act, Cap 22.
42. Indeed, Section 7 of the Limitation of Actions Act, Cap 22 provides that any party that seeks to recover land must institute the proceedings within 12 years from the date of the cause of action.
43. In the instant case, the Appellant executed two Agreements For Sale dated 17.11.1990 and 03.06.1993 with the late Kiptoo Arap Ngososei for a portion of LR.NO.Moiben/Moiben Block 2 (Segero)/379.
44. If indeed this Agreements For Sale dated 17.11.1990 and 03.06.1993 were executed which fact is in dispute, then the Appellant was required to file any proceedings for enforcement and/or recovery of the said 4 acres on the property known as LR.NO.Moiben/Moiben Block 2 (Segero)/379 within 12 years thereafter.
45. A basic calculation of the 12 years from 17.11.1990 in terms of the Agreement for Sale dated 17.11.1990 lapsed on the 16.11.2002.
46. On the other hand, the 12 years from 03.06.1993 in terms of the Agreement For Sale dated 03.06.1993 lapsed on the 02.03.2005.
47. In essence, this Court is of the considered view that the Causes of Action based on the two Agreements For Sale dated 17.11.1990 and 16.11.1993 are time barred based on the provisions of Section 7 of the Limitation of Actions Act, Cap 22.
48. It is important to point out that the Appellants in the present Appeal and their submissions have raised an issue of trust.
49. According to the Appellants, the late Kiptoo Arap Ngososei held the 4 acres on the property known as LR.NO.Moiben.Moiben Block 2(Segero)/379 in Trust after the execution of the two Agreements For Sale dated 17.11.1990 and 03.06.1993.
50. However, the Appellant in the Plaintiff dated 03.11.2022 did not plead any particulars of Trust either against the late Kiptoo Arap Ngososei or the Respondents herein.
51. Consequently, the issue of Trust cannot be considered by this Court where the same was not pleaded by the Appellant.
52. The issue of leave to Amend the Plaintiff dated 03.11.2022 to include such a Claim could only be considered if the original Plaintiff was sustainable against the Respondents which unfortunately was found to be not.

**Issue no. 2- whether the preliminary objection was merited or not?**

53. The second issue is whether the Preliminary Objection was merited or not.
54. Based on the determination in Issue No. 1, this Court makes a finding that the Preliminary Objection dated 17.11.2022 was merited.



**Issue no. 3- is the present appeal merited?**

55. Based on the determination in Issues No. 1 and 2, this Court is of the considered view and finding that the Trial Court considered the correct facts and applied the law correctly.
56. As such, this Court has no reason and/or legal basis to disturb and/or alter the Trial Court Ruling pronounced on the 27.10.2023 hence the present Appeal is not merited.

**Issue no. 4- who bears the costs of the present appeal?**

57. Costs follow the event.
58. In the present Appeal, the Appellant is not successful and therefore must meet the costs.

**Conclusion**

59. In conclusion, this Court hereby makes the following Orders in determination of the Memorandum of Appeal dated 31.10.2023;
- A. The memorandum of appeal dated October 31, 2023 is not merited and therefore dismissed forthwith.
- B. The 1<sup>st</sup> -3<sup>rd</sup> respondents are awarded costs of this appeal to be paid by the appellant herein.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Ass: Brian

Appellant: Ms. Rotich holding brief Martim for Appellant

Respondent: Ms. Sielei for the Respondent

