



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MAKUENI**

**ELC CASE NO. E002 OF 2020**

**ABDULMALIK THOMAS MATEE NZOMO**

**(Suing as the administrator if the Estate of Daniel Nzomo Matee (Deceased))....PLAINTIFF**

**-VERSUS-**

**TABITHA KATILE KAWINZI.....1<sup>ST</sup> DEFENDANT**

**DANIEL MUTUKU KAWINZI.....2<sup>ND</sup> DEFENDANT**

**SAMUEL MUNGUTU NDAMBUKI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed this suit on 8<sup>th</sup> October, 2020 against the Defendants seeking various reliefs in the Plaintiff *inter alia*:

**a. An Order of permanent injunction restraining the Defendants by themselves, agents, servants or any other person claiming under their authority and/or instructions from entering, trespassing, interfering, constructing, demolishing, fencing, leasing out, selling, carrying on any activity thereon or committing any act whatsoever of all that property belonging to Daniel Nzomo Wambua (Deceased) (the Plaintiff's father) measuring 2.024 Hectares part of all that land known as Makueni/Unoa/143 situated in Wote Town within Makueni County.**

**b. An Order that the Administrators of the estate of Ndambuki Kingutu Maitha (Deceased) do transfer the portion of land measuring 2.024 Hectares contained in Title Number Makueni/Unoa/143 measuring 15.6 Hectares situated in Wote within Makueni County to the Plaintiff/Applicant.**

**c. Costs of the suit.**

2. In reply, Defendants filed their Statement of Defence on 3<sup>rd</sup> November, 2020 praying that the suit be dismissed with costs. On the same day, the Defendants filed a notice of preliminary objection seeking that the suit and application dated 6<sup>th</sup> October, 2020 be struck out on grounds that the cause of action is statute barred pursuant to Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya.

3. The notice of preliminary objection was canvassed by way of written submissions.

4. Having perused the pleadings and submissions and I am of view that the issue for determination is as follows:

**- Whether the Plaintiff's suit offends Section 7 of the Limitation of Actions Act Cap 22 Laws Kenya?**

5. Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya bars the bringing of suits for recovery of land after the end of twelve years from the date on which the cause of action first accrued.

6. In their submissions, the Defendants posit that from paragraph 3 of the plaintiff, the Plaintiff states as follows:

**“That on 9/8/1973, the Plaintiff's late father (Daniel Nzomo Wambua) bought land measuring approximately 5.2 acres from one Ndambuki Kingutu Maitha (Deceased).”**

7. The Defendants submitted that the Plaintiff herein seeks to enforce the purported sale agreement of 1973 so that the claimed portion of land is transferred to the Plaintiff who is the Administrator of his late father's estate. They argue that since the Plaintiff's late father, to whom the suit property was sold in 1973 died in 2006, the Plaintiff cannot bring the suit herein now to enforce that sale agreement.

8. The Plaintiff refuted the Defendant's interpretation of when the cause of action herein arose. He argued that this suit is founded on Section 9(1) of the Limitation of Actions Act Cap 22 Laws of Kenya which provides as follows:

**“Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action accrues on the date of the dispossession or discontinuance.”**

9. The Plaintiff alleges that it is the Defendants who upon obtaining a certificate of confirmation of grant sometimes in 2019 changed tack and refused to recognize the purchaser's interest which now rests with the Administrator of the estate of Daniel Nzomo (Deceased). The Plaintiff alleged that while his family has been in continuous possession of the suit property, the Defendants sometimes in between 2016 and 2019 descended on the suit property and demolished the farmhouse and the fence.

10. I am inclined to find the Plaintiff's rendition that the cause of action herein arose the moment quiet possession was interrupted to be the only plausible reason that prompted the filing of this suit. The Plaintiff is therefore justified to bring this claim which is anchored upon Section 9 of the Limitation of Actions Act.

11. Hence, the Preliminary Objection is hereby dismissed. Costs shall abide the outcome of the suit.

**Signed, dated and delivered at Makueni via email this 9<sup>th</sup> day of February, 2021.**

.....

**HON. MBOGO C.G.**

**JUDGE**

**Court**

**Assistant:**

**Mr.**

**Mohammed**