



REPUBLIC OF KENYA



**Mugo (Suing as Administrator of the Estate of John Mugo Kinuthia)
v Orate International Limited & 3 others (Environment & Land Case
E053 of 2024) [2025] KEELC 3792 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E053 OF 2024**

MD MWANGI, J

MAY 8, 2025

BETWEEN

**ESTHER WAKONYO MUGO (SUING AS ADMINISTRATOR OF THE ESTATE
OF JOHN MUGO KINUTHIA) PLAINTIFF**

AND

ORATE INTERNATIONAL LIMITED 1ST DEFENDANT

KAJIADO COUNTY 2ND DEFENDANT

DISTRICT LAND REGISTRAR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

(In respect of the Preliminary objection dated 28th October, 2024)

RULING

Background

1. This Ruling is in respect of the preliminary objection by the 1st Defendant dated 28th October, 2024. The 1st Defendant raises two points as follows;
 - a. The Supreme Court of Kenya has in the case of Torino Enterprises Ltd -vs- Attorney General SC Petition N0. 5 (E006) of 2022 held that an allotment is incapable of being transferred. The Present suit is therefore irredeemably defective as the Plaintiff claims ownership pursuant to a transfer of an allotment.
 - b. The suit is time barred under Section 3(2) of the Public Authorities Limitations Act since the impugned allotment in favor of the 1st Defendant was effected 1997.



Court's directions.

2. The court's directions were that the preliminary objection be dispensed with by way of written submissions. The Plaintiff and the 1st Defendant duly filed their respective submissions which form part of the record of this court.
3. The Defendant through submissions dated 20th March, 2025 in support of the objection terms the Plaintiff's suit as a non-starter. He avers that an allottee cannot transfer a parcel of land before a title is issued as alleged by the Plaintiff in her suit. Further, the 1st Defendant avers that the Plaintiff's claim is subject to the provisions of the Public Authorities Limitations Act. Taking into consideration that the Plaintiff challenges an allotment letter issued to the 1st Defendant on 29th January, 1997, then she ought to have filed her suit within 3 years of allotment based on Section 3(2) of the Act of the Public Authorities Limitations Act.
4. The Plaintiff's counsel through submissions dated 20th March, 2025 implores the court to dismiss the preliminary objection because it concerns disputed factual issues. The decision of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1979) E.A* is cited to demonstrate that a preliminary objection must be based on points of law only.
5. According to the Plaintiff, a court cannot rely on evidence to determine a preliminary objection. It is contended that the Plaintiff's claim for ownership of the suit property is a factual question that can only be determined once the court inquires into whether all the conditions in the allotment letter were fulfilled. The Plaintiff submits that her claim over the suit property is valid, lawful and must be allowed to proceed to full trial because it is also based on rights that extend beyond the allotment letter.
6. It is further argued that the Plaintiff's suit is not time barred as the cause of action which prompted the filing of this suit accrued on 15th May, 2023. Further, Section 3 of the Public Authorities Limitation of Act provides that the issue of limitation of action can only be raised by a public body once a suit is filed against it. Therefore, taking into consideration that the 1st Defendant is a private entity, it cannot rely on this provision of the law. Accordingly, its preliminary objection is misplaced.

Issues for determination.

7. Having carefully considered the preliminary objection and the parties' submissions, the sole issue for determination is whether the 1st Defendant's preliminary objection is merited.

Analysis and determination

8. As extensively submitted by the Plaintiff, the celebrated case of *Mukisa Biscuit (supra)* set the benchmark on what constitutes a proper preliminary objection. The Court stated that;

“---a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration.

“....a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but



unnecessarily increase costs and on occasion, confuse the issues, and this improper practice should stop.”

9. This position was restated by the Supreme Court of Kenya in the case of *Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others* [2015] KESC 23 (KLR), where the court stated as follows;

“Thus, a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

10. In the case of *Independent Electoral & Boundaries Commission -vs- Cheperenger & 2 others* [2015] KESC 2 (KLR), the Supreme Court too expressed itself as follows on the purpose of a preliminary objection;

“The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

11. One of the grounds upon which the preliminary objection is premised on is that an allotment letter cannot be transferred. The 1st Defendant has quoted the holding of the Supreme Court in *Torino Enterprises* case (supra). On his part, the Plaintiff holds the view that this ground does not meet the criteria set out in *Mukisa Biscuit* (supra) because it is based on factual issues which are yet to be determined, rather than on points of law. The Plaintiff affirms that she seeks this court’s determination on the allotment of the suit property which is also being claimed by the other parties in this suit.

12. The Plaintiff has pleaded in his plaint dated 15th May, 2024 that even though he was issued with an allotment letter of the suit property on 29th January, 1991 by OleKejuado County Council, the same was illegally transferred to the 1st Defendant by the 2nd Defendant without his knowledge. He thus seeks this court intervention to have the allotment letter issued to the 1st Defendant cancelled. He further wants this court to direct the 3rd and 4th Defendants to issue him with the lease to the suit land lease and a certificate of lease.

13. At this very early stage, it is impossible to establish from the pleadings who the lawful and or original allottee of the suit property is. It is an issue which can only be established once the court takes and analyses the evidence. The pleadings are still open and parties have the liberty to file documents and witnesses statements to aid the court in making its determination. Consequently, I agree with the Plaintiff’s submissions that the first ground of the 1st Defendant preliminary objection is not premised on a point of law but on contested factual issues.

14. The second ground of the preliminary objection is premised on Section 3(2) of the Public Authorities Limitations Act which provides as follows;

“No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”



15. The issue whether the Plaintiff's suit is time barred is dependent on the time the Plaintiff instituted his claim against the defendants vis-à-vis to the exact date the cause of action arose. The Plaintiff has pleaded that the suit property was transferred to John Mugo Kinuthia on 10th October, 1983 vide an allotment letter. While John Mugo was in possession, he continued to pay rent until his demise in 2007.
16. Upon commencement of Succession proceedings, the administrators of his estate realized that the suit property had been transferred to the 1st Defendant. Consequently, they visited the ministry of land offices at Ardhi House on 15th May ,2023 where they sought to trace the suit land file. It was only then that they learnt that the suit property had already been fraudulently transferred to the 1st Defendant on 6th June, 2012 without their knowledge.
17. Going by the Plaintiff's assertions as stated in his plaint, the computation of time of his cause of action commenced in 2023 when time begun to run. Accordingly, the provisions of Section 3(2) of the Public Authorities Limitations Act do not bar the Plaintiff's suit. Accordingly, I find that the Plaintiffs' suit as pleaded is not statute barred.
18. My finding is that the 1st Defendant's preliminary objection is not merited and the same is hereby dismissed with costs to the Plaintiff.
19. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Maina h/b for Mr. Njuru for the Plaintiff

Mr. Philip Ndegwa Mbundi h/b for Mr. Kiplagat for the 1st Defendant/Objector

N/A by the 2nd to 4th Defendants

Court Assistant: Mpoye

