



REPUBLIC OF KENYA



KENYA LAW
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**Gachenga v Malii & 11 others (Environment and Land Case
343 of 2019) [2025] KEELC 5983 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 343 OF 2019**

**AA OMOLLO, J
JULY 24, 2025**

BETWEEN

MICHAEL KARIUKI GACHENGA PLAINTIFF

AND

RAPHAEL KISOTO MALII 1ST DEFENDANT

ONESMUS MUTIE MUTUA 2ND DEFENDANT

HON HASHIM KAMAU ATHMAN 3RD DEFENDANT

HON. PAUL NDUNGU IRUNGU 4TH DEFENDANT

**ADAM ABDULA – CHAIRPERSON STEVEN ODHIAMBO – TREASURER
DICKSON DOYO – SECRETARY HAMISI MUHAMED – ASS. TREASURER
(AS OFFICIALS OF UPRISING YOUTH GROUP) 5TH DEFENDANT**

AISHA WANJIRU GICHARU 6TH DEFENDANT

ASHA W. RAMATHAN 7TH DEFENDANT

**JUMA MUHAMED (CHAIR PERSON) RAJAB JUMA (TREASURER)
WYCLIFF OMONDI (SECRETARY) (AS OFFICIALS OF MASHIMONI YOUTH
GROUP) 8TH DEFENDANT**

NELSON KIMOTHO KARENJU 9TH DEFENDANT

ROSE MBULO NZOMO 10TH DEFENDANT

ANTONY OTUOMA AKOMO 11TH DEFENDANT

LYDIA M GATHANGA 12TH DEFENDANT



RULING

1. The 2nd – 10th Defendants filed a Preliminary Objection dated 3rd July 2024 pleading thus;
 - i) The Plaintiff's claim is time barred as provisions of section 7 of the *Limitation of Actions Act* Cap 22 having been brought over 12 years.
 - ii) The Plaintiff's claim is an abuse of the court process.
2. The plaintiff states that he filed grounds of opposition dated 2nd October, 2024. The plaintiff stated inter alia that his suit is filed within time and the Preliminary Objection has no legal basis serving as axed herring and deliberate attempt to manipulate these proceedings.
3. Section 7 of the *Limitation of Actions Act* Cap 22 provides thus;

“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.”
4. In their submissions dated 13th March, 2025, the Defendants state that the Plaintiff was granted a lease running from 1998 but the plaintiff brought this claim after the lapse of twelve (12) years from the date the right accrued to him hence the claim is time barred. The defendants then go further to submit that the issue of limitation goes to the jurisdiction of the court and cited the holding in the case of *Sahanladurgass Rajput & Another Vs. Divisions Intergrated Development Programmes Co. Ltd (2021) eKLR*.
5. Nowhere in the preliminary objection nor the submissions do the 2nd to 10th Defendants plead when according to them time began to run. Be that as it may is trite law that when time begin to run should be discerned from the pleadings.
6. At paragraphs 10 and 11 of the plaint, it is pleaded that;

“sometimes between 2008 and 2010, the 1st and 2nd defendants entered on to the land without the licence or consent of the plaintiff. The Plaintiff avers that the defendants and/or their tenants are currently occupying the suit property and have set up residential houses, Pumwani Local Mattress, a car wash and a self-help group called Mashimoni Youth Group, which deals in Sanitation, particularly that of public toilets.”
7. Under paragraph 15(b) the illegal conduct of the 1st and 2nd Defendants is pleaded as trespass upon private land by remaining upon the suit property without the consent of the plaintiff. The plaintiff in the sought prayers inter alia, an order for eviction of the defendants.
8. The Defendants do not deny occupation but aver that they have been in occupation for over 85 years prior to 2010 after the property was allocated to them by the government. It is in their paragraph 19A of amended statement of defence they plead the case was brought after 12 years of their possession.
9. Therefore, according to the Plaint, time began running between 2008 – 2010 and by the time the suit was filed in the year 2019, 12 years had not lapsed. Further, by virtue of the Defendants' continued occupation without his consent means the act of trespass is continuous. Whether or not the averment by the plaintiff is right/wrong is a question to be proved by evidence.



10. Similarly, as per the defence raised, whether the Defendants allege to have been on the land for over 85 years (order than Independent Kenya bringing in to question whether the colonial government allotted them the land) is a question of fact requiring proof through evidence.
11. In the renowned case of Mukisa Biscuits Co. Ltd vs West End Distributors Ltd, it was held that a preliminary objection ceases to be one when it requires proof by production of evidence. In this case, the Defendants Preliminary Objection requires proof in terms of whether to adopt the timelines set by the plaintiff and or the timelines set by the Defendants. This make it fail the threshold of a preliminary point of law.
12. In any event, the timelines set out in the plaint on the face of it show the suit was filed before the lapse of the twelve years. Further, the question of expiry of time would not apply where the alleged trespass is still continuing. I am guided by the decision of the court of Appeal in the case of Muthiora vs Marion Muthama Kiara (suing on behalf of Estate of Erastus Muthamia Kiara) Civil Appeal 43 of 2017) (2022) KECA 28 (KLR) 4th February, 2022 (Judgment) at paragraph 53 and 54.

“ 53.

Finally, in clerk and Lind set on Torts 16th Edition paragraph 23 – 01 it is stated that;

“Every continuance of trespass is a fresh trespass of which a new cause of action arises form day today as long as the trespass continues.”

13. In light of the foregoing analysis, I hold that the preliminary objection raised is without merit. It is dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025

A. OMOLLO

JUDGE

