



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maranga v Mwangi & 2 others (Environment and Land Case  
38 of 2014) [2025] KEELC 5130 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5130 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 38 OF 2014  
SM KIBUNJA, J  
JULY 9, 2025**

**BETWEEN**

**NICODEMUS NYAGAKA MARANGA ..... PLAINTIFF**

**AND**

**GRACE GATHONI MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**JAMES KAMAU WACHIRA ..... 2<sup>ND</sup> DEFENDANT**

**LEAH MUTHONI KANUGO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The defendants filed the notice of motion dated 23<sup>rd</sup> April 2025 seeking for inter alia that the further amended plaint dated 21<sup>st</sup> February 2022 be struck out with costs for being otherwise an abuse of court process. The application is based on the fourteen (14) grounds on its face marked (i) to (xiv) respectively and supported by the affidavit of James Kamau Wachira, 2<sup>nd</sup> defendant, sworn on 23<sup>rd</sup> April 2025, among others deposing that the plaintiff's claim is based on fraud and was filed in 2014; that it had initially been filed as Mombasa CMCC No. 526 of 2007; that the agreements subject matter of the suit were executed on 31<sup>st</sup> May 2002 and 14<sup>th</sup> January 2006 and the suit is therefore time barred, a waste of valuable judicial time and an abuse of court process; that consequently the court has no jurisdiction in the suit and it should be struck out with costs.
2. The application is opposed by the plaintiff through the fourteen (14) grounds of opposition dated 8<sup>th</sup> May 2025, and the replying affidavit of Nicodemus Nyagaka Maranga, the plaintiff, sworn on the 8<sup>th</sup> May 2025. The plaintiff's case is summarized as follows:
  - a. The application is misconceived and an abuse of court process;
  - b. The application is res judicata as the limitation issue was brought during the amendment of pleadings application and declined;



- c. That the suit touches on the suit property described in the plaint and is questioning the agreements selling his property as he never signed the agreement dated 14<sup>th</sup> January 2006;
  - d. That the cause of action arose in 2007 to recover his land and the suit was filed in 2014, before expiry of 12 years;
  - e. That even if the issue based on fraud was to be found to be time barred, it does not stop the rest of the issues from going to trial;
  - f. That the plaintiff has already given his evidence and closed his case; and
  - g. That the application should be dismissed with costs.
3. The learned counsel for the defendants and plaintiff filed their submissions dated the 13<sup>th</sup> May 2025 and 29<sup>th</sup> May 2025 respectively, that the court has considered.
  4. The following are the issues for the court's determinations on the notice of motion dated 23<sup>rd</sup> April 2025:
    - a. The learned counsel for the defendants has submitted that the plaintiff's suit is statute time barred and should be struck out with costs. The counsel cited the cases of Equatorial Bank Limited versus Jodam Engineering Works Limited & 2 Others [2014] eKLR, on the use of striking out remedy in a sparingly manner. The counsel further submitted that from the further amended plaint filed on 21<sup>st</sup> February 2022, the plaintiff's claim is based on the tort of fraud, and ought to have been filed within three years from the date of occurrence, but the plaint is silent on the date of cause of action. That this makes the plaintiff's claim too general and lacks on precision and certainty. The counsel further cited sections 4 & 26 of the *Limitation of Actions Act* chapter 22 of Laws of Kenya, and submitted this court has no jurisdiction in this suit in view of the decision in the cases of Spin Knit Dairy Limited versus Mwaniki Muchangi [2019] eKLR, Owners of Motor Vessel "Lillian S" versus Caltex Oil (K) Limited [1989] KLR, David Githumbi Thande versus Dairy Farmers Cooperative Society & 9 Others [2010] eKLR, Benja Properties Limited versus Syedna Mohammed Burhannudin Sahed & 4 Others [2015] eKLR, and Accredo AG & 3 Others versus Steffano Uccelli & Another [2019] eKLR, among others, and submitted their application should be allowed as prayed.
    - b. The learned counsel for the plaintiff has inter alia submitted that from the plaintiff's further amended plaint and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' defence and counterclaim, his client's cause of action is recovery of his property that was sold without his consent by 1<sup>st</sup> defendant to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. That he pleaded fraud for purposes of seeking damages, and so as to present his whole claim as required under Order 3 Rule 14 of Civil Procedure Rules, and even if no damages will eventually be granted, it will not make the rest of his claim incompetent. That there is confirmation already that the sale of his property was improper and partial judgement has been entered against the 1<sup>st</sup> defendant. That when he got to know his land had been sold wrongly in 2007, he filed a suit before the Magistrate court but the defendants raised objection on the court's jurisdiction, necessitating the filing of the instant suit in 2014, before the expiry of 12 years for recovery of the land. That as the defendants never raised a preliminary objection on the suit being statute time barred before from 2014, to the filing of this application, the suit should be allowed to be heard and determined on merit.
    - c. The record confirms that the during the proceedings of 16<sup>th</sup> March 2023, the suit was referred to court annexed mediation by consent of the parties' counsel. The parties subjected themselves



to the mediation process and a partial settlement agreement dated 29<sup>th</sup> May 2023, that was duly signed by all the parties, and their respective advocates was filed by the mediator, and adopted by the court on the 19<sup>th</sup> July 2023. It is important to note the further amended plaint being sought to be struck out was filed on 21<sup>st</sup> February 2022, and the defendants were alive to its contents by the time they conceded to the mediation process. Considering that court annexed mediation settlements are not appealable, then it is an exercise to futility to consider allowing the defendants' striking out application as it would have the effect of throwing out of the window the said parties' partial settlement.

- d. Further, the court has noted that the plaintiff had through the application dated 3<sup>rd</sup> November 2023 sought to have inter alia the partial settlement agreement set aside. The application was opposed by the defendants through the replying affidavit of Grace Gathoni Mwangi, 1<sup>st</sup> defendant, sworn on 10<sup>th</sup> November 2023. The application was heard on merit and declined vide the ruling of 11<sup>th</sup> April 2024, that however set aside agreed issue number 2 that was against unspecified County Government that was not a party. Again, to consider allowing the instant application will be tantamount to setting aside the parties' partial settlement that was declined through the ruling of 11<sup>th</sup> April 2024. It is important to also note that the plaintiff has closed his case on the issues that were not settled during mediation. The defendants should therefore put their efforts in presenting their defence and leave the court to determine the issues that were not settled through mediation.
  - e. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where for good reasons the court orders differently. In this application, the plaintiff is awarded costs.
5. Flowing from the above determinations, the court finds and orders as follows:
- a. That the defendants' application dated the 23<sup>rd</sup> April 2025 is without merit and is dismissed.
  - b. The defendants to pay the plaintiff's costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 9<sup>TH</sup> DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Plaintiff : M/s Mwanzia

Defendants : Mr Kioko for Jengo

Shitemi-Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

