



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

MISC. APPLICATION NO. 24 OF 2020

IN THE MATTER OF LIMITATION OF ACTIONS ACT

IN THE MATTER OF AN APPLCIATION BY JOYCE WANJIKU GEOFFREY

FOR LEAVE TO FILE SUIT OUT OF TIME

JOYCE WANJIKU GEOFFREY.....PLAINTIFF/APPLICANT

(Suing as personal representative of the Estate of Geoffrey Ngige Kahombora DECEASED)

VERSUS

JOSEPH KABANDE.....DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated the 21st August, 2020 brought pursuant to Section 27 and 28 of the Limitation of Actions Act; Section 1A and 3A of the Civil Procedure Act including Order 50 Rule 7 of the Civil Procedure Rules, the Applicant seeks for the following orders:

1. **THAT** this Honourable Court be pleased to grant the Applicant herein leave to file suit out of time, for recovery of land from particulars stated in the Plaint annexed herein.
2. **THAT** the costs of this Application be in the cause.

The Application is premised on the summarized grounds that the Applicant's husband, **GEOFFREY NGIGE KAHOMBORA** (deceased) duly entered into a written sale of agreement with the vendor one **JOSEPH KABANDE** on 31st January, 1990 for the sale of a parcel of land measuring five (5) acres from Land title Reference Number **KAJIADO/KISAJU/2980** which was hived from Land Title Reference No. **KAJIADO/KISAJU 527**. The deceased paid the full purchase price of Kshs. 4000 per acre amounting to Kshs. 20,000. Further, despite the deceased making the full payment, the Respondent refused to effect the transfer of the five (5) acres of land to him but only did for two (2) acres. The deceased lodged a formal complaint on the matter to the Land Dispute Tribunal of Kajiado North District which determined through a ruling dated 8th November, 2012, that the remaining three (3) acres of land should be transferred to him. Despite the Award, the Respondent refused to transfer the three (3) acres to the deceased. Further through his Advocates at the time, the deceased wrote a Demand Letter to the Respondent dated 30th April, 2015 seeking vacant possession of the land and completion documents for effective transfer of title, which letter failed to elicit a response. The deceased through his Advocates wrote another demand letter dated 9th February, 2016 but the same did not elicit any response from the Respondent.

The Applicant contends that the delay in filing the suit within the stipulated time was not intentional as her late husband was pursuing this matter before his death on 10th September, 2019 at the Land's Tribunal. She further explains that the deceased fell ill between 2013-2016 and was therefore not able to effectively pursue the case before as fate would have it, succumbing to illness on 10th September, 2016. Further, she underwent immense mental anguish following the demise of her late husband and was not in the proper state to pursue this matter at that time. She further confirms that following the death for Geoffrey Ngige Kahombora, she applied for Grant Ad Litem so as to be the legal representative in the suit. She reiterates that she has been ready and willing to prosecute this suit.

The application is supported by the affidavit of the Applicant JOYCE WANJIKU GEOFFREY where she reiterates her claim above.

The application was canvassed by way of written submissions.

Analysis and Determination

Upon consideration of the Notice of Motion dated the 21st August, 2020 including the supporting affidavit as well as the annexures thereon, the only issue for determination is whether leave should be granted to the Applicant to file this suit out of time.

The Applicant is the legal representative of the estate of **Geoffrey Ngige Kahombora**. The deceased had entered into Sale agreement with the vendor one **JOSEPH KABANDE** on 31st January, 1990 for the sale of a parcel of land measuring five (5) acres from Land title Reference Number **KAJIADO/KISAJU/2980** which was hived from Land Title Reference No. **KAJIADO/KISAJU 527**. The Applicant contends that despite the deceased paying the full purchase price, the Sale was not completed as the Respondent only transferred two (2) acres of land to him. Further, despite the Land Disputes Tribunal directing the Respondent to transfer the remaining three (3) acres to the deceased, he failed to do so. The Applicant in her submissions reiterated her claim and contended that this Application has merit. Further, that no prejudice will be occasioned by the Respondent. To buttress her averments, she relied on the following decisions: **Joseph Tinga Janga V Kenya Marine & Fisheries Research Institute (2014) Eklr**; **Lucy Bosire V Kehancha Div. Land Dispute Tribunal & 2 Others; CMC Holdings Limited Vs Nzioki 2004) 1KLR 173**; **Pan African Paper Mills Limited Vs Silvester Nyarango Obwocha (2018) Eklr and Agip (Kenya) Limited V Highlands Tyres Limited (2001) KLR 630**.

Based on the explanations given above, I note the deceased strived to claim for land from the Respondent but it was in vain. From a perusal of the annexures in the supporting affidavit, I note there were Sale Agreements and on 8th December, 2012 the Kajiado North District Land Disputes Tribunal directed the Respondent to transfer the three (3) acres of land to the deceased but he failed to do so.

In the case **Rawal Vs Rawal (1990) KLR 275** the court stated: -

“The object of any Limitation enactment is to prevent a Plaintiff from prosecuting stale claims on one hand and on the other hand protect a Defendant after he had lost evidence for his defence from being disturbed after long lapse of time.”

Further, in the case of **Agip (Kenya) Limited V Highlands Tyres Limited (2001) KLR 630**, the Court held that:’ **Where there is a reason for the delay is offered, the court should be lenient and allow the Plaintiff an opportunity to have his case determined on merit. The court must also consider whether the Defendant has been prejudiced by the delay.’g**

Based on the facts before me while associating myself with the decisions cited above, I find the explanation granted by the Applicant in respect to the delay plausible. Further, I find that the Respondent will not be prejudiced by this delay since the deceased has over the years pursued him to give him the three (3) acres of land but he failed to do so.

In the circumstance, I find the application dated 21st August, 2020 merited and will allow it. Costs will be in the cause.

I direct the Applicant to file the suit within fourteen (14) days from the date hereof.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF MARCH, 2021.

CHRISTINE OCHIENG

JUDGE