



Ogombo v Land Registrar Vihiga County; Zinale & 2 others (Interested Parties) (Environment and Land Case Judicial Review Application E001 of 2025) [2025] KEELC 6030 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6030 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2025
E ASATI, J
SEPTEMBER 18, 2025**

BETWEEN

JAMES NJIMWEI OGOMBO APPLICANT

AND

LAND REGISTRAR VIHIGA COUNTY RESPONDENT

AND

JACQUILINE ZINALE INTERESTED PARTY

MARY ANDISI EGADWA INTERESTED PARTY

NAUMI M EGADWA INTERESTED PARTY

RULING

1. This ruling is in respect of the Preliminary Objection raised by the 1st Interested Party herein vide the Notice of Preliminary Objection dated 5th June 2025.
2. The 1st Interested Party seeks to have the Judicial Review proceedings herein struck out on the basis that:
 - i. The suit offends the mandatory provisions of section 4 (4) of the *Limitation of Actions Act* as the applicant is seeking to enforce an order issued on 17th July 2005 which is twenty (20) years ago.
 - ii. The suit offends the mandatory provision of Section 7 of the *Limitation of Actions Act* as the applicant is seeking to recover land after twenty (20) years.
3. On 9th June, 2025 directions were taken that the Preliminary Objection be heard by way of written submissions. Written submissions dated 9th June, 2025 were filed on behalf of the Interested Party by



- Emily & Associates Advocates. Counsel submitted that the only issue for determination is whether the preliminary objection is merited.
4. Relying on the case of Mukisa Biscuits Manufacturing Company limited vs West End Distributors Limited (1969) EA 696, Counsel submitted that the Preliminary Objection was raised on points of law.
 5. That the first point of law is premised on section 4 (4) of the *Limitation of Actions Act*. Counsel submitted that the applicant herein seeks to enforce an order made on 19th July 2005 which directed that the suit land namely; South Maragoli/Logovo/849 be registered in the Applicant's name. That the present Judicial Review Application was filed in the year 2025 which is 20 years after the order was issued. That such actions are statute-barred hence unenforceable. Counsel relied on the case of Owaga vs Koech [2022] KEHC 1744(KLR) where the court held that where a party seeks to execute a judgement/order after the passage of 12 years since its delivery, the same is statute barred and not enforceable.
 6. Counsel submitted further that no leave has been sought to file the application out of time and that no explanation has been given for the delay. That the application is caught up by the provisions of section 4 (4) of the *Limitation of Actions Act* and ought to be struck out.
 7. Counsel submitted that the second limb of the objection is that under Section 7 of the *Limitation of Actions Act*, the Applicant's right of action to recover land, if any, accrued at the time the order was made in 2005 and stayed valid until the lapse of 12 years which was in the year 2017. That the present application made 8 years beyond the statutory period is untenable.
 8. Counsel relied on the case of Kuria & 27 Others vs Mott and 12 Others [2024] KEELC 4220 (KLR) and submitted that permitting the enforcement of an order issued more than 2 decades ago will amount to permitting a nullity as the same would be against the law.
 9. Counsel urged the court to find that the Preliminary Objection is meritorious and to uphold it and strike out the Judicial Review application with costs to the 1st Interested Party.
 10. On behalf of the ex parte Applicant, it was submitted vide the written submissions dated 19th June 2025 filed by the firm of Chimei Malenya & Company Advocates that there is no dispute over ownership of the parcel of land and that the applicant's right to property is a right well enunciated under Article 40 of *the Constitution* of Kenya.
 11. That it is not accurate that the matter has been dormant since the year 2005 as the last activity on the matter was on 2nd October 2024 when the Court Administrator Vihiga Law Courts signed the transfer and Land Control Board forms in accordance with the court order.
 12. That an inquiry into how long it has taken to enforce the court order would make the court inquire into the facts of the matter, which would take the matter out of the purview of a Preliminary Objection. That a right to hold property is a constitutional right under Article 40 of *the constitution* and no person can be deprived of his property except in accordance with the provision of *the Constitution* or statute. That the *Limitation of Actions Act* cannot be used to limit a constitutional right. Counsel relied on the case of Monica Wangu Waruwere & 5 Others vs The Attorney General SC Petition Numbers 26, 34 and 35 of 2019 (Consolidated) [2023] KESC 3(KLR) and the case of Chief Land Registrar and 4 others vs Nathan Tirop Koech and 4 others [2018] KECA 27 KLR to submit that the applicant's right under article 40 of *the Constitution* (right to property) has been violated continuously by the respondent's failure to comply with lawful order to transfer the suit land to the applicant.
 13. That this is a constitutional grievance that inform the context and the justification for the judicial review application hence there ought to be no time as to the filing of the application.



14. That the Applicant has been making countless efforts to have the suit land transferred to his name which efforts have borne no fruits to date. Counsel submitted further that an order of Mandamus as sought by the Applicant cannot be subjected to limitation period. Counsel relied on the case of Lucy Mirigo and 550 Others vs Minister for Land and 4 Others [2014]eKLR and the case of Republic vs Land Registrar Busia and 2 Others, Nyabola [Ex parte Applicant] Environment and Land Judicial Review Case E003 of 2023 [2024] KEELC 1319 (KLR) to support the submission.
15. No submissions were filed by the respondent.
16. The 2nd and 3rd Interested Parties supported the Preliminary Objection.
17. I have keenly considered the Preliminary Objection. The threshold for Preliminary Objections was set in the case of Mukisa Biscuits Manufacturing Company Limited vs West End Distributors Limited [1969] E.A relied on by the 1st Interested Party where the court held that;

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

Further that;

“A preliminary objection is in nature what used to be a demurrer. It raises a pure point of law which 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.”

18. The preliminary objection raised herein relates to a plea of limitation based on sections 4 (4) and 7 of the *Limitation of Actions Act*.
19. The 1st Interested Party’s case is that the Judicial Review application seeks to enforce a judgement that is already time barred under the provision of section 4 (4) of the *Limitation of Actions Act*. Section 4 (4) of the *Limitation of Actions Act* provides that:

“An action may not be brought upon a judgement after the end of twelve years from the date on which the judgement was delivered, or (where the judgement or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period) the date of the default in making the payment or delivery in question and no arrears of interest in respect of a judgement debt may be recovered after the expiration of six years from the date on which the interest became due.

20. The substantive Notice of Motion filed by the ex-parte applicant pursuant to leave granted by the court on 12th May 2025 is dated 5th June 2025. The substantive prayers sought in the Notice of Motion are prayers 1 and 2 namely;

“ 1) An order OF Mandamus be issued compelling the respondent to transfer land parcel South Maragoli/Luguro/849 to the applicant.



- 2) An order of certiorari be issued quashing any title issued by the respondent with respect to South Maragoli/Lagovo/849 to any other third party other than the applicant.”
21. From the grounds of the application contained on the face of the Notice of Motion, it is clear that the basis of the Judicial Review application is an order made on 19th July 2005 in Vihiga SRM MISC. Civil Application No.68 of 1999 that land parcel number South Maragoli/Logovo/ 849 be transferred to the Applicant.
22. The Applicant’s complaint is that the Land Registrar who is the Respondent has refused and/or declined to act on the transfer.
23. The court order dated 19th July 2005 and issued on 16th August 2005 was annexed to the Verifying Affidavit. The order directed inter alia that the respondents who were Mary Andisi Egadwa and Naomi Muhonja Egadwa, the 2rd and 3rd Interested Parties herein, do execute all the relevant documents to effect the transfer of the suit land to the applicant and that in default the Executive Officer of the court to execute the same.
24. The applicant claimed that transfer documents were signed by Court Administrator at Vihiga Law Courts on 2nd October 2024 in accordance with the order dated 19th July 2005. A copy of Transfer of Interest in Land and copy of application for Consent of Land Control Board both signed inter alia by the Court Administrator, Vihiga Law Courts were attached to the Verifying Affidavit and marked as JNO.4.
257. There is no evidence placed before court to show that the Respondents in the court order dated 19th July, 2005 refused to transfer the land to the Applicant in accordance with the court order. There is no evidence that the documents marked JNO.4 (Transfer of interest in land and application to the Land Control Board were ever delivered to the Land Registrar or that the Land Registrar declined to act on the same.
28. It is clear that by the time of execution of the transfer documents by the Court Administrator in October, 2024, the period of limitation under Section 4(4) of the *Limitation of Actions Act* had elapsed and the order become unenforceable. The action of executing the transfer documents in October, 2024 was therefore void.
29. The ex parte Applicant’s action based on the said court order is not sustainable.
30. In the case of M’ikiara M’rinkanya & Another vs Gilbert Kabeere M’mbijiwe [2007] eKLR, the Court of Appeal stated thus; ‘It is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished...’
31. And in Hudson Moffat Mbue v Settlement Fund Trustees & 3 others (ELC NO. 5704 of 1992 (OS), while considering the application of section 4(4) of the *Limitation of Actions Act*, the court observed: -“What I understand the law to be is that once a judgment has been rendered, execution of that judgment must be commenced within the 12year period otherwise you cannot obtain a judgment and fail to do anything about it and after 12 years have expired seek to execute the same. Section 4(4) of the *Limitation of Actions Act* will bar you from carrying on with such execution”.
32. The applicant’s action is therefore barred by the provisions of both section 4(4) and 7 of the *Limitation of Actions Act*.



33. This court notes that the substantive motion dated 5th June, 2025 was filed out of time and no effort was made to seek extension of time. Leave to file the substantive motion was granted on 12th May, 2025 and the ex parte Applicant directed to file and serve the substantive application within 21 days from 12th May, 2025. The twenty-one (21) days elapsed on 1st of May, 2025. The law in order 53 Rule 3 requires such motion to be filed within 21 days from the date of grant of leave.
34. I find that the Preliminary Objection is merited and hereby uphold it with the result that the substantive Notice of Motion dated 5th June 2025 is hereby struck out. Costs are awarded to the 1st Interested Party.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 18TH DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Ajevi: Court Assistant.

Magogo for the Applicant

N/A for the Respondent.

Kadenyi for the 1st Interested Party.

Wekesa for the 2nd & 3rd Interested Parties.

