



**Mugo v Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development & 3 others (Environment & Land Miscellaneous Case E110 of 2024) [2024] KEELC 6676 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6676 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E110 OF 2024**

**MD MWANGI, J**

**JULY 9, 2024**

**BETWEEN**

**JOYCE NYAMBURA MUGO ..... PLAINTIFF**

**AND**

**CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ..... 1<sup>ST</sup> DEFENDANT**

**PERMANENT SECRETARY, STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT ..... 2<sup>ND</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**PERMANENT SECRETARY, MINISTRY OF MEDICAL SERVICES .... 4<sup>TH</sup> DEFENDANT**

**RULING**

(In respect to the Notice of Motion application dated 13<sup>th</sup> June 2024 brought under the provisions of Sections 1A, 3A & 95 of the *Civil Procedure Act*, Section 39 of the *Limitation of Actions Act* and Order 50 rule 6 of the Civil Procedure Rules seek leave to file suit against the Respondents out of time)

**Background**

1. The application under consideration is the Notice of Motion dated 13<sup>th</sup> June, 2024. The Applicant seeks leave of the Court to file suit out of time. It is premised on the grounds on the face of it and on the supporting affidavit of Joyce Nyambura Mugo, the Applicant.
2. The Applicant avers that she has been following the release of the title deed for Government House Block 7/150(T/HG2) (hereinafter referred to as ‘the house’), the stoppage of monthly rent deductions



and the refund of the wrongful monthly deductions from her salary of Kshs.8,000/- from April, 2008, to date in vain. She avers that she has been advised by her Advocates that the time allowed to institute the suit under the law has since lapsed but the Court has the power to enlarge it.

3. The Applicant asserts that she purchased the house under the Civil Servants Housing Scheme and paid for the same in full. She has been in possession of the said house since 2003 and has gone ahead to make developments therein. She however has not been issued with a title deed despite having paid for it in full. Further, the monthly rent deduction of Kshs. 8,000/- continues being deducted from her salary in spite of her having completed payment for the purchase of the house in the year 2008. The monthly rent deduction is not applicable to her as she is the owner of the house having lawfully purchased it from the Government of Kenya.

### **Court's Directions**

4. The Court directed that the application be canvassed by way of written submissions. The Applicant complied and filed submissions dated 28<sup>th</sup> June, 2024 which I have had an opportunity to read and consider.

### **Issues for Determination.**

5. I have carefully considered the application before me including the draft plaint and the attachments in support of it. One of the attachments is the Applicant's pay slip for the month of May, 2024 which reflects the Government of Kenya house rent deduction of Kshs.8,000/-. The import of the pay slip is that first and foremost, the Applicant is still an employee of the Government of Kenya and secondly that the deductions of Kshs.8,000/- per month continues to date. The Applicant has also affirmed that she is and has been in possession of the house since the year 2003 as stated in her application. The question then is whether her case is really time barred.
6. A second important issue for consideration is that the Applicant's cause of action as clearly deducible from the draft plaint attached to it, is one of breach of contract. The million-dollar question then is whether the Court has the jurisdiction to extend time for filing suit in cases of breach of contract.
7. Finally, it is not lost on the Court that the intended suit is against the Government of Kenya. The application by the Applicant is premised on the provisions of the *Limitation of Actions Act*. The Court will have to determine whether the provisions of the Limitations of Actions Act applies in actions intended against the Government and other public authorities.

### **Analysis and Determination**

8. I choose to begin by considering the issue whether the Court has the jurisdiction to extend time for filing a suit involving an alleged breach of a contract.
9. In this respect, I rely on the Court of Appeal decision in the case of Mary Osundwa v Nzoia Sugar Company Ltd [2002] eKLR, where the Court categorically stated that: -

“This section (S.27 of the Limitations of Actions Act) clearly lays down the circumstances in which the Court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and claims are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the Court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo, J had no jurisdiction to extend time as he purported to do.” (Emphasis mine).



10. Oguttu Mboya J in the case of Chirchir Arap Kuto v Nancy Cherotich Koech & Ano [2022] eKLR, too emphasized on the issue when he stated that: -

“For clarity, the provisions of Section 27 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya do not apply in respect to cases touching on and or concerning breach of contract, but (only) cases of tort.”
11. For a claim anchored on breach of contract, there is no window for extension of time once the statutory timelines have expired. The statute of Limitations is not conceived with the merit of the intended suit. Once the time has lapsed, the door is permanently shut.
12. The second issue for consideration is whether the provisions of the *Limitation of Actions Act* apply to intended suits against the Government or other Public authorities. The answer to this issue is to be found in section 42 (1) of the *Limitation of Actions Act* itself, which is no uncertain in terms provide that;

“This Act does not apply to-  
....Proceedings to which the *Public Authorities Limitation Act* applies.....”
13. The Public Authorities Limitations Act is an Act of Parliament to provide for limitation of proceedings against the Government and a Local Authority. For the purposes of the Act proceedings against the government includes proceedings against the Attorney General or any Government or any Public officer as such.
14. The Provisions of the Limitations of Actions Act would therefore not apply in this instance since the Applicant’s intended suit is against the Attorney General, and Pubic officers in the name of Permanent Secretaries and a Cabinet Secretary.
15. Finally is the issue whether the Applicant’s cause of action is really time barred. As already pointed out, the wrongful deductions of the rent of Kshs. 8,000/- per month from the Applicant’s pay slip continues to date.
16. In other words, the Government has continued to commit the wrong against the Applicant to this day. The Applicant’s cause of action cannot therefore be time bared in the aspect of the wrongful deductions of monthly rent.
17. Similarly, the Applicant is in possession of the house in respect to which she seeks to compel the Government to issue her with a title. As per the draft plaint, the contract between her and the Government was completed when she completed payment of the agreed purchase price. All that she intends to seek is an order compelling the Government to issue her the title document. In my humble opinion, I do not see then how the issue of time bar arises in that scenario.
18. Consequently, the Applicant is at liberty to institute the intended suit without leave of the Court. Her intended suit is not time barred.
19. I therefore disallow the application dated 13<sup>th</sup> June 2024 but with no orders as to costs since the application was ex parte.
20. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF JULY 2024.**



**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Oloo h/b for Ms. Akello for the Applicant

Court Assistant: Yvette.

**M.D. MWANGI**

**JUDGE**

