



REPUBLIC OF KENYA



**Nyingi v Mugo & 2 others (Environment and Land Appeal
E013 of 2021) [2024] KEELC 6555 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6555 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E013 OF 2021**

JM MUTUNGI, J

OCTOBER 9, 2024

BETWEEN

SAMUEL MUREITHI NYINGI APPELLANT

AND

PETER MUNENE MUGO 1ST RESPONDENT

FLORA WANJIKU MURIITHI 2ND RESPONDENT

MARK MUTHIKE MUGO 3RD RESPONDENT

(An Appeal arising from the Ruling of the Honourable G.W. Kirugumi – P.M delivered on 7th July 2021 in ELC No. E029 OF 2020 in the Chief Magistrate’s Court at Kerugoya)

JUDGMENT

1. This appeal arises from the decision made by the Trial Court on 7th July 2021. Originally, the Appellant had filed a Complaint dated 30th November 2020 against the Respondents, seeking a refund of Kshs 72,000/- plus 30% annual interest from the time the sale agreement was entered into until the case conclusion, additional expenses, legal costs with interest, and any further relief deemed appropriate by the Court.
2. In his statement, the Appellant claimed to have entered into a sale agreement to purchase Land Parcel Inoi/Kerugoya/2110 with the Respondents. A sum of Kshs. 12,000/- was paid at the time the sale agreement was executed. Further the Appellant advanced a sum of Kshs. 60,000/- to aid in the succession process for the estate of the deceased, acting on behalf of the Respondents. The Appellant further stated he expended money on the Respondents transportation, meals and other necessary expenses. As a direct consequence of these actions, the Respondents received Letters of Administration. However, without his prior knowledge, the agreement was terminated, and Land Parcel No. Inoi/Kerugoya/2110 was sold to another party.



3. In response, the Respondents filed their defence and promptly raised a Preliminary Objection. They argued that the statute of limitations barred the suit, as defined in Section 4(1) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya.
4. In the impugned ruling, the Trial Court agreed with this position, upholding the Respondents Preliminary Objection. Consequently, the Applicant's suit was dismissed with costs to the Respondents.
5. Aggrieved and dissatisfied with the Court's decision, the Appellant appealed to this Court and filed a Memorandum and Record of Appeal dated 2nd August, 2021 and 7th February, 2022, respectively.
6. The Appellant's Memorandum of Appeal set out 3 grounds of appeal as hereunder:-
 - a. That the Learned Magistrate erred in Law and in fact by making a Ruling against the Plaintiff without considering the fact that the Plaintiff had given the reasons whereby he made mistake hence a miscarriage of Justice was occasioned.
 - b. That the Learned Magistrate erred in Law and in fact by not considering the Plaintiff's grounds on the application and therefore arriving at this wrong conclusion hence a miscarriage of Justice was occasioned.
 - c. That the Learned Magistrate erred in Law and in fact by making Ruling against the Plaintiff while there was no cause of action to warrant the same hence a miscarriage of Justice was occasioned.
7. The Appellant sought for orders that;
 - a. The appeal be allowed.
 - b. The Ruling of the Learned Magistrate read on 7th July 2021 be set aside.
 - c. Costs of the appeal be awarded to the Appellant.
8. On 17th July 2023, the court directed that the case be referred for Alternative Dispute Resolution, mandating the mediator to submit a report. Subsequently, a mediator's report was filed on 8th September 2023, indicating that the parties were unable to reach a consensus. Following this, the Court directed that the appeal be canvassed through written submissions.

Submissions, Analysis And Determination

9. On 14th November 2023, the Appellant filed his written submissions, where he stated he initiated legal action in the Trial Court seeking a refund of Kshs. 72,000/- plus an annual interest rate of 30% which had accrued from the date the sale agreement was executed. He explained that this sum represented funds transferred to the Respondents through a sale agreement dated 22nd July 2014. Of this, Kshs. 60,000/- was used by the Respondents for legal expenses related to the probate of their father's estate, identified as Succession Cause No. 402 of 2014 at the High Court of Kerugoya, a matter which has now been concluded.
10. The Appellant stated that following the dismissal of his suit for being time-barred, he filed an application on 26th February, 2021, seeking permission to file the suit after the deadline, which application was declined.



11. The Appellant contended that the Respondents should reimburse him an amount of Kshs. 72,000/-, along with an interest rate of 30% per annum starting from 22nd July 2014, to the present day, in addition to the principal sum, bringing the total claim to Kshs. 266,400/-.
12. The Respondents filed their written submissions dated 28th March 2024 and submitted that the Appellant, having entered into a sale agreement with the Respondents on 22nd July 2014, he (the Appellant) brought his suit against the Respondents on 1st December 2020, which suit was statute barred on account of Limitation of Actions under the *Limitation of Actions Act*. The Respondents argued the Appellant conceded his suit was time barred as he filed an application dated 26th February, 2021 seeking leave of Court to have his claim to be deemed to be duly filed out of time.
13. In their submissions, the Respondents contended that during the Lower Court proceedings, the Appellant acknowledged the lapse in meeting the deadline for filing his claim and attributed it to his not being aware of the provisions of the *Limitation of Actions Act* relating to Limitation period for actions. The Respondent contended ignorance of the law does not constitute a valid excuse for any legal action and that the Appellant's oversight was particularly indefensible and detrimental, given that his claim originated from a contractual dispute.
14. The Respondents pointed out that the Appellant sought to rely on Sections 27(1) and 28 of the *Limitation of Actions Act*, which the Respondents asserted were only applicable in cases involving torts. The Respondents argued that the trial court correctly determined the Appellant's claim was statute barred on account of limitation and urged the appeal to be dismissed with costs.
15. In support of their submissions, the Respondents placed reliance on the following authorities; Peter Nyamai & 7 Others v. M. J. Clarke Limited (2013) eKLR and Timothy M. Mukalo v. Reuben Alubale Shiramba & 3 Others (2005) eKLR.
16. I have considered the record of the appeal and the submissions of the parties. The central issue for determination in this appeal is Whether the Trial Court erred in dismissing the Appellant's claim on the ground that the suit was statute barred on account of Limitation of Actions under the provisions of Section 4(1) of the *Limitation of Actions Act*.
17. The Appellant's claim arose from a contract of sale of land between the Appellant and the Respondents entered into on 22nd July 2014. The Appellant filed the suit in the Trial Court on 1st December 2020.
18. In determining the Preliminary Objection as raised by the Respondents in the Trial Court, the Court reasoned that the suit was time-barred under provisions of Section 4(1)(a) of the *Limitation of Actions Act*. The Court stated that the Appellant himself admitted that his suit was time-barred and even filed an application seeking to extend time to file the suit which application ought to have been filed for consideration before filing the suit or at the time of filing suit.
19. Section 4(1)(a) of the *Limitation of Actions Act* provides as follows:
 - “4(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued:
 - a. Actions founded on contract”



20. In the case of *Bosire Ogero v Royal Media Services* [2015] eKLR R.E. Aburili J stated as follows:

“The law of Limitation of Actions is intended to bar the Plaintiffs from instituting claims that are stale and aimed at protecting Defendants against unreasonable delay in the bringing of suits against them”.

The Judge in the case further stated that:-

“.....The issue of limitation goes to the jurisdiction of court to entertain claims and therefore if a matter is statute barred, the Court has no jurisdiction to entertain the same. And even if a party does not raise the issue of limitation to the proceedings, since it is a jurisdictional issue, the court cannot entertain a suit which it has no jurisdiction over.”

21. In the Case of *Michael Benhardt Otieno v National Cereals & Produce Board* (2017) eKLR the Court observed as follows:

“As regards the applicability of section 4(1) it is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely an action that is brought in contract six years after the cause of action. ..In light of these clear provisions it should be unacceptable to imply as the Learned Judge of the Superior Court did that the wording of Section 4(1) of the *Limitation of Actions Act* suggests a discretion can be invoked.”

22. The Appellant had attempted to invoke the provisions of Sections 27(1) and 28 of the *Limitation of Actions Act* which provides for the Court’s discretion to extend time for filing of suits. The Trial Court rightly declined to extend time as these provisions were not applicable in regard to cases founded in contract. These provisions only apply to tortious acts and do not apply to cases involving contract as in the instant case.

23. In the Case of *Willis Onditi Odhiambo v Gateway Insurance Company Limited* (2014) eKLR the Court of appeal in regard to Section 27 of the *Limitation of Actions Act* held thus: -

“This section 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 claimed 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 on 28th May, 1991 that the order was by consent can be neither here nor there, the parties could not confer jurisdiction on the Judge by consent.”

24. The contract of sale of land between the Appellant and the Respondents was entered into on 22nd July 2014, and the Appellant filed the suit in the Trial Court on 1st December 2020. This definitely was beyond the 6 years Limitation period within which the suit ought to have been filed.

25. The Learned Trial Magistrate properly appraised the facts and the Law and I find no basis upon which I could fault her determination. The appeal is without merit and the same is dismissed with costs to the Respondents.



JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 9TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

