



**Warutumo v County Government of Nyeri (Environment & Land Case E019 of 2023) [2024] KEELC 6445 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6445 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E019 OF 2023**

**JO OLOLA, J**

**OCTOBER 3, 2024**

**BETWEEN**

**FRANCIS WARUTUMO ..... PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF NYERI ..... DEFENDANT**

**RULING**

1. By this Complaint dated and filed on 27<sup>th</sup> April 2023, Francis Warutumo (the Plaintiff) prays for Judgment against the County Government of Nyeri (the Defendant) for:-
  - a). A declaration that the Plaintiff is the lawful owner of Plot No. 57 Thunguma and should be given vacant possession of the said plot;
  - b). An award of general damages;
  - c). Costs of the suit;
  - d). In the alternative, compensation with a plot of equivalent value as Plot No. 57 Thunguma or payment of Kshs. 1,200,000/= in lieu thereof.
2. Those prayers arise from the Plaintiff's contention that he was allocated the said plot measuring "50 x 100m" on 27th January 1976 by the Defendant's predecessor. The Plaintiff asserts that sometime in the year 2013, he came to learn that the said Plot No. 57 Thunguma does not exist in the records of the Defendant and hence the claim herein.
3. In its Statement of Defence dated 3<sup>rd</sup> July 2023, the Defendant denies that the Plaintiff was allocated any such plot.
4. Upon closure of pleadings and by a Notice of Preliminary Objection dated 6<sup>th</sup> December 2023, the Defendant objects to the suit herein and urges the court to strike out the same on the grounds:-



- i). That the court lacks the pecuniary jurisdiction to hear and determine the matter; and
  - ii). That the suit herein is time-barred by dint of Section 7 of the Limitation Actions Act.
5. Following directions given herein on 6<sup>th</sup> February 2024, it was agreed that the Preliminary Objection be disposed of first by way of written submissions. I have accordingly perused and considered the Preliminary Objection as well as the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
  6. As was stated in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696:

“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by a clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
  7. By its Preliminary Objection herein, the Defendant asserts that this court has no jurisdiction to hear the suit and that the matter is time-barred by dint of Section 7 of the *Limitation of Actions Act*.
  8. From a perusal of the submissions filed by the Defendant’s Advocates, it is apparent that the first limb of the objection is based on the fact that the Plaintiff puts the value of the subject property at Kshs. 1,200,000/=. According to the Defendant this court’s jurisdiction starts from Kshs. 20,000,000/= and hence the court has no jurisdiction to try matters of a lesser value.
  9. That ground of objection is certainly informed by ignorance. In accordance with Section 13 of the *Environment and Land Court Act*, this court has both original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the *Constitution*. There is nothing within the law that bars this court from dealing with matters whose value is below Kshs. 20,000,000/
  10. The second limb of the Defendant’s objection is the contention that the suit is time-barred and that the same offends the provisions of Section 7 of the *Limitation of Actions Act*. From a perusal of the pleadings herein, it was again evident that the Defendant had raised that objection merely on account of the fact that the Plaintiff had cited the year 1976 as the time he was allocated that plot of land.
  11. From a perusal of Paragraphs 8 to 11 of the Plaintiff, it was clear that the Plaintiff is alleging fraud in the disappearance of the suit land from the Defendant’s records and he states clearly that he came to learn of the same in the year 2013 to 2014. That being the case, the calculations of time for the purposes of the *Limitation of Actions Act* can only start to run from the year 2013. This suit having been filed in the year 2023, it was again clear to me that the second limb of the objection had no basis.
  12. As Sir Charles Newbold P. cautioned in the Mukisa Biscuits Case (*supra*):

“The first matter relates to the increasing practice of raising points of law, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is 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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”



13. This is one such case where a party raises a Preliminary Objection without any basis and without due regard to the pleadings and the law. The Preliminary Objection dated 6<sup>th</sup> December 2023 was clearly unfounded and a waste of time. It is dismissed with costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 3<sup>RD</sup> DAY OF OCTOBER, 2024.**

In the presence of:

No appearance for the Plaintiff.

No appearance for the Defendant.

Court Assistant: Kendi

.....

**J. O. OLOLA**

**JUDGE**

