



Warutumo v County Government of Nyeri & another (Environment & Land Case E020 of 2023) [2024] KEELC 6385 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E020 OF 2023
JO OLOLA, J
OCTOBER 3, 2024**

BETWEEN

ELISHIPA NYAGUTHII WARUTUMO PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NYERI 1ST DEFENDANT

JOHN KANGARA NDIRANGU 2ND DEFENDANT

RULING

1. By her Complaint dated and filed herein on 27th April 2023, Elishipa Nyaguthii Warutumo (the Plaintiff) prays for Judgment against the two Defendants jointly and severally for:-
 - a) A declaration that the Plaintiff is the lawful owner of Plot No. 60 Riamukurwe and should be given vacant possession of the said plot by the Defendants;
 - b) An award of general damages;
 - c) Costs of this suit; and
 - d) In the alternative, compensation by the 1st Defendant with a plot of equivalent value as Plot No. 60 Riamukurwe or payment of Kshs. 1,200,000/= in lieu thereof.
2. Those prayers arise from the Plaintiff's contention that on 19th May 1976 she was allocated the said plot No. 60 Riamukurwe by the 1st Defendant. The Plaintiff avers that she has since come to learn that the said plot was subsequently unlawfully and fraudulently allocated to the 2nd Defendant.
3. In its statement of Defence dated 3rd July 2023, the County Government of Nyeri (the 1st Defendant) denies the Plaintiff's claim and asserts that the plot in question did not exist physically and hence the same could not have fallen under its jurisdiction.



4. On his part, John Kangara Ndirangu (the 2nd Defendant) equally denies the Plaintiff's claim but avers that he is the one who has been in exclusive possession of Plot No. 60 Riamukurwe Village.
5. Subsequent to the filing of the pleadings and by a Notice of Preliminary Objection dated 6th December 2023, the 1st Defendant objects to the suit and urges the court to strike out the same on the grounds that:-
 1. That the court lacks jurisdiction to hear and determine the matter; and
 2. That the suit herein is time barred by dint of Section 7 of the *Limitation of Actions Act*.
6. Following directions given herein on 6th February 2024, it was agreed that the Preliminary Objection be disposed of first by way of written submission. I have accordingly perused and considered the Preliminary Objection as well as the submissions placed before me by the Learned Advocates representing the parties herein.
7. As was stated in Mukisa Biscuits Manufacturing Co. Ltd –vs- 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.”
8. By its Preliminary Objection herein, the 1st Defendant asserts that this court has no pecuniary jurisdiction to hear the suit and that the matter is time-barred by dint of Section 7 of the *Limitation of Actions Act*.
9. From a perusal of the submissions filed by the 1st Defendant's Advocates, it is evident that its first limb of the objection is based on the fact that the Plaintiff puts the value of compensation for the subject property at Kshs. 1,200,000/=. According to the 1st 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.
10. That ground of objection is certainly informed by ignorance. In accordance with Section 13 of the Environment and Land Courts 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/=.
11. The second limb of the 1st 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 1st Defendant had raised that objection merely on account of the fact that the Plaintiff had cited the year 1976 as the time she was allocated that plot of land.
12. From a perusal of Paragraphs 9 to 12 of the Plaintiff, it was clear that the Plaintiff is alleging fraud in the transfer of the suit property and stating clearly that she 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.



13. 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.”

14. The matter before me 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 6th 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 3RD DAY OF OCTOBER, 2024.

In the presence of:

No appearance for the Plaintiff.

No appearance for the 1st Defendant.

Mrs. Maina for the 2nd Defendant.

Court Assistant: Kendi

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J. O. OLOLA

JUDGE

