



**Thairu v Lepau (Environment & Land Case E012 of 2022)
[2023] KEELC 16417 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E012 OF 2022
EK WABWOTO, J
MARCH 9, 2023**

BETWEEN

MILLICAH WAMBUI THAIRU PLAINTIFF

AND

KIRAPASH OLE LPAU DEFENDANT

RULING

1. This ruling is in respect to the Preliminary Objection dated January 26, 2023. The Preliminary Objection is raised on the grounds that:
 - i. That this Honourable Court lacks territorial jurisdiction to hear and determine this matter for the reason that the subject matter of the suit, the parcel of land known as LTK/Kimana/Tikondo/3316, is situated in Kajiado County which is within the territorial jurisdiction of the Environment and Land Court of Kajiado.
 - ii. That this suit is based on the Agreement for Sale and Purchase of Land entered into on October 16, 2012 which renders the claim statutorily time barred pursuant to Section 4(1) of the *Limitation of Actions Act*.
2. Section 4(1) of the *Limitation of Actions Act* states that:

The following action may not be brought after the end of six years from the date when the cause of action accrued -

 - a. actions found on contract [Emphasis mine]
3. The facts of the case are that on October 16, 2012, the Plaintiff entered into a sale agreement with the Defendant for the sale and purchase of parcel known as LTK/Kimana/Tikondo/3316, situated



in Kajiado County measuring approximately 58 acres. Several payments were made by the Plaintiff for herself and the benefit of other family members. However, the Defendant failed to surrender ownership documents for the transfer process.

4. The Defendant relied on Section 19(2) and Section 3 of the ELC Act to reiterate that the suit should be filed before the ELC Court in Kajiado. Furthermore, it was submitted that since the Agreement had been executed in 2012, the Plaintiff should have filed the suit by 2018.
5. The matter came up for hearing of the preliminary objection on 2nd February 2023, the Plaintiff submitted that the question is whether a contract signed in Nairobi for a parcel in Kimana can be heard in Nairobi. Additionally, it was reiterated that the Defendant had not shown whether they had received money which according to the Plaintiff had occurred consistently until 2019.
6. Having perused the submissions and pleadings and further having heard the oral submission made by counsel for the parties, it is evident that the issue for determination before this Court is whether the Preliminary Objection is merited?
7. It is trite law that a Preliminary Objection must be raised on a point of law as reiterated in the case of Mukisa Biscuits Manufacturing Co. Ltd v West-End Distributors Limited (1969) EA 696. Having raised the objection on a specific provision of the law, the preliminary objection would be alive and within the jurisdiction of this court.
8. I find it prudent to first determine the issue on whether this suit is time barred. In the case of Gathoni -vs- Kenya co-operative Creameries Ltd (1982) KLR 104 Potter, JA stated the rationale of the Law of Limitation as follows:-

“The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
9. The question before this Court is to determine when the cause of action accrued. In B. Mathayo Obonyo v South Nyanza Sugar Company Ltd [2019] eKLR it was stated:

“The word “accrue” means ‘to come into existence as an enforceable claim or right’...To hold that the cause of action accrues at the end of the contract period is inconsistent with the meaning of the legislative language and in particular the ordinary meaning of the term, “accrue...It is the breach that gives rise to the cause of action. Thus under the outgrowers cane agreement, such as the one subject to the suit, the right to sue for breach of contract arose when one of the parties failed to meet its obligations under the contract”
10. It is undisputed that the parties entered into an agreement on October 16, 2012, In the Amended Plaintiff dated February 9, 2022, it was submitted that the payments for the parcel were made until July 4, 2013. In my opinion, the cause of action in this instance would have accrued at the time when the Defendant failed to complete obligations under the Sale Agreement sometime in 2013. This would mean that by initiating the suit in 2022, the Plaintiff was time barred.
11. For this reason, the court finds that the preliminary objection is merited and the suit is hereby dismissed with no orders as to costs.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MARCH 2023.



E. K. WABWOTO
JUDGE

