



REPUBLIC OF KENYA



KENYA LAW
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**Kago v Sururu & another (Environment and Land Case Civil Suit
55 of 2019) [2023] KEELC 17270 (KLR) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE CIVIL SUIT 55 OF 2019**

CG MBOGO, J

MAY 9, 2023

BETWEEN

STEPHENSON KARUCI KAGO APPLICANT

AND

**TITUS KITETA SURURU (ALSO KNOWN AS TITUS KITIR
SURURU) 1ST RESPONDENT**

JOSEPH SIRONKA TARURU 2ND RESPONDENT

JUDGMENT

1. Before this court for determination is an Originating Summons dated 21st November, 2019 filed by the applicant and which is expressed to be brought under Order 37 Rules 1,8 and 11 of the Civil Procedure Rules, Sections 25 and 26 of the [Land Registration Act](#) and [Land Adjudication Act](#), Section 28 of the [Limitations of Actions Act](#) and Section 1, 3 and 3A of the [Civil Procedure Act](#) seeking the following orders:-

1. That the honourable court do order the District Land Registrar to rectify the register by cancelling the names stated in the schedule of land register Cis-Mara/Kisiriri/193 and in the Land Adjudication Record and register the names entered on the adjudication register on 20-5-80, that is the names of the applicant herein Stephen Karuci Kago.
2. That this honourable court do order that the title deed held by the current registered proprietor if any be dispensed with when registering and issuing the title deed to the applicant herein.

The costs of this application be provided for.

2. The application is premised on the grounds on the face of it and more importantly, the applicant pleaded particulars of fraud by the respondents as follows:-



- i. Tampering with the adjudication register to illegally transfer the parcel of land no. Cis-Mara/Kisiriri/193 to transfer the land to the 1st defendant.
 - ii. That sometime on 5th February, 2001, he received a letter from the Chief, Enengeetia Sub-Location in relation to his ownership of the land parcel which they acknowledged was his but nobody else showed up.
 - iii. Illegal transfer or registration of his parcel of land without his knowledge or consent by the defendants in collusion with land registry officials, who even acknowledged their illegality.
3. The application is supported by the affidavit of the applicant sworn on even date. The applicant deposed that he purchased parcel number Cis-Mara/Kisiriri/193 from the 1st respondent during the land adjudication process in the year 1978 for a sum of Kshs. 22,000/- and that the process of adjudication and transfer was completed and the suit property was registered in his name on 20th May, 1980.
4. The applicant further deposed that he took possession immediately from the year 1978 to date without interruption. Further, that recently, he was shocked to find out that there was cancellation of his name in the register when he commenced the process of acquiring the title. That the said property was registered in the name of the 2nd respondent.
5. The applicant further deposed that a search on the land adjudication register reveals that the records were tampered which was a fraudulent process as no legal reasons for cancellation were given on 19th February, 2001.
6. Further, that the respondents never informed him of the said actions and any registration to deprive him of his property is a calculate fraud as he is the rightful owner of the suit property.
7. The application was opposed by the replying affidavit of the 1st respondent sworn on 26th January, 2022. The 1st respondent deposed that he has never sold or transferred the suit property to the applicant and maintains that the documents in the applicant's supporting affidavit are forgeries as his name is that which is indicated in his national ID card. Further, that although the suit was under adjudication process as at 1979, he never wrote any letter to the Adjudication Officer transferring the suit property to the applicant.
8. The 1st respondent further deposed that he has been in occupation of the suit property until the year 2000 when he sold the same to the 2nd respondent who is now deceased. Further, that the Originating Summons demonstrate indolence and ignorance of the law and facts.
9. The 2nd respondent filed a replying affidavit sworn on 6th October, 2022 by Serah Siamanta Taruru for and on behalf the estate of the 2nd respondent. The 2nd respondent deposed that the instant application is a duplication of Nairobi High Court Civil Cause No. 417 of 2001 that was disposed off long ago. Further, that the claim is statute barred noting that the cause of action is said to have arisen on 26th July, 1978 when the applicant allegedly bought the suit property.
10. The 2nd respondent further deposed that her late husband is the registered owner of the suit property having followed all due processes of purchase and transfer from the original owner. Further, that since the month of December, 2000, she has been in possession and occupation of the suit property and has undertaken extensive cultivation and grazing of livestock.
11. The 2nd respondent further deposed that her late husband acquired possession of the suit property from the 1st respondent on 19th December, 2000 and it would be a lie that the applicant has been in



- possession yet they have occupied the same all along. Further, that the applicant has previously laid claim but has never proved nor obtained any order conferring ownership to him.
12. In conclusion, the 2nd respondent deposed that the applicant upon realising that her husband had passed on, and with hopes to bring back his lost cause, went forth and filed the instant application hoping to subvert justice.
 13. The applicant's case proceeded for hearing on 13th February, 2023. The applicant, while relying on his supporting affidavit sworn on 21st November, 2019 testified that he met the owner of the shamba, one Titus Kiteta Ole Sururu-the 1st respondent herein who informed him that he had a shamba for sale. Further, that he was with three other people who were looking for land and this was in the year 1978.
 14. The applicant further testified that the four of them were shown the land by the 1st respondent and they later agreed to meet in the evening while in the company of their witnesses. On his part, he brought one George Kiondo Kihati and they prepared an agreement. Further, that the 1st respondent's witness was one Joseph Meitamei Ole Pere. He was for Sururu. The applicant produced the agreement as P. Exhibit No. 1 which agreement showed that the 1st respondent had agreed to sell his land to him and he had in turn agreed to purchase it for the sum of Kshs. 22,000/-.
 15. The applicant further testified that following the agreement, they prepared another letter to the Land Adjudication Officer requesting for transfer dated 26th August, 1979 and produced the same as P. Exhibit No. 2. Further, that the Land Adjudication Officer wrote a letter to acknowledge their request letter which he produced as P. Exhibit No. 3 and thereafter, he took possession of the suit land and cleared the bush for cultivation and built houses for his mother, sister and brother.
 16. The applicant further testified that the 1st respondent was to notify him when title deeds would be issued and while at it, he received a letter from the area chief requesting him to go to Enaibelbel for a land dispute which he produced as P. Exhibit No. 4. That from the chief's office, they went to the land's office where he found out that a title deed had been issued to the 1st respondent and he had already sold the land to someone else.
 17. He further testified that as per the adjudication record produced as P. Exhibit no. 3, his name and that of the 1st respondent had been cancelled and someone else's name inserted. Also, that the record shows that there were no legal reasons for cancellation. Further, that in the year 1992, there were tribal clashes and they were forced to flee the area and that he rarely goes to the suit land because it is occupied by the 2nd respondent.
 18. The applicant further testified that he filed a case in Nairobi and later abandoned it after it took a long time to conclude. He informed the court that he filed the case in the year 2005 immediately after he left the Chief's office.
 19. On cross examination, the applicant testified that it was the 1st respondent who sold the land to him in the presence of one George Kiondo Kihati who is not a witness in this case. He further testified that he built 3 houses which were demolished and that he left the area in the year 1992. Further, that he did not see the person who demolished the houses but that he went to the chief's office after he was summoned. Also, that there were no titles when he purchased the land but the title came out in the name of the 1st respondent.
 20. On further cross examination, the applicant testified that it was the 1st respondent who told him that he was offering his land for sale and that together with his friends, they were in Narok to look for land. Also, that the people he was with knew the 1st respondent including his elder brother and they met the 1st respondent in the year 1978. He further testified that the witnesses' names who were present are



indicated in P. Exhibit No. 1 and they signed the agreement on the same day. Further, that he is not sure about what happened as the 1st respondent is said to have signed the agreement on 26th July, 1978 while he signed on 20th February, 1979. The applicant could not explain the discrepancies that show that the agreement was prepared on 26th August, 1979 and he informed the court that he was not the one who prepared the agreement. He further could not explain how the agreement was signed before it was prepared and he could not remember the day of the week that they prepared the agreement.

21. The applicant admitted that he paid kshs. 22,000/- in cash in the presence of the witnesses and the 1st respondent wrote to the Land Adjudication Officer on a date he does not recall. Further that the agreement and the letter were prepared by Kiondo and Pere as latter knew how to read and write. Further, that the Adjudication Record has two cancellations. The 1st cancellation is with respect to the 1st respondent and the second cancellation is his name and that he did not know how the suit land was transferred to the 2nd respondent from the 1st respondent.
22. The applicant testified that he does not reside on the property and does not remember the actual year when he left the same. He admitted that he filed a case in Nairobi after appearing before the chief. Further, that he does not remember the prayers that he sought in the previous suit which suit he admitted to have abandoned.
23. On re-examination, the applicant testified that the sale agreement and the letter were prepared by Kiondo and Joseph Ole Pere and he was not sure if the agreement was signed on the same date. Also, that he settled his relatives in the suit land and these were his mother, sister and brother. In conclusion, he testified that he does not remember when his family left the suit land.
24. Serah Samanta Tarutu (DW1) while adopting her replying affidavit testified that she has been a resident of the area since 1994 and does not know the applicant as she first saw him in court. DW1 further testified that she is aware that the applicant had filed a similar case in Nairobi and her late husband used to attend court in Nairobi in the year 2000. Further, that she was informed that the case ended in favour of the purchaser of the land. She produced pleadings in Originating Summons No. 417 of 2001 and a civil case of 2000 which has no number as P. Exhibit Nos. 2 (a) and (b) respectively.
25. DW1 further testified that her late husband bought the suit land from the 1st respondent and they obtained a title deed in her late husband's name which she produced as P. Exhibit No. 3. She testified that she cultivates the farm but does not reside on it. She has fenced the land as shown in the copy of photos which she produced as P. Exhibit No. 4 and testified that no one has ever laid claim on the suit land.
26. On cross examination, she testified that she got married to the 2nd respondent who is now deceased in January, 1994 and during that time, there were no houses on the land when she occupied the same. She further informed the court that she knows the brother to the applicant as he resides in Kisiriri. Further, she informed the court that she was aware that there was a case in Nairobi involving her late husband, the 1st respondent and the applicant but does not have the final determination of the cases in court. Also that her late husband was not aware of a previous dispute concerning the land when he purchased it and he was never summoned by the chief.
27. On further cross examination, DW1 testified that her late husband bought the land from the 1st respondent before the case that was filed in Nairobi and that it was the 1st respondent who pointed out the land to them.
28. On re-examination, DW1 testified that there were no structures on the land when they purchased it.



29. The 1st respondent testified that the suit land was previously his and that he got through the then Assistant Minister, Ole Nampaso. He testified that he did not build any structures on the land but sold it to the 2nd respondent who also owned another parcel of land next to his. Further, that he does not know the applicant and neither did he sell land to him. Also, that he did not enter into any sale agreement over land.
30. On cross examination, he testified that in the year 1979, there was the process of land adjudication which began in 1974. Further, that the adjudication record was taken to the Adjudication office in 1979/80 and one would be able to transfer his interest in land to someone else. (referred to No. 3 a letter dated 9th January, 1980). The 1st respondent informed the court that it was not true that he received money from the applicant in the year 1979 before P. Exhibit No. 3 was prepared. He also informed court that he did not know one Joseph Meitamei.
31. With reference to the Adjudication Record (P. Exhibit No. 40), the 1st respondent testified that he did not know the names of Titus Kiteta Sururu and Stephen Karuci Kagio. He also said and that the suit land was not 193. Further, that the parcel of land in the Adjudication Record was not his. He further testified that he was not residing on the suit land before he sold it to the 2nd respondent and that no one had built on the land before he sold it.
32. On further cross examination, the 1st respondent testified that he owns 2 parcels of land and he sold the land in Kisiriri to the 2nd respondent and no one else.
33. On re-examination, the 1st respondent testified that he did not sign the sale agreement marked as P. Exhibit No. 1 and that the signature in it is not his. Also, that he was appointed as chief in 1980.
34. By the time of writing this judgement, it is only the applicant who had filed his written submissions dated 3rd March, 2023. The applicant raised six issues for determination as follows: -
- i. Was there a sale?
 - ii. Was there a subsequent occupation by the applicant?
 - iii. Was there an intervening factor that stopped the applicant's occupation?
 - iv. Can forceful eviction be construed as an acquiesced dispossession or voluntary vacation of property?
 - v. Is filing of a suit in itself res judicata in this instance.
 - vi. What is the effect of or interpretation of land registration records with the words 'no legal reason for cancellation' on subsequent registration?
35. The applicant submitted that in Originating Summons, the issues to be determined are deemed to be straightforward or simple in approach. In this case, the applicant purchased the suit property from the 1st respondent which was during the adjudication process back in the year 1980 and necessary entries were entered into the land adjudication register.
36. The applicant further submitted that sometimes in the year 1996-1997, there were violent clashes which forced the applicant to flee together with his family. The counsel went on to submit that this forced the applicant to have constructive possession by going in and out of the property. Further, that sometime in the year 2000, while making his visits to the suit property, he was confronted by his neighbour who claimed to have purchased it from the 1st respondent.



37. The applicant further submitted that the applicant attempted to assert his rights by filing a suit in Nairobi, which was not prosecuted for the reason that there was jurisdictional problem and the period of 2000 was heightened and charged with political upheavals. The applicant submitted that after trying all amicable ways, he finally decided to file the suit in this court when all parties and political conditions were temperate.
38. The applicant submitted that there having been no legal reason for cancellation of the title, is an admission of fraud and illegality on the land register to dispossess the applicant of his property. Also, that without legal reasons, the cancellation is illegal and invalid.
39. The applicant submitted that the 1st respondent failed to show how cancellation was made in his favour and that the burden was upon him to disapprove the illegality of the cancellation of the applicant's name. As such, the respondents' replies are a mere denial which should be *disregarded entirely*. *The applicant relied on the case of Lawrence Mugambi Rutere v Nelly Wachira & Another, District Land Registrar Mbeere* (Interested Party) [2019]eKLR.
40. I have considered the application, the evidence and the written submissions filed by the applicant and the issue for determination is whether the applicant is entitled to the orders sought.
41. It was the applicant's case that he purchased the suit land from the 1st respondent in the year 1978 for the sum of Kshs. 22,000/- and thereafter, the 1st respondent wrote to the Land Adjudication Officer informing him of the sale and requesting that the same be transferred to the applicant. That the Land Adjudication Officer wrote back to the 1st respondent and acknowledged receipt of his letter and entered the details of the applicant in the adjudication records as per the letter.
42. It was the applicant's testimony that he immediately took possession by settling his mother, brother and sister on the suit land and that his family fled the area in the year 1992 during the tribal clashes. Further, that he was summoned to appear before the chief and that during this time is when he realised upon visiting the lands office that the records had been altered, his names deleted and the name of the 2nd respondent entered as the proprietor of the suit land.
43. The applicant admitted to having filed a case in Nairobi immediately thereafter, which he abandoned and it was his submission that he abandoned his claim owing to the political temperatures during that time.
44. Section 7 of the *Limitation of Actions Act* provides:
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”
45. The purpose of the Law of Limitation was stated in the case of *Mehra v Shah* [1965] E.A 321, as follows;
- “The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”



46. In the case of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104, the Court of Appeal held as follows;

“...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

47. Of major concern to this court at this stage is the approximate period which the applicant became aware of the actions of the respondents to lay claim of a cause of action. DW1 produced evidence to show that the applicant filed a similar application before the high court in Nairobi through Originating Summons No. 417 of 2001 and a civil case of 2000 which has no number as P. Exhibit Nos. 2 (a) and (b) respectively.

48. A suit barred by limitation is a claim barred by law, hence by operation of law, the court cannot grant the relief sought. In the case of *Iga v Makerere University* [1972] EA, the court stated thus;

“A Plaint which is barred by limitation is a Plaint barred by law. Reading these Provisions together it seems clear that unless the Applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption, the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the Court cannot grant the remedy or relief sought.”

49. It is, therefore, not in doubt that the cause of action arose sometime in the year 2000. However, the applicant admitted to having abandoned his claim at the time and has now come to court 19 years later seeking redress and relief. The reasons for abandoning his claim does not sound logical more so as contained in his written submissions. The applicant ought to have been vigilant and relentless in his pursuit for justice.

50. As it is, this court has no jurisdiction to determine the issues as the claim is statute barred having been brought to court nineteen years later since the cause of action first arose pursuant to Section 7 of the Limitations of Actions Act.

51. Arising from the above, the Originating Summons dated 21st September, 2019 is hereby dismissed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL on this 9th day of MAY, 2023.

MBOGO C.G.

JUDGE

9/5/2023.

In the presence of: -

CA:T.Chuma

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