



REPUBLIC OF KENYA



Koech & another v Keino & 2 others (Environment & Land Case 88 of 2021) [2023] KEELC 18712 (KLR) (7 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18712 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 88 OF 2021**

MN MWANYALE, J

JULY 7, 2023

BETWEEN

ELIUD KIPROTICH CHEPKWONG KOECH 1ST PLAINTIFF

FLORENTINE JEPKUTWO KOGO 2ND PLAINTIFF

AND

PETER SOME KEINO 1ST DEFENDANT

LAND REGISTRAR NANDI COUNTY 2ND DEFENDANT

COUNTY SURVEYOR NANDI COUNTY 3RD DEFENDANT

RULING

1. Before this Court for determination is a Preliminary Objection raised by the 1st Defendant vide his Statement of Defence and Counter-claim. It is stated under Paragraph 17 that;

“ 17. The 1st Defendant at the earliest opportunity and of which the Notice is hereby issued, shall raise a Preliminary Objection (P.O) based on points of law to the effect;

- i. The 1st Plaintiff’s claim offends the provisions of Section 4 (4) of the [Limitation of Actions Act](#), Chapter 22 Laws of Kenya
- ii. The 2nd Plaintiff’s suit offends the provisions of the Law of Succession Act, Chapter 160 Laws of Kenya.

And that the Defendant shall be seeking the Plaintiffs suit/ claims to be struck out with costs.”

2. On 16th February, 2023 the 2nd Plaintiff’s suit was marked as withdrawn thereby dispensing the 2nd ground of the 1st Defendant’s Preliminary Objection.



3. Parties canvassed the Preliminary Objection by way of written submissions which this Court has taken into consideration.
4. A Preliminary Objection was held in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* 1969 E.A 896 as;

“... A Preliminary Objection consists of a point of law which has been pleaded, or which arises by 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.”
5. It was stated further by the Court of Appeal that;

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually 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...”
6. Guided by the Court of Appeal decision cited herein above, the issue whether or not the Preliminary Objection in this is suit is on a pure point of law shall pan out in the course of this determination.
7. Section 4 (4) of the [Limitation of Actions Act](#) upon which the Preliminary Objection is premised on provides that;

“An action may not be brought upon a judgement after the end of twelve years from the date on which the judgement was delivered, or 9where the judgement or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgement debt may be recovered after the expiration of six years from the date on which the interest became due.”
8. This provision clearly bars a party from bringing an action after 12 years from the date a judgement is delivered. This Section is however not clear as to what the term “an action” entails. The Court of Appeal in the case of [Koinange Investment And Development Company Limited –vs- Ian Kabiu Ngethe & 3 Others](#) (2019) eKLR pointed out under paragraph 35 that the word “action” in Section 4 (4) includes all kinds of civil proceedings (including execution proceedings). Therefore, this instant suit would ordinarily fall within the ambit of “an action” as envisaged under Section 4 (4) of the [Limitation of Actions Act](#).
9. That said, the 1st Defendant lays basis of their Preliminary Objection on paragraph 13 of the Plaintiff. A keen perusal of the said paragraph, it is not clear when the alleged hearing before the panel of elders was conducted. More so, it is not indicated when the said decision by the panel of elders was adopted as an order of the Court as alleged by the 1st Defendant. The Plaintiff on their part contended through their written submissions that the 1st Defendant had concealed material facts. It was submitted that the 1st Defendant had challenged the decision of the panel of elders before the High Court thus stopping time from running.
10. In my view, these are conflicting facts which this Court can only ascertain through perusal of further evidence as well as its interrogation during trial.



11. Consequently, the 1st Defendant's Preliminary Objection does not fall within the definition of Preliminary Objection as established in the Mukisa Biscuit Case. It is devoid of merit and is hereby disallowed with costs in the cause.
12. Orders accordingly.

DELIVERED AND DATED AT KAPSABET THIS 7TH DAY OF JULY, 2023.

HON. M. N. MWANYALE,

JUDGE

