



**Kari (Suing as the administrators of the Estate of Gitau Karia - Deceased) v Chege & 3 others  
(Environment & Land Case 234 of 2017) [2022] KEELC 2546 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2546 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 234 OF 2017  
YM ANGIMA, J  
MAY 5, 2022  
FORMERLY NAKURU ELC 184 OF 2016**

**BETWEEN**

**KAGOCHI GITAU KARI ..... PLAINTIFF  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF GITAU KARIA -  
DECEASED**

**AND**

**MARY WANJIRU CHEGE ..... 1<sup>ST</sup> DEFENDANT  
RUTH NYAMBURA CHEGE ..... 2<sup>ND</sup> DEFENDANT  
JACKSON Z. NDUNG'U KIARIE ..... 3<sup>RD</sup> DEFENDANT  
NJENGA GITHAE (SUED AS THE ADMINISTRATORS OF THE ESTATE OF  
WAWERU NJOROGE GATHUNGU (DECEASED) ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**A. The Plaintiff's Claim**

1. By a plaint dated 17<sup>TH</sup> May, 2016, the Plaintiff sought the following reliefs against the Defendants:
  - (a) A permanent injunction restraining the Defendants by themselves, servants or agents or anyone acting under them for selling, charging, disposing off, transferring or in any other way so to do interfering with 19 acres out of land parcel number Nyandarua/Lesirko/136.
  - (b) A declaration that the estate of Gitau Karia is the lawful owner of 19 acres out of land parcel number Nyandarua/Lesirko/136.
  - (c) An order of specific performance directing the Defendants to transfer 19 acres out of land parcel number Nyandarua/Lesirko/136 to the estate of Gitau Karia and in default the Deputy



Registrar of this Honourable court do sign all the necessary documents to effect transfer of the said 19 acres of land into the name of the estate of Gitau Karia.

- (d) Costs of this suit.
2. The Plaintiff pleaded that he was the administrator of the estate of the late Gitau Karia (Karia) who had in 1980 bought a portion of 19 acres out of Title No. Nyandarua/Lesirko/136 (the suit property) from the late Waweru Njoroge Gathungu (Gathungu) whose estate the Defendants were appointed administrators. It was further pleaded that despite the contracting parties having obtained the consent of the Land Control Board for the transaction Gathungu had failed to transfer the land to Karia in his lifetime hence the suit.
3. The Plaintiff further pleaded that the suit was not statute-barred because the limitation period only started running from the date of appointment of the administrators of the estate of Karia and Gathungu.

### **B. The Defendants' Response**

4. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a defence to the action dated 8<sup>th</sup> April, 2019. Apart from admitting the description and capacities of the parties they denied the Plaintiff's claim in its entirety and put the Plaintiff to strict proof thereof. They denied the existence of a sale agreement between Karia and Gathungu for the sale of 19 acres out of the suit property or the issuance of the consent of the Land Control Board with respect thereto. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants further pleaded that the suit was res judicata under Section 7 of the *Civil Procedure Act* and that it was time-barred under the law of limitation of actions.
5. The 1<sup>st</sup> Defendant was said to be deceased and the Plaintiff's advocate informed the court that the claim against her had been withdrawn. There was no appearance for the 4<sup>th</sup> Defendant and there was no defence filed on his behalf.

### **C. Summary of Evidence at the Trial**

6. At the trial hereof, only the Plaintiff attended court to prosecute the suit. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not attend court either by themselves or through their advocates on record. The Plaintiff adopted his witness statement dated 27<sup>th</sup> May, 2016 as his evidence-in-chief. He also produced the documents in his list of documents as exhibits P1 - P12 before closing his case. He sought the prayers set out in the plaint.
7. The Plaintiff's evidence-in-chief simply reiterated the contents of the plaint on the existence of a sale agreement between Karia and Gathungu; the procurement of the consent of the Land Control Board, and his desire for specific performance of the said sale agreement. The Plaintiff also contended that the limitation period should be computed from the date of appointment of the administrators of the 2 estates and not from the date of accrual of the cause of action. Consequently, the Plaintiff asked the court to grant the reliefs sought in the plaint together with costs of the suit.

### **D. The Issues For Determination**

8. The court has noted that the parties did not file an agreed statement of issues but they filed separate statements. As such, the court shall frame the issues for determination in accordance with the provisions of Order 15 Rule 2 of the *Civil Procedure Rules*. Under Rule 2 of the said Order, a court may frame issues from any of the following:
  - (a) the allegations contained in the pleadings.



- (b) the statements made on oath by or on behalf of the parties.
  - (c) the contents of documents produced by the parties.
9. The court has perused the pleadings, evidence and documents on record parties and is of the opinion that the following issues arise for determination herein:
- (a) Whether the suit is time-barred under the statute of limitations.
  - (b) Whether there was a sale agreement between Karia and Gathungu for the sale of 19 acres out of the suit property.
  - (c) Whether the Plaintiff is entitled to the reliefs sought in the plaint.
  - (d) Who shall bear costs of the suit.

## E. Analysis And Determination

### (a) Whether the suit is time-barred under the law

10. The court has considered the material and evidence on record on this issue. It is evident that the issue of limitation was raised both in the plaint and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' defence. Whereas the Defendants contended that the suit was time-barred since the sale agreement in issue was made in 1986, the Plaintiff contended that time could not run in the circumstances until the appointment of the administrators of the 2 estates. The evidence on record shows that the Plaintiff was appointed as administrator of the estate of Karia in 2015 whereas the Defendants were appointed as administrators of the estate of Gathungu in 2018.
11. The relevant provisions on limitation are to be found in the *Limitation of Actions Act* (Cap. 22). Section 7 thereof stipulates as follows:
- “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.”
12. Despite the Plaintiff's submissions to the contrary, the court is of the opinion that the language of the statute is clear that the limitation period runs from the date of the accrual of the cause of action and not the date of appointment of administrators of the estate of a deceased vendor or purchaser. The only period to be excluded is the period specified in Part III of *Limitation of Actions Act*, that is, on extension of the limitation period due to disability, fraud, mistake, ignorance of material facts or acknowledgment. There is no doubt from the material on record that the sale agreement the Plaintiff is seeking to enforce is dated 14<sup>th</sup> October, 1986 whereas the consent of the Land Control Board was granted on 14<sup>th</sup> April, 1987.
13. Assuming that the cause of action accrued in 1987 upon the granting of the Land Control Board consent then the limitation period of 12 years must have expired in 1999 or thereabouts. The court is thus of the opinion that the Plaintiff's suit for enforcement or specific performance of the sale agreement dated 14<sup>th</sup> October, 1986 is clearly statute barred having been filed 30 years after the making of the sale agreement and 17 years after expiry of the limitation period. Consequently, the 1<sup>st</sup> issue is answered in the affirmative.



**(b) Whether there was a sale agreement between Karia and Gathungu for the sale of 19 acres out of the suit property**

14. The court has considered the material and submissions on record on this issue. The Plaintiff produced a copy of the sale agreement dated 14<sup>th</sup> October, 1986. The said agreement was not challenged at the trial since the Defendants did not attend the hearing. There is also some evidence in Nakuru High Court Succession Cause No. 400 of 1993 which lends credence to the Plaintiff's claim that there was such a sale. However, this finding is of no consequence in view of the earlier finding that the entire suit is statute-barred.

**(c) Whether the Plaintiff is entitled to the reliefs sought in the plaint**

15. Although the court has found that there was a sale agreement between Karia and Gathungu for a portion of 19 acres out of the suit property, the court is nevertheless of the opinion that the said agreement is not legally enforceable due to limitation of actions. The court has already found that the claim is time-barred under the *Limitation of Actions Act* (Cap. 22). Accordingly, the court is of the opinion that the Plaintiff is not entitled to the reliefs sought in the plaint, or any one of them.

**(d) Who shall bear costs of the suit**

16. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. However, the court is not inclined to award the Defendants any costs since they did not attend court to defend the suit. Accordingly, the court shall make no orders as to costs.

**F. Conclusion And Disposal**

17. The upshot of the foregoing is that although the court has found the existence of a sale agreement between Karia and Gathungu, the Plaintiff's suit cannot succeed on account of limitation of actions. Accordingly, the Plaintiff's suit is hereby dismissed with no orders as to costs. It is so ordered.

**JUDGMENT DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 5<sup>TH</sup> DAY OF MAY, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Munyiri holding brief for Mr. Murimi for the Plaintiff

No appearance for the Defendants

CA- Carol

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**Y. M. ANGIMA**

**JUDGE**

