



Kiarie (Suing on Behalf of Lucy Wangari Njenga the Legal Representative of the Estate of the Late Amos Njenga Gikonyo) v Lands Registrar Nakuru & 4 others (Environment & Land Case 14 of 2021) [2022] KEELC 12831 (KLR) (4 October 2022) (Ruling)

Neutral citation: [2022] KEELC 12831 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 14 OF 2021
FM NJOROGE, J
OCTOBER 4, 2022

BETWEEN

GRACE WANJIKU KIARIE PLAINTIFF

SUING ON BEHALF OF LUCY WANGARI NJENGA THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE AMOS NJENGA GIKONYO

AND

LANDS REGISTRAR NAKURU 1ST DEFENDANT

OFFICE OF THE ATTORNEY GENERAL 2ND DEFENDANT

EVANS RURENGOH THUKU & BERNADETTE NJOKI MAMBO 3RD DEFENDANT

VALLEY OF TUMAINI CHILDRENS HOME 4TH DEFENDANT

CATHOLIC ARCHDIOCESE OF NAKURU 5TH DEFENDANT

RULING

1. This is a ruling in respect of the 3rd defendant's preliminary objection dated April 6, 2021 on the ground that the suit is statute barred and does not lie within the province of sections 7 and 26 of the [Limitation of Actions Act](#).
2. The 1st and 2nd defendants did not oppose the preliminary objection.

Submissions

3. The 3rd defendant filed his submissions dated June 6, 2022 on June 13, 2022 where they submit that the suit herein being an action to recover land, the time limitation period is twelve (12) years. They relied



- on section 7 and 9(2) of the [Limitation of Actions Act](#) and submit that the owner of the land Amos Njenga Gikonyo died on December 22, 2005 which was when the cause of action arose. They submit that the suit was instituted on February 19, 2021 amounting to more than 15 years clearly outside the 12 years' period prescribed by law.
4. The 3rd defendants' contend that even if the plaintiff may argue that the cause of action accrued when she got knowledge of the alleged fraud, the [Act](#) provides that the limitation period starts to run when the plaintiff is said to have discovered the alleged fraud. They further submit that the pleadings show that the plaintiff discovered the alleged fraud on January 24, 2008 while the suit was filed on February 19, 2021 thus there is still a lapse of 13 years from the date the right of action did accrue to the plaintiff making the suit statute barred.
 5. On the second issue, the 3rd defendant submits that the plaintiff has no *locus standi* to institute the suit as from the plaint, the plaintiff Grace Wanjiru Kiarie brought the suit on behalf of Lucy Wangari Njenga the legal representative of the estate of the late Amos Njenga Gikonyo; that the plaintiff pleads that she brings this suit by virtue of holding a power of attorney donated by the legal representative of the deceased estate. The 3rd defendant submits that this being a suit for recovery of land on behalf of deceased person, it is only the legal representative or administrator who can validly institute a suit on behalf of the estate.
 6. They relied on the Court of Appeal case of [Rebeccah Njeri Muturi v Violet Wambui Muturi](#) [2019] eKLR and submit that a legal representative cannot donate powers of administration to another person through a power of attorney. They submit that the suit herein was instituted by a stranger who was not an administrator to the estate at the time of institution of suit.
 7. The 4th defendant on the other hand filed its submissions dated June 21, 2022 on June 22, 2022 where it raised two issues for determination: one whether the preliminary objection has met the set threshold and two whether or not the suit herein is statute barred congruent to section 7 and 26 of the [Limitation of Actions Act](#).
 8. On the first issue, the 4th defendant relied on the case of [Mukisa Biscuits Manufacturing Co Ltd v West End Distributors](#) [1969] EA 696 and submit that the preliminary objection is proper as it has met the threshold prescribed. On the second issue it submits that the instant suit has been brought outside the statutory limitation period of 12 years. It also submits that more than three (3) years passed from the year 2008 when the plaintiff discovered the alleged fraud and that the suit was filed 13 years after the plaintiff became aware of the alleged fraud. It submits that the court lacks jurisdiction and urges the court to allow the preliminary objection.

Analysis And Determination

9. This court has considered the preliminary objection and submissions filed and the issue for determination is whether the 3rd defendant's preliminary objection is merited.
10. In [Mukisa Biscuits \(supra\)](#), the Court of Appeal defined a preliminary objection as follows;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and if 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.



...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 had to be ascertained or if what is sought is the exercise of judicial discretion.”

11. This court is of the view that for a preliminary objection to be maintained, the pure points of law raised must sprout from the pleadings. In the case of *Avtar Singh Bhamra & anor v Oriental Commercial Bank* HCC No 53 of 2004, the court stated as follows;

“A preliminary objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

12. The 3rd defendant in their preliminary objection stated that the suit is time barred. The question of limitation is a question that goes to the jurisdiction of this court. It is a clear point of law, which if argued as preliminary point may dispose of the suit. It is therefore this court’s view that the preliminary objection raised in the instant case is on a point of law, and the same is validly and properly taken.

13. The 3rd defendant argues that an action to recover land should not be brought after the lapse of twelve (12) years. He contends that from the pleadings, the plaintiff discovered the alleged fraud on January 24, 2008 while the suit was filed on February 19, 2021 thus there was a lapse of 13 years from the date the right of action did accrue to the plaintiff making the suit statute barred.

14. This court has perused the pleadings in the instant case and notes that the suit is for recovery of land. The plaintiff in its plaint dated February 9, 2021 and filed on February 19, 2021 under paragraph 9 avers that in 2008, she learnt of an illegal entry into the suit land by the 3rd defendant. On the strength of this fact, it is as plain as day that the cause of action arose in the year 2008. An excess of 12 years had already lapsed between the date of discovery of the cause of action and the date the plaintiff filed this suit, to wit, February 19, 2021.

15. Section 7 of the *Limitation of Actions Act* provides 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.”

16. In *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.”

17. It is not in dispute in the instant case that the cause of action indeed arose in the year 2008 and that the plaintiff filed the present suit in the year 2021. This is clearly outside the 12 year limitation period stipulated by law in respect of suits for recovery of land.

18. In the upshot, the preliminary objection dated April 6, 2021 is hereby upheld. I therefore strike out the plaintiffs’ suit for being statute barred. I also order that each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 4TH DAY OF OCTOBER, 2022.

MWANGI NJOROGE



JUDGE, ELC, NAKURU.

