



Sego v Sub County Administrator Nandi East Subcounty & 6 others (Environment & Land Case E003 of 2021) [2022] KEELC 13433 (KLR) (6 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E003 OF 2021**

**MN MWANYALE, J
OCTOBER 6, 2022**

BETWEEN

ALEXANDER KIPLIMO SEGO PLAINTIFF

AND

**THE SUB COUNTY ADMINISTRATOR NANDI EAST SUBCOUNTY & 6
OTHERS DEFENDANT**

RULING

1. The court has been called upon to determine a notice of preliminary objection dated June 29, 2022 by the 1st, 2nd, 3rd, 4th and 6th defendants. This notice of preliminary objection seeks the following orders: -
 - i) That, the suit is time barred having been brought outside the statutory limitation of 12 years in view of section 7 of the Limitation of Actions Act cap 22 Laws of Kenya.
 - ii) That, this honorable court lacks jurisdiction to hear and determine this suit as the plaintiff failed to exhaust all the available dispute resolution mechanism on time during adjudication process and provided for under section 26 and 29 of the Land Adjudication Act cap 284 Laws of Kenya.
 - iii) That, the suit offends the provisions of section 16 and 18 (2) of the Land Registration Act No 3 of 2012 which vest boundary dispute of registered land in the registrar.
 - iv) That, the plaintiff's suit is incompetent, bad in law, barred in law, an abuse of the court process and should be dismissed with costs to the defendants.
2. On court's directions given on June 30, 2022, the notice of preliminary objection was canvassed by way of written submissions. The same were duly filed.
3. Counsel for the 1st to 6th defendants formed six (6) issues for determination. In summary it was submitted that the suit was time barred by dint of section 7 of the Limitation of Actions Act. This was as a result of the fact that the cause of action accrued in the year 1970. Moreover counsel faulted the



plaintiff for not exhausting the available dispute resolution mechanism set out under section 26 and 29 of the Land Adjudication Act. Lastly, it was submitted that the suit offends the provisions of section 16 and 18 92) of the Land Registration Act since it was a boundary dispute falling within the jurisdiction of land registrar as the first port of call.

4. Counsel for the plaintiff opposed the preliminary objection on the grounds that the cause of action arose on October 25, 2021 when the defendants trespassed the suit property. Further that the dispute arising in this suit was not a boundary dispute but rather a dispute relating to fraud and trespass. They relied on the case of Husdon Kulundu and 2 others v Marthe Chibetti and Another (2020) to buttress this position. Counsel therefore urged the court to find that the preliminary objection did not raise pure points of law and ought to be dismissed.

Analysis And Determination: -

5. I have considered the notice of preliminary objection by the 1st to 6th defendants as well as party's respective submissions and find the following issued for determination;
 - i) Whether the suit is time barred by dint of section 7 of the Limitation of actions Act.
 - ii) Whether this court has jurisdiction to hear and determine this suit.
 - iii) Whether this suit is a boundary dispute of registered land falling within the jurisdiction of land registrar.
6. A preliminary objection was held by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Limited* [1969] E A 696 to be: -

“So far 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 which if argued as a preliminary point may dispose of 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.”
7. The effect of the above holding is that a preliminary objection should be raised on a point of law derived from a statute.
8. Upon examination of the grounds set out in the preliminary objection by the 1st to 6th defendants, i am satisfied that the same has met the threshold of what a preliminary objection is in the Mukisa Biscuits case cited herein. That said, I will proceed to address the issued arising individually.

a) Whether The Suit Is Time Barred

9. The preliminary objection raised herein refer to section 7 of the Limitation of Actions Act which provides that;

“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.”
10. From the above provision of the law, it is trite that a claim for recovery of land be filed within a period of 12 years from the date on which the right of action accrued to him.
11. The 1st to 6th defendants contended that the right of action accrued in the year 1970 during the adjudication process. The plaintiff on the other had stated that his right of action accrued on October



25, 2021 when the defendant trespassed the suit property. As a result, he filed this suit on November 8, 2021. The plaintiff made reference to the contents of his plant herein particularly on the prayers sought. He averred that the present suit raised two main issues namely trespass and fraud on the part of the defendants.

12. It is not in dispute that the issue of trespass arose on October 25, 2021, what is disputed is the issue of fraud. When does time start running in an action based on fraud? section 26 of the [Limitation of Actions Act](#) answers this question. It provides that;

“Where, in the case of an action for which a period of limitation is prescribed, either-

- a) The action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent, or
- b) The right of action is concealed by the fraud of any such person as aforesaid; or
- c) The action is for relief from the consequences of a mistake, the period of limitation does not begin until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”

13. Indeed, the alleged, fraud transpired in the year 1970 during tenure of the registered proprietor who is the father to the plaintiff as pointed out by both parties in their pleadings. However, the plaintiff averred at paragraph 15 (d) that he became aware of the fraud on October 25, 2021 when the defendants purported to survey the position of the easement on the suit property.

14. From the foregoing, I find that the cause of action arose on October 25, 2021, therefore this suit is not statute barred as it was filed on November 8, 2021.

b) Whether This Court Has Jurisdiction To Hear And Determine This Suit

15. This ground in the preliminary objection is premised on sections 26 and 29 of the [Land Adjudication Act](#) which provides for procedure of dispute resolution during the adjudication process. The jurisdiction of this court is also disputed on account of section 16 and 18 (2) of the [Land Registration Act](#) that provides for resolution of disputes relating to boundaries by the land registrar as the first port of call.

16. As rightly submitted by the plaintiff, the jurisdiction of this court is donated by section 13 of the [Environment and Land Court Act](#) which generally gives power to this court to hear and determine disputes relating to environment and land.

17. I wish to address this issue of jurisdiction under two limbs namely under sections 26 and 29 of the [Land Adjudication Act](#), and sections 16 and 18 (2) of the [Land Registration Act](#).

18. Sections 26 and 29 of the [Land Adjudication Act](#) lay down the procedure for resolution of disputes emanating during the registration process but before finalization of registration. Once the property is registered then the court is the proper channels to use for resolution of disputes. The provision of the law clothing this court with such jurisdiction is section 30 of the [Land Adjudication Act](#) which provides that;

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that section has become final in all respects under section 29 (3) of this Act.”



19. In the instant case, the suit property's registration process was finalized hence giving this court the power to entertain any suit emanating from it. Moreover, the cause of action in this suit related to trespass and fraud which are new causes of action and not the process of adjudication.
20. Consequently, i find this court has jurisdiction to entertain this matter.
21. As regards the second limb under the issue of jurisdiction particularly sections 16 and 18 (2) of the [Land Registration Act](#), I wish to associate myself with the submissions of the plaintiff that the dispute in this suit related to trespass and fraud. The prayers in the plaintiff filed on November 8, 2021 confirm so. Accordingly i find that his court has jurisdiction to hear and determine this suit.
22. In light of the above positions outlined by this court, the 1st to 6th defendant's notice of preliminary objection dated June 29, 2022 lacks merit and is hereby dismissed with costs to the plaintiff.
23. Orders accordingly.

DATED AND DELIVERED IN KAPSABET THIS 6TH DAY OF OCTOBER, 2022.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Mr. Mbogo for the Plaintiff/Respondent

Ms. Kogo for 1st, 2nd, 3rd, 4th and 6th Defendants/Applicants.

