



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

ELC NO. 65 OF 2019

**MAGDALENE NYOKABI GUANDAI(suing as the Administrative of the
Estate of the Guandai Karugu deceased).....PLAINTIFF**

-VS-

PETER KIBET TUEL.....1ST DEFENDANT

MOHAMMED O. OMAR.....2ND DEFENDANT

HASSAN SHABA ADAN.....3RD DEFENDANT

THE LAND REGISTRAR, KAJIADO.....4TH DEFENDANT

SAMUEL PERTET MEPUKORI.....5TH DEFENDANT

RULING

This ruling is on the preliminary objection dated 13/4/2021.

The preliminary objection which is by the Plaintiff is based on three grounds namely;

- 1) THAT the claim by the fifth Defendant to the suit land known as KAJIADO/OLE KASASI/12 is time barred as per **Section 7 of the Limitation of Actions Act** because the Plaintiff's father acquired said land 46 years ago.
- 2) THAT the fifth defendant lacks locus standi to appear as his power of attorney is defective.
- 3) THAT the inclusion of the fifth Defendant as a party will prejudice the Plaintiff.

The preliminary objection is opposed by the fifth Defendant on the grounds that under **Section 26 (a) of the same Act**, where the suit is based on the fraud of the Defendant, it is exempted from the **Limitation in Section 7**.

Counsel for the plaintiff filed written submissions on 26th May, 2021 while the fifth Defendant's counsel filed his on 6th August, 2021.

I have carefully considered the preliminary objection as well as the facts so far disclosed and the submissions by learned counsel for the parties.

I dismiss the preliminary objection for the following reasons;

Firstly, it is a draconian move to lock out a party who has a stake in the suit when the facts have not been proven. Should it later turn out such a party ought to have been heard, an injustice will have been occasioned.

Secondly, the preliminary objection is not based on pure points of law because it has raised facts that are not yet proved namely, who is in occupation, the plaintiff's period of occupation and the validity of the fifth defendant's power of attorney.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF NOVEMBER, 2021.

M.N. GICHERU

JUDGE