



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC MISC. APPLICATION NO. 226 OF 2018

PAUL WANGOMBE KANYI.....1ST APPLICANT

PETERSON WAMBUGU KANYI.....2ND APPLICANT

MARY NYAMBURA WAMBUGU.....3RD APPLICANT

VERSUS

ELIZABETH WANJIRU NGIGI.....1ST RESPONDENT

ROBERT MATATHIA NGIGI.....2ND RESPONDENT

RULING

1. The Applicants are seeking leave to file a suit out of time. The Applicants had entered into a sale agreement with Francis Ngigi Matathia in 1987. The Applicants made deposits of Kshs. 20,000/= for each of the plots which they were purchasing at Garden Estate Nairobi. The said Francis Ngigi Matathia died before he could transfer the properties to the Applicants.

2. The Applicants have now filed the present application in which they seek leave to file suit against the administrators of the Estate of Francis Ngigi Matathia claiming specific performance or in the alternative refund of the deposits made with interest.

3. The Respondents have opposed the application arguing that the suit which the Applicants intend to file is stale having not filed any for over three decades.

4. I have gone through the submissions by the parties herein. The only issue for determination is whether this court has jurisdiction to extend time for filing of a suit arising out of matters relating to contract. It has been held time and again that one cannot seek extension of time to file a suit touching on contractual matters. In the case of **Willis Onditi Odhiambo Vs Gateway Insurance Company Limited (2014)** the Court of Appeal stated as follows:-

“Under Section 27 as can be gleaned from the provisions cited above, time to file suit can only be extended where the action is founded on tort and must relate to torts of negligence, nuisance or breach of duty and the damages claimed should be in respect of personal injuries to the Plaintiff as a result of the tort”.

5. In the case of **Mary Osundwa - V - Nzoia Sugar Company Limited [2002] eKLR** the Court of Appeal stated as follows:

“This Section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The Section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo, J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent”.

[Emphasis ours]

6. **The Applicants’ application is therefore without merit.** The same is dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 6th day of May 2021.

E.O. OBAGA

JUDGE

In the Virtual presence of:-

Mr Tum for Applicants

Mr Mwaniki for Respondent

Court Assistant: John

E. O.OBAGA

JUDGE