



Methodist Church in Kenya Trustees Registered & another v County Government of Tharaka Nithi & 4 others (Environment & Land Case E005 of 2024) [2025] KEELC 4070 (KLR) (20 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4070 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE E005 OF 2024**

**BM EBOSO, J
MAY 20, 2025**

BETWEEN

**METHODIST CHURCH IN KENYA TRUSTEES REGISTERED . 1ST PLAINTIFF
THE PRESIDING BISHOP, METHODIST CHURCH IN
KENYA 2ND PLAINTIFF**

AND

**COUNTY GOVERNMENT OF THARAKA NITHI 1ST DEFENDANT
THE GOVERNOR, THARAKA NITHI COUNTY 2ND DEFENDANT
THE NATIONAL LAND COMMISSION 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT
NATIONAL CEREALS BOARD CHUKA 5TH DEFENDANT**

RULING

1. The plaintiffs initiated this suit through a plaint dated 3/6/2024. The plaint was amended on 28/1/2025. Through the amended plaint, the plaintiffs seek: (i) an order compelling the defendants to issue title deeds to the plaintiffs for seven (7) acres excised from land parcel number Karingani/Ndagani/585; (ii) a permanent injunction restraining the defendants against interfering with, trespassing on, possessing or allocating the seven (7) acres to any other parson or party; (iii) a declaration that the plaintiffs are the legal owners of the 7 acres under the doctrine of adverse possession; (iv) an order decreeing eviction of the 1st and 5th defendants from the 7 acres; (v) an order decreeing cancellation of the tittle deed for Karingani/Ndagani/585 and issuance of a separate title for the 7 acres; (vi) an order decreeing resurvey of Karingani/Ndagani/585; (vii) an order decreeing the 5th defendant to remove the structures erected on the 7 acres; (viii) costs of the suit and interest on the costs.



2. The case of the plaintiffs is that the Town Council of Chuka and the County Council of Meru (both now defunct) allotted to the Methodist Church in Kenya five (5) acres and a further two (2) acres out of “land registration number 585.” The church took possession of the land more than 20 years ago. The parcel of land, described by the plaintiffs as land registration number 585, was subsequently surveyed and registered as Karingani/Ndagani/585, measuring approximately 17.5 hectares. The plaintiffs contend that the 1st defendant has taken five (5) acres out of the 7 acres that were allocated to the Methodist Church and has allotted part of the 5 acres to the 5th defendant.
3. It is the plaintiffs’ case that on being allocated the 7 acres, they constructed a church sanctuary, a multipurpose hall, a minister’s house, an evangelical manse, sunday school classes, modern kitchen, toilets, recreation center, prayer gazebos, prayer rooms and car parking. They term the actions of the 1st defendant as illegal, contending that the sub-division titles generated out of Karingani/Ndagani/585 were procured fraudulently.
4. Together with the plaint, the plaintiffs brought a notice of motion dated 3/6/2024 seeking various interlocutory injunctive orders, pending the hearing and determination of the suit. The said notice of motion is one of the five items that fall for determination in this ruling.
5. The second application falling for determination is the notice of motion dated 31/7/2024, brought by the 1st and 2nd defendants, seeking an order setting aside the ex parte orders issued in this suit on 5/6/2024 and an order staying further proceedings in the suit. The third application is the plaintiffs’ notice of motion dated 1/8/2024 seeking extension of the interim order issued on 5/6/2024 and an order enjoining the Officer Commanding Police Station, Chuka, to enforce the order. The 4th application is the plaintiffs’ notice of motion dated 9/10/2024 seeking: (i) an interlocutory injunction restraining the 5th defendant against continuing with the development of land parcel number Karingani/Ndagani/ 15245 measuring 1.41 hectares; (ii) a notice to the chairman of the 5th defendant to show cause why he should not be held to be in contempt of the order of this court; (iii) an order committing the said chairman to civil jail for contempt of court; and (iv) an order directing a site visit to the suit land. The last item falling for determination in this ruling is the 5th respondent’s notice of preliminary objection dated 29/7/2024. Because the notice of preliminary objection raises jurisdictional issues, the court will dispose it first.

Preliminary Objection dated 29/7/2024

6. Through the notice of preliminary objection dated 29/7/2024, the 5th respondent invited this court to strike out the plaintiffs’ suit on the grounds that: (i) the plaintiffs have not exhausted the redress avenue under Section 18(2) of the *Land Registration Act*; and (ii) the plaintiffs’ claim is statute-barred under Sections 4 and 7 of the *Limitation of Actions Act*.
7. The preliminary objection was canvassed through written submissions dated 18/11/2024, filed by Peter Mutui Mutemi Advocate. The 5th defendant contends that it is evident from the plaintiffs’ pleadings, prayers and supporting documents that their claim is a boundary dispute. The 5th defendant cites the framework in Section 18(2) of the *Land Registration Act* and contends that the dispute should first be determined by the Land Registrar.
8. On the contention that the plaintiffs’ suit is statute-barred, the 5th defendant argues that because the plaintiffs contend in their pleadings that the church was allotted the suit land in 1991, the 12 year limitation period for bringing the instant claim started running from 1991, hence the limitation period lapsed on expiry of 12 years reckoned from the date of the allotment.



9. The plaintiffs opposed the preliminary objection through written submissions dated 23/10/2024, filed by M/s Charles Kimathi & Company Advocates. The case of the plaintiffs is that the key issue before court is not about boundaries of the suit land. They contend that the 5th defendant has failed to demonstrate the requisite elements of limitation under the *Limitation of Actions Act*.
10. The court has considered the points raised in the notice of preliminary objection by the 5th defendant. The two questions to be answered in the preliminary objection are: (i) Whether this court is precluded from entertaining the plaintiffs' claim at this point by dint of Section 18(2) of the *Land Registration Act*; and (ii) Whether this suit is statute-barred under Section 7 of the *Limitation of Actions Act*.
11. Section 18(2) of the *Land Registration Act* provides as follows:
 - “(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”
12. Is the plaintiffs' claim a boundary dispute? I have looked at the amended plaint dated 28/1/2025 and I have summarized the gist of the plaintiffs' claim and the reliefs sought in the plaint. It is clear from a perusal of the amended plaint that the plaintiffs' claim is not a boundary dispute. The plaintiff is challenging the 1st defendant's decision to take back five (5) out of the 7 acres that its predecessors allotted to the church in the early 1990s. The claim is not a boundary dispute. Consequently, there is no proper basis for invoking Section 18 (2) of the *Land Registration Act*.
13. Is the plaintiff's suit statute-barred under Section 7 of the *Limitation of Actions Act*? As the party alleging limitation, the 5th defendant was obligated to demonstrate: (i) what they understand to be the cause of action in the plaintiff's suit; (ii) the date when the cause of action accrued or the date when time started running; and (iii) the date when the 12 year limitation period lapsed. These are essential elements which a party invoking a statute of limitation ought to demonstrate. Regrettably, the 5th defendant has not done that.
14. What emerges from the interlocutory evidence placed before court is that, the sub-division titles which the plaintiffs are challenging were issued in June 2023. The present suit was filed in June 2024. There is therefore no proper basis upon which to invoke the statute of limitation against the plaintiffs. That is the finding of the court on the 2nd issue in the notice of preliminary objection.
15. The result of the above findings is that the preliminary objection dated 29/7/2024 is rejected and dismissed for lack of merit.

Application dated 31/7/2024

16. The application dated 31/7/2024 was brought by the 1st and 2nd defendants. They sought an order setting aside the interim ex parte orders issued in this suit on 5/6/2024. They also sought an order staying further proceedings in this suit. The plea for an order setting aside the interim ex parte orders issued on 5/6/2024 is spent because the interim order was to lapse on disposal of the plaintiffs' application dated 3/6/2024. The application dated 3/6/2024 is being disposed through this ruling.
17. The applicants did not demonstrate the basis upon which they sought an order staying proceedings in this suit. The applicants submitted on res judicata but did not bring out the nexus between res judicata and the plea for an order of stay of proceedings. Ordinarily, whenever essential elements of res judicata are demonstrated in a suit, the proper order to ensue is an order striking out the suit on the ground that the court has no jurisdiction to entertain a claim that is res judicata. That is not the relief which the 1st and 2nd defendants have sought.



18. Proceeding from the premise that res judicata is the basis upon which the applicants sought an order of stay of proceedings, I do not think they were able to establish the essential elements of res judicata. I say so because in Nairobi High Court Civil Case No 315 of 1996 the church challenged a purported allocation of the suit land to Samuel Gitonga and Mary Wilfred. They sought an order annulling the allotment. Clearly, that was a distinct cause of action. It is not the same cause of action as the cause of action in the present suit. Secondly, Samuel Gitonga and Mary Wilfred who were defendants in the said suit are not parties to the present suit. Clearly, the essential elements of res judicata have not been demonstrated.
19. For the above reasons, I do not find merit in the application dated 31/7/2024.

Application dated 1/8/2024

20. The application dated 1/8/2024 was brought by the plaintiffs. Through it, they sought an order extending the interim order issued on 5/6/2024 and an order enjoining the Officer Commanding Station, Chuka, to enforce the order. The said interim order was to lapse on disposal of the application dated 3/6/2024. The application dated 3/6/2024 is being determined and disposed through this ruling. Consequently, the interim order dated 5/6/2024 is at this point wholly spent. It is so marked. Consequently, the application dated 1/8/2024 is marked spent.

Application dated 3/6/2024 and 9/10/2024

21. The two applications dated 3/6/2024 and 9/10/2024 were brought by the plaintiffs. They were all filed before the plaintiffs brought an amended plaint. On amending the plaint, the plaintiffs did not bother to amend the applications.
22. From the replying affidavit of Mwendani Franklin dated 31/10/2024, it emerges that the land register relating to Karingani/Ndagani/585, measuring 17.5 hectares, was closed on 8/6/2023 and various sub-division registers were opened. Various sub-division titles were subsequently issued. The sub-division titles were exhibited through the affidavit of Mwendani Franklin. One of the sub-division titles is number Karingani/Ndagani/15245 comprising of 1.41 hectares registered in the name of the County Government of Tharaka Nithi and reserved for the National Cereals and Produce Board. At the time the plaintiffs amended their plaint, the replying affidavit dated 31/10/2024 had been filed. No subsequent steps were taken to align the pleadings with the new titles and the new land registers.
23. The amended plaint and the application dated 3/6/2024 focus on Karingani/Ndagani/585, a parcel whose land register was closed on sub-division in June 2023. The plaintiffs have invited the court to issue injunctive and contempt orders in relation to the closed land register and the now non-existent parcel, Karingani/Ndagani/585. Were the court to issue the interlocutory orders focusing on closed land registers and the now extinct title, the orders will not be enforceable. I do not think a judge properly directing himself would issue such orders.
24. For the above reasons, the court will not venture into the merits of the two applications. The court will strike out the two applications but allow the plaintiffs the liberty to align their pleadings and bring fresh applications bearing the current land registrations.

Disposal Orders

25. In the end, the four (4) applications and the preliminary objection are disposed as follows:
 - a. The plaintiffs' two applications dated 3/6/2024 and 9/10/2024 are struck out.
 - b. The 1st and 2nd defendants' application dated 31/7/2024 is dismissed for lack of merit.



- c. The plaintiffs' application dated 1/8/2024 is marked spent.
- d. The 5th defendant's preliminary objection dated 29/7/2024 is dismissed for lack of merit.
- e. Costs of the four applications and costs of the preliminary objection shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 20TH DAY OF MAY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Kimathi for the Plaintiffs

Mr. Mwendani for the 1st and 2nd Defendants

Ms. Mwanyika, State Counsel

Court Assistant – Mr. Mwangi

