

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 31 OF 2020

NOLPARAKWO OLOTUNO KORTON.....1ST PLAINTIFF

NALAKTU OLOTUNO KORTON.....2ND PLAINTIFF

-VERSUS-

MAMURA OLOTUNO KORTON.....1ST DEFENDANT

OLENYEIYIE OLE KORTOM.....2ND DEFENDANT

RULING

The Defendants have raised a preliminary objection on points of law on the grounds that the suit herein is time barred and contravenes the provisions of section 7 of the limitation of actions act and thus the court lacks the requisite jurisdiction to hear and determine the matter herein. The defendants further stated that the plaintiff lacks the requisite locus standi to institute the suit herein on behalf of the estate of the late Olotuno Ole Kortum and further that no leave of court was sought by the Plaintiff prior to the instituting of the present suit.

The court had directed that the preliminary objection be served on the plaintiffs and it seems that the defendants have not challenged the same and did not file any submissions on the said preliminary objection.

In their submissions the defendants contends that the plaintiffs had brought the suit herein on their own names as joint proprietors of land parcel Narok/Trans Mara/Olosupulo/1 and since the 3rd plaintiff is deceased the plaintiffs have not attached any authorization to a court on behalf of the estate of the deceased since they are suing on their own behalf they ought to have been appointed as the administrators of the estate of the deceased and therefore a party cannot file a suit with the requisite capacity to commence the suit.

On whether the suit herein is time barred the defendants contends that the entire suit offends the provisions of section 7 of the Limitations of Actions Act as the suit herein was filed in 2020 36 years after the death of Olotuno Ole Kortum. They state that the cause of action arose in 1984 when the deceased died and thus the time to recover the suit had lapsed.

I have considered the application before me and the defendants submissions on the Preliminary Objection on points of the law. The Defendants contend that the Plaintiffs have no locus standi as the 3rd defendant is deceased. I have perused the pleadings filed and I find that the 1st and 2nd plaintiff contend that they hold the suit land in trust for the 3rd plaintiff but have not shown or annexed any authority to show that they obtained or were appointed as the administrators of the estate of the late Olotuno Ole Kortum. However, it is clear that the Plaintiff and the deceased are members of the family. The defendant contends that the 3rd defendant is deceased and it is incumbent on the 1st and 2nd plaintiffs to first obtain letters of administration before the filing of the instant suit. The first plaintiff is the mother of the 2nd defendant and in the pleadings she contends that she is holding the land as a trust for the rest of the family. From the pleadings I am in agreement with the defendants the plaintiff had not obtained letters of administration to enable them commence the suit herein. However, I note that the 1st Plaintiff is the mother of the 1st defendant and since the suit herein relates to ancestral land I find that this is a case in which the plaintiff ought to have taken out letters of administration before the commencement of the suit herein and failure to do so will be fatal. The estate of a deceased person can only be administered by a person who is duly appointed and in the absence of the above I find that the suit herein has been properly filed and I therefore strike out the suit herein on the said grounds. Having found so, I find no reason to proceed to making a finding on the other grounds since they will make no difference on the outcome of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 23RD DAY OF JULY, 2021

MOHAMED N. KULLOW

JUDGE

23/7/2021

In the presence of:

CA:Chuma

Parties and advocates N/A