



Mahinge (Suing as Legal Representative of Mahinge s/o Ndung’u – Deceased) v Kanyua S/o Waguthii (Environment & Land Case 2 of 2023) [2025] KEELC 3852 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3852 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 2 OF 2023
JO OLOLA, J
MAY 15, 2025
(FORMERLY NYERI HC CASE NO. 4 OF 1988)**

BETWEEN

**LAWRENCE MURIITHI MAHINGE PLAINTIFF
SUING AS LEGAL REPRESENTATIVE OF MAHINGE S/O NDUNG’U –
DECEASED**

AND

KANYUA S/O WAGUTHII DEFENDANT

RULING

1. By a Notice of Motion dated 23rd July, 2024, Lawrence Muriithi Mahinge suing as the Legal Representative of Mahinge s/o Ndung’u (the Applicant) prays for the following orders:
 1. That this Honourable Court be pleased to order the Respondent to sign the transfer forms and all the requisite Land Control Board Applications, Mutations, transfer forms and any other necessary document and avail his passport size photographs, photocopies of his ID Card, a Copy of his Personal Identification Number Certificate and to surrender the original title deed to Kirimukuyu/Mbogoini/272, to enable sub-division and transfer of 0.65 acres to the Applicant;
 2. That in default, the Court does authorize the Deputy Registrar to sign all the documents and instruments of sub-division, transfer and registration relating to a portion of land measuring 0.65 acres, to be excised from Kirimukuyu/ Mbogoini/272 on behalf of the Respondent and order the Land Registrar, Nyeri, to dispense with the production of passport size photographs, photocopies of the Respondent’s ID Card, Copy of the Respondent’s Personal Identification Number Certificate and also the original Title Deed for L.R. No. Kirimukuyu/Mbogoini/272,



to enable the transfer of the aforementioned parcel from the Respondent to the Applicant herein;

3. That the County Land Registrar, Nyeri be ordered to effect the registration of transfer of 0.65 acres of Kirimukuyu/Mbogoini/272 to the Applicant, in compliance with the High Court's Decree dated 12th July, 1996;
 4. That this Honourable Court be pleased to permit the reduction of the width of the access road on Kirimukuyu/Mbogoini/272 from the required minimum of 30 feet to 9 feet wide; and
 5. That the costs of this Application be borne by the Respondent.
2. The Application is supported by an Affidavit sworn on an undisclosed date and id premised, inter alia, on the grounds;
- i. That the dispute regarding the said parcel of land was heard and determined by an arbitration tribunal of elders chaired by the District Officer Mathira in 1993;
 - ii. That in terms of the award, the Applicant's father, the late Mahinge s/o Ndung'u was to be granted 0.65 Ha. of the suit property and the remainder thereof was to be held by the Respondent, who was also to be given access to the main road;
 - iii. That the said arbitral award was adopted as the Judgment of the High Court in 1996, but the terms thereof have never been complied with to-date, owing to the Respondent's reluctance to sub-divide and transfer the 0.65 acres;
 - iv. That the Applicant's father, passed on before he could enjoy fruits of the Judgment and the Respondent is still intent on frustrating the Applicant's efforts to recover the 0.65 acres on behalf of his father's estate;
 - v. That the Applicant is willing to comply with the order that the Respondent be given access to the main road but the suit land is quite narrow and the prescribed 30 feet minimum width for an access road is untenable in the circumstances, hence the prayer to have the access road reduced to 9 feet wide; and
 - vi. That it is only fair and in the interest of justice that this application be allowed as prayed.
3. I have carefully perused and considered the application as well as the Affidavit in support thereof. The Respondent did not file anything in opposition to the application.
4. By this application before the court, the Applicant has urged the court to order the Respondent to execute relevant transfer documents to enable them sub-divide the parcel of land known as Kirimukuyu/Mbogoini/272 for purposes of transferring a portion thereof measuring 0.65 acres to the estate of Mahinge s/o Ndung'u.
5. It is the Applicant's case that the said Mahinge s/o Ndung'u who was the Applicant's father had instituted this suit in the year 1988 against the Respondent seeking the surrender of the said 0.65 acres which had been consolidated with the Respondent's land parcel No. Kirimukuyu/Mbogoini/272.
6. It was apparent from a perusal of the record herein that the dispute was referred by the High Court to arbitration by a Panel of Elders who after hearing the parties did award the Applicant's father the said portion measuring 0.65 acres. The arbitral award was adopted as a Judgment of the High Court and a decree dated 12th July, 1996 was consequently issued.



7. It was also apparent that more than 28 years after the decree was issued the same has not been executed. According to the Applicant, his father Mahinge s/o Ndung'u passed away on 5th December, 1999 before the decree was complied with and he had now taken the mantle as the legal representative to have the same executed.
8. The Applicant blames the delay in execution of the decree on the Respondent whom he accuses of adamantly refusing to execute the necessary documents for the subdivision and transfer of the land in terms of the decree issued on 12th July, 1996.
9. It was however not clear why the Applicant took so long to come to court to seek for the orders that he is now praying for. In terms of enforcement of a decree of this nature, Section 4 (4) of the Limitation of Actions Act Provides as follows:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

10. The import of Section 4(4) of the Limitation of Actions Act was considered by the Court of Appeal in M'Ikiara M'Rinkanya & Another –vs- Gibert Kabeere M'Mbijiwe (2007) eKLR where the court held that where an attempt at enforcement of a decree after 12 years includes eviction proceedings, then such proceedings are statute –barred. The court went on to hold:

“...it is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in Section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished as stipulated in section 17 of the Act and the Judgment debtor acquires possessory title by adverse possession which he can enforce in appropriate proceedings. It follows, therefore, that, to hold that execution proceedings to recover land are excluded from the definition of “action” in Section 4(4) of the Act would be inconsistent with the law of adverse possession.”

11. In the mater before me, it is evident that the Applicant seeks to recover the portion of land measuring 0.65 acres from the Respondent more than 28 years since the decree was issued. While one can identify with the Applicant's frustrations, this court's hands are tied by the provisions of the Limitation of Actions Act aforesaid.
12. It follows that the application before me is for dismissal. I dismiss the same with no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 15TH DAY OF MAY, 2025

.....

J.O. OLOLA
JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Lawrence Mahinge – the Applicant in person



c. No appearance for the Respondent

