



**Singh v County Government of Nairobi (Civil Case E220 of 2023)
[2024] KEHC 14211 (KLR) (Civ) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E220 OF 2023**

**AN ONGERI, J
OCTOBER 18, 2024**

BETWEEN

SUKHDEV LALAY SINGH PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI DEFENDANT

RULING

1. The application coming for consideration is the one dated 29/12/2023 brought under Article 50(1) and 159 (d) of the Constitution of Kenya 2010, Section 10 of the Judicature Act Cap 8 Laws of Kenya, Sections 1A, 1B, 3A and 63 (c) of the Civil Procedure Act, Cap 21 Laws of Kenya, Sections 27, 28, 29 and 30 of the Limitation of Actions Act (Chapter 22 of the Laws of Kenya), Order 37 Rule 6 of the Civil Procedure Rules seeking for orders that the applicant be granted leave to file his suit out of time and further that the attached plaint be deemed as duly filed upon assessment and payment of the requisite fee.
2. The application is supported by the affidavit of the applicant sworn on 29/12/2023 where he stated that being the registered proprietor of the parcel known as LR No Nairobi/Block93/1429, he made an application to erect a perimeter wall round the premise, which was granted by the Respondent herein.
3. That upon the permission granted, the applicant proceeded with the construction and finalized the same as intended, since the suit parcel was to be leased to a third party known as JCL Agencies.
4. That upon completion of the perimeter wall, the Respondent through its servants, agents and or employees descended on the perimeter fence, destroyed it and carried away all the materials, which they have never returned to date.



5. That the Course of action took Place sometimes in 2007, when the Applicant herein filed a suit against among other parties the City Council of Nairobi which is currently defunct.
6. That alongside the Complaint, the Applicant filed an application dated 22nd February 2007 seeking among other Orders, that;
 - i. A mandatory injunction do issue compelling the Nairobi City Council to return to the suit property LR No Nairobi/Block 93/1429 all the materials removed on the 19th February 2007 from the site and to re-enact the fence at its own expense; and
 - ii. A declaration that the Notice dated 15th February 2007 is invalid and the Authority and permission granted to the Plaintiff on 1st February 2007 be restored
7. That on its Ruling of 2008, Justice J.L. A. Osiemo as he was then held as follows;

“It is trite Law that once it is established that there is a dispute over ownership of property no authority should be given develop the same. It is on that basis that the respondent moved in and removed the development erected therein.”
8. That it goes without saying that the destruction by the Respondent herein was justified on grounds of disputed ownership of the parcel of land being LR No. Nairobi/Block 93/1429.
9. That consequent to the ruling by Justice L. A. Osiemo the suit was withdrawn and the decision had a far-reaching consequence on the prayers in main suit, which was not heard on merit.
10. That through the Judgment delivered on the 23rd May 2022, by Justice Mogeni, the rightful position of the Applicant herein was stamped as the rightful owner of the parcel known as LR. No. Nairobi/Block 93/1429.
11. That the applicant has been in possession of the suit property since the issuance of certificate of lease, save that the contact between myself and JCL Agencies was aborted for the disputed ownership and subsequent destruction of the perimeter fence by the Respondent.
12. That as a result of the Respondent’s action and or inaction, the applicant has suffered loss of business opportunity and potential business with a third party.
13. That the applicant is now desirous to prosecute its case against the defunct City Council of Nairobi, Now, the County Government of Nairobi.
14. That the suit herein has been brought without delay, since Judgment was delivered on the 23rd May 2022.
15. That it is in the interest of justice that the Application herein be allowed and the Applicant be allowed to prosecute the suit out of the prescribed time.
16. That the applicant has patiently waited for over 17 years to have his position of ownership against the parcel known as LR No Nairobi/Block 93/1429 to enable him prosecute his claim against the Respondent.
17. That it is in the interest of Justice that the Orders herein sort are granted, and the Applicant herein be granted his day in court.
18. That unless these Orders are issued to the Applicant, the Appellant/Applicant is likely to suffer irreparable loss.



19. The respondent's filed grounds of opposition to the application and a notice of preliminary objection as follows;
 - i. That this Honourable Court lacks jurisdiction to adjudicate over this matter on account of Article 162 (2) (b) of the Constitution of Kenya 2010 and the Environment and Land Court Act Cap 8D Laws of Kenya read alongside Article 165 (5) (b) of the Constitution of Kenya 2010 and Section 11 (1) (d) of the High Court (Organization and Administration) Act Cap 8C Laws of Kenya.
 - ii. That the Plaintiff's application dated 29th December 2023 is incurably and fatally defective for offending the provisions of Order 37 Rule 6 of the Civil Procedure Rules 2010.
 - iii. That the entire suit grossly offends the provisions of Section 4(1)(a) and Section 4(2) of the Limitation of Actions Act Cap 22 Laws of Kenya.
20. The parties filed written submissions which I have duly considered.
21. The issues for determination are as follows;
 - i. Whether the plaintiff should be granted leave to file suit out of time.
 - ii. Whether this court has the jurisdiction to entertain this suit.
22. The plaintiff's suit is seeking Mesne profits of Ksh.400,000 per month for 10 years and Kshs.2,175,000 being the cost of construction materials.
23. The defendant opposed the application and said that the same in a land dispute.
24. I have considered to affidavits and the submissions filed herein.
25. I have also perused the plaint and it is evident that the plaintiff is alleging that he is the leasehold owner entitled to possession of all that parcel of land known as Nairobi Block 93/1429 Plains View along Mombasa Road where he did works that were demolished by the defendant.
26. I find that this is a land dispute since one of the issues for determination is whether there was trespass by the defendant as alleged.
27. This court has no jurisdiction to entertain the same or to extend time for filing suit out of time.
28. The constitution has set up special courts to handle land dispute.
29. In the case of Samuel Kamau Macharia vs Kenya Commercial Bank Limited, Kenya Commercial Finance Company Limited.

“A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondent in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

30. I find that this court lacks the jurisdiction to entertain the application dated 29/12/2-23.



31. The same is struck out with costs to the respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
18TH DAY OF OCTOBER, 2024.**

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant

