



**Karanja & 2 others v Waithira (Environment and Land Appeal
E013 of 2023) [2025] KEELC 4661 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4661 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E013 OF 2023**

JM ONYANGO, J

JUNE 24, 2025

BETWEEN

SAMUEL KINUTHIA KARANJA 1ST APPELLANT

AGNES NJERI MBUGUA 2ND APPELLANT

FREDRICK MURAYA CHEGE 3RD APPELLANT

AND

NELSON KARATU WAITHIRA RESPONDENT

JUDGMENT

1. This appeal arises from the ruling and orders of C. Mburu Principal Magistrate in MCELC Case No. 56 of 2019 at Kikuyu Senior Principal Magistrate's Court delivered on 4th July 2023.
2. By way of background the 1st, 2nd and 3rd Appellants filed suit against the Respondent for the transfer of two portions of land measuring 100 ft by 100 ft from land parcel number KARAI/KARAI/1367. The Appellants claimed that they had entered into sale agreements with the Respondent's mother dated 7th August 1998 and 13th September 2000 respectively, for the purchase of the said parcels of land measuring 100 ft by 100ft which were to be carved out of land parcel number KARAI/KARAI/1367. The Respondent's mother received part of the purchase price but she died before transferring the suit properties to the Respondents. The Respondent applied for letter of Administration in respect of his late mother's estate and subsequently registered the whole of land parcel number KARAI/KARAI/1367 in his name without any regard for the Appellants' beneficial interest in the suit property.
3. The Respondent filed a Defence denying the Appellant's claim and averred that the Appellant's suit was statute barred under the provisions of section 4(1) of the *Limitation of Actions Act*. He subsequently filed a Notice of Preliminary Objection in which he raised the issue that the suit was



fatally defective as it offends the provisions of section 7 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya.

4. The parties were directed to file their written submissions in respect of the Preliminary Objection. Upon considering the submissions of the parties, the trial Magistrate delivered a ruling dated 4th July 2023 in which he upheld the Preliminary objection and struck out the Appellants' suit. It is the said ruling that prompted this appeal citing the following grounds:
 - i. That the trial magistrate erred in law and in fact in failing to consider that the suit property being title No. KARAI/KARAI/1367 had been disposed of to the Appellants by the Defendant's mother, the late Margaret Waithira Ndegwa who died in the year 2001. Therefore, time could not run against a deceased person.
 - ii. The learned magistrate erred in law and in fact in not finding in the face of overwhelming evidence that the Respondent had fraudulently filed a Succession Cause in respect of title number KARAI/KARAI 1367 as the sole beneficiaries to the exclusion of the Appellants despite having knowledge of the existence of the respective sale agreements between his late mother and the Appellants.
 - iii. The learned Magistrate erred in law and in fact in failing to find that there was fraud on the part of the Defendant and the Appellants were therefor protected by section 26 of the *Limitation of Actions Act*.
 - iv. The learned Magistrate erred in law and in fact in upholding a Preliminary Objection that had failed to meet the principles of what amounts to a Preliminary Objection in that the same required ascertainment of facts with regard to (a) whether time had passed; (b) whether there was fraud perpetuated by the Defendants.
 - v. The learned Magistrate erred in law and in fact in failing to consider the Appellant's beneficial interest in the said property.
5. The Appeal was canvassed by way of written submissions and both parties duly complied.
6. Having considered the Memorandum of Appeal, the entire Record of Appeal and the rival submissions, the issues that fall for determination are
 - i. Whether the Preliminary Objection raised a pure point of law
 - ii. Whether the suit was statute barred.
 - iii. Whether section 26 of the *Limitation of Actions Act* is applicable.
 - iv. Whether the appeal should be allowed.
7. The case of *Mukisa Biscuits Manufacturing Limited V West End Distributors Ltd (1969) E.A 696* held as follows:

“A preliminary objection consists of a point of law which has been pleaded, or which arises out of clear implication out of the pleadings and which if argued as preliminary point may dispose of the suit.

Justice Newbold in the said suit argues that:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are



correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion”

8. In *George Oraro v Barack Eston Mbaja Nbi* HCCC No. 85 of 1992 J.B Ojwang (as he then was) held as follows:

“ A Preliminary objection correctly understood is a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through evidence”.

He further observed that:

“...Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary objection which the court should allow to proceed”

9. The Preliminary objection herein raises the issue that the suit offends the provisions of Section 7 of the *Limitation of Actions Act*. Section 7 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to the person through whom he claims to that person”.

10. The issue as to whether or not a suit is statute –barred is a pure point of law.

11. I will now proceed to determine whether the suit is statute-barred.

12. In their Complaint dated 23rd September 2019 and amended on 24th March 2023, the Plaintiffs claim to have entered into 2 sale agreements dated 7th August 1998 and 3rd September 2000 for the purchase of parcels of land measuring 100ft by 100ft each with Margaret Waithira Ndegwa deceased who was the defendant’s late mother. The said land parcels were to be excised from land parcel number KARAI/KARAI/1367 which was registered in the name of the deceased. They further allege that after the defendant applied for letters of Administration in respect of his late mother’s estate, he registered the entire parcel in his name without due regard to the plaintiff’s interest in the land.

13. The plaintiff’s suit is for recovery of land based on the above-mentioned sale agreements and it ought to have been filed before the lapse of 12 years from the date of the said sale agreements that means by 7th August 2010 in respect of the sale agreement dated 7th August 1998 and 3rd September 2012 in respect of the sale agreement dated 3rd September 2000. However, the suit was filed on 23rd September 2019 which was clearly outside the 12- year statutory period.

14. In his submissions, learned counsel for the Appellant has contended that time stopped running when the Defendant’s mother who was the vendor died. He relied on the case of *Kahi v Manasseh Environment and Land Case No. 23 of 2021 KEELC 20593* (12 October 2023) Judgment where it was held that:

“The period between when the deceased died on 27th July 1983 and the date when the grant was issued on 18th November 2016, there was no person with capacity to transact in the suit land.”



15. With due respect to counsel, capacity to deal with the property of a deceased person and running of time under the *Limitation of Actions Act* are two different things. The correct position was stated in the case of *Muchendu v Waita* (2003) eKLR where the court held as follows:

“The plaintiff indeed admitted that the basis of his action was the aforementioned agreement. It is important to establish when the cause of action accrued. It is stated in Chitty on Contracts, 23rd Edition, Vol 1 page 732, that the cause of actions accrued when the breach takes place and not when the damage is suffered. In this case going by the plaintiff’s pleadings, the cause of action accrued on 11th November, 1995. Of course the plaintiff will argue that the alleged seller, Mr Francis Waite Mbaki passed away before completing the transaction.

It should be pointed out that time does not stop at the death of a party. It is stated so in Halsbury’s Laws of England, 4th Edition, Vol 28 at page 281:

“ Thus, if time has begun to run against a person entitled to sue, or in favour of a person capable of being sued, the fact of his death and that there is an interval between his death and the grant of administration does not prevent time from running against, or in favour of the administrator, as the case may be.”

16. Similarly, in the instant case time started running from the date when payments were made and the death of the Defendant’s mother did not stop time from running. The suit having been filed 19 years after the second contract was signed is therefore statute barred.

17. The next issue for determination is whether section 26 of the *Limitation of Actions Act* is applicable.

18. Section 26 of the *Limitation of Actions Act* provides as follows:

“ Where, in the case of an action for which a period of limitation is prescribed, either-

- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which-

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- (ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know



or have reason to believe that the mistake had been made.”

19. It has been submitted on behalf of the Appellants that the Respondent filed Succession Cause No. 119 of 2016 in respect of his late mother’s estate without informing the Appellants and subsequently registered the whole of land parcel number Karai/Karai/1367 in his name without involving the Appellants and that therefore that amounts to fraud.
20. I have reviewed the Amended Complaint filed by the Appellants and no allegation or particulars of fraud have been pleaded. In the case of Dickson Ngige Ngugi v Consolidated Bank Ltd (Formerly Jimba Credit Corporation and Another (2020) eKLR the court declined to invoke the provisions of section 26 of the *Limitation of Actions Act* in a suit that had been filed out of time as the Plaintiff had failed to plead fraud. Besides, even if fraud was to be implied, it is not clear when the alleged acts of fraud were discovered by the Appellants.
21. From the above analysis I am unable to fault the trial Magistrate for having arrived at the finding that the suit was statute barred and for upholding the Preliminary Objection.
22. The upshot is that the appeal lacks merit and it is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA, THIS 24TH DAY OF JUNE 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Ngure for the Appellants
2. Mr Kihara for the Respondents

Court Assistant: Hinga

