



REPUBLIC OF KENYA



Chepkelat & another (Suing as the Legal Administrators of the Estate of Michael Kipkoskei Chepkelat) v Mureithi & 8 others (Environment & Land Case E077 of 2024) [2025] KEELC 4558 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E077 OF 2024**

MAO ODENY, J

JUNE 18, 2025

BETWEEN

**AGNES CHEPKELAT 1ST PLAINTIFF
PETER MUTAI 2ND PLAINTIFF
SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF MICHAEL
KIPKOSKEI CHEPKELAT**

AND

**WILLIAM WANJOHI MUREITHI 1ST DEFENDANT
EVANS BABU 2ND DEFENDANT
JANE CHEPKORIR KIBIEMTO 3RD DEFENDANT
LAND REGISTRAR-NAKURU COUNTY 4TH DEFENDANT
PRISCA NYABOKE MATUNDA 5TH DEFENDANT
STEPHEN MTABISA M'KAWALE 6TH DEFENDANT
MARY WANGUI MUTUA 7TH DEFENDANT
COSMAS KIPNGETICH CHELULE 8TH DEFENDANT
NATIONAL BANK OF KENYA 9TH DEFENDANT**

RULING

1. This ruling is in respect of the following preliminary objections: the 1st Defendant's preliminary objection dated 7th February, 2025, the 3rd and 5th Defendant's preliminary objection dated 18th February, 2025 and the 9th Defendant's preliminary objection dated 7th February, 2025.



2. The 1st Defendant's Preliminary Objection dated 7th February, 2025 is on the following grounds:
 - a. That the plaintiff's suit is time-barred under the provisions of the *Limitation of Actions Act*, Cap 22, Laws of Kenya.
 - b. That the suit is incompetent, bad in law, and an abuse of the Court process, warranting its dismissal with costs to the Plaintiff.
3. The 1st Defendant prayed that the suit be struck out with costs.
4. The 3rd and 5th Defendants Preliminary Objection dated 18th February, 2025 is on the following grounds:
 - a. That the Plaintiff's suit is statutorily barred under the provisions of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, rendering it untenable before this Honourable Court.
 - b. That the suit as instituted is legally untenable, procedurally defective and constitutes an abuse of the court process thereby warranting its immediate dismissal with costs.
 - c. That allowing the suit to proceed would prejudice the 3rd and 5th Defendants by subjecting them to unwarranted litigation over a matter that ought to have been raised within the prescribed statutory period.
 - d. That in the interest of justice, judicial efficiency, and finality in litigation, this Honourable Court ought to strike out the suit with costs to the 3rd and 5th Defendants.
5. The 9th Defendant raised a Preliminary Objection dated 7th February 2025 challenging the jurisdiction of this court to handle this case on the basis that the jurisdiction lies with the High Court/Commercial Court and not the Environment and Land Court.

Plaintiff's Submissions

6. Counsel for the Plaintiff filed submissions dated 5th May, 2025 and identified the following issues for determination:
 - a. Whether the instant suit is statutorily barred under the provisions of the *Limitation of Actions Act*, Cap 22, Laws of Kenya?
 - b. Whether this Honourable Court has jurisdiction to entertain the instant suit?
7. On the first issue, counsel submitted that from the Plaintiff's pleadings, it is evident that they became aware of the Defendants' fraud sometime in 2023 when they obtained a certified copy of the green card in respect of the subject property hence time ought to run as from December 2023. Counsel further submitted that it is also evident from the police occurrence book at page 26 of the Plaintiff's list of documents and the witness statement that upon the discovery of the fraudulent activities by the Defendants, a report on the matter was made to Kaptembwo Police station sometime on 6th February, 2024.
8. Mr. Sang relied on Section 26 of the *Limitation of Actions Act* and submitted that the Plaintiff discovered the Defendants' fraudulent activities sometime in December 2023, hence this suit is not time barred as alleged by the 1st, 3rd, 5th and 9th Defendants. Counsel further relied on the cases of Justus Tureti Obara vs Peter Koipeitai [2014] eKLR, Delilah Ondari vs Francis Ondieki Atandi Nyamira ELC Case No 4 of 2021 and Joseph Mwaniki Muchira vs Godfrey Muchangi [2018] eKLR.



9. On the second issue, counsel submitted that the predominant matter in the instant suit is the fraudulent transfer of the suit properties to the 3rd, 5th, 6th, 7th and 8th Defendants and relied on Sections 150 of the Land Act, 2012, 101 of the Land Registration Act and 13 (2) (a & d) of the Environment and Land Court Act and submitted that the Court shall have power to hear and determine disputes relating to title to land.
10. According to counsel, as much as the suit property was issued as security for a loan facility, the process in which the same is now registered in the names of the 3rd, 5th, 6th, 7th and 8th Defendants is the issue of contention as the process was marred with fraudulent activities. Further that the issue of accounts which is a preserve of the High Court is not in issue hence the Environment and Land Court has jurisdiction to hear and determine the dispute.
11. It was counsel's submission that Article 165 (5) of the Constitution provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162 (2) which includes the Environment and Land Court.
12. Counsel urged the court to apply the predominant test as was laid down in the cases of Suzanne Achieng Butier & 4 others vs Redhill Heights Investments Limited & Another (2016) eKLR, Lydia Nyambura Mbugua vs Diamond Trust Bank Kenya Limited & another [2018] eKLR, Thabiti Capital Limited vs Equity Bank (Kenya) Limited & Another and Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 others (2017) and find that this court has jurisdiction to hear and determine this suit.

1st Defendant's Submissions

13. Counsel for the 1st Defendant filed submissions dated 26th February, 2025 and identified the following issues for determination:
 - a. Whether the suit is time barred?
 - b. Whether the Preliminary Objection is merited?
14. On the first issue, counsel submitted that the 1st Defendant lawfully acquired the suit property through a public auction on 11th May, 2011 following an advertisement on 26th April, 2011 and if the Plaintiff had any claim, they ought to have raised it within twelve years from 2011 which lapsed in 2023. Counsel submitted that by filing this suit in 2024, the Plaintiffs have clearly violated the statutory limitation period and relied on Sections 4, 7 and 16 of the Limitation of Actions Act and the cases of Gichari & Another vs Muchiri (Environment & Land Case E010 of 2023) [2024] KEELC 1519, Susan Wanjiru Waweru vs Musa Kimengich Kimuge [2019] eKLR and Gathoni vs Kenya Co-operative Creameries Ltd [1982] KLR 104.
15. On the second issue, counsel submitted that this court lacks jurisdiction to entertain a suit that is statute barred and thus the preliminary objection is merited and relied on the cases of Sohanlaldurgadass Rajput & Another vs Divisional Integrated Development Programmes Co Ltd [2021] KEELC 1427 (KLR).

3rd and 5th Defendants' Submissions

16. Counsel for the 3rd and 5th Defendants filed submissions dated 12th March 2025 and identified the issue for determination as to whether the suit is time barred/non-starter. Counsel submitted that the 3rd and 5th Defendants purchased the suit properties from the 1st Defendant who had in turn acquired them as the highest bidder in a public auction conducted on 11th May, 2011 by the 9th Defendant in the lawful



exercise of its statutory power of sale. Counsel submitted that the 3rd and 5th Defendants conducted due diligence and were issued with valid title deeds.

17. Mr. Kibet submitted that the Plaintiffs have instituted these proceedings more than twelve years after the sale, belatedly seeking to challenge a completed lawful transaction. Counsel urged this Honourable Court to dismiss this suit with costs to the 3rd and 5th Defendants as it is not only time-barred but also a meritless attempt to disrupt settled ownership.
18. Counsel relied on Section 26 of the *Land Registration Act*, Section 7 of the *Limitation of Actions Act* and the cases of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors Ltd* [1969] EA 696, *Cherwon vs Kisekem Limited & 3 others* (Civil Appeal 240 of 2019) [2014] KECA 482 and *David Limo Bindotich vs Housing Finance Company of Kenya Limited* [2022] eKLR.

9th Defendant's Submissions

19. Counsel for the 9th Defendant filed submissions dated 29th March, 2025 and identified the following issues for determination:
 - a. Whether this Court has jurisdiction to hear and determine this Suit?
 - b. Whether this Court can transfer the suit to the High Court?
 - c. Whether the plaintiffs' suit is time-barred?
20. On the first issue, counsel submitted that the Court of Appeal has held that matters relating to charges, mortgages, collection of dues and rent fall exclusively within the jurisdiction of the High Court. Counsel submitted that the Applicant has approached the wrong court as regards the nature of the dispute and thus this court lacks jurisdiction to determine this suit.
21. Mr. Ojow relied on Article 162 (2) (b) of *the Constitution* of Kenya, Section 13 of the *Environment and Land Court Act* and the cases of *Cooperative Bank Limited vs Patrick Kangethe Njuguna & 5 others* (2017) eKLR and *Thomas Mutuku Kasue vs Housing Finance Company Ltd (HFC) & another* [2021] eKLR.
22. On the second issue, counsel submitted that this suit having been filed in a court without the requisite jurisdiction is not transferrable to the High Court hence should be struck out. Counsel cited the case of *Phoenix of E.A Assurance Company Limited vs M. Thiga t/a Newspaper Service* [2019] eKLR. Counsel further relied on Section 7 of the *Limitation of Actions Act* and submitted that the suit is time barred.

Analysis and Determination

23. The issue for determination is whether the 1st, 3rd, 5th and 9th Defendants Preliminary Objections have merit.
24. It should be noted that once a Preliminary objection has been filed that resonates with the other parties' views on the grounds raised in the preliminary objection, there is no need to file multiple preliminary objections on the same grounds. The other parties can support by filing their submissions and arguing why the preliminary objection should be upheld.
25. In this case, we are dealing with three Preliminary Objections essentially saying the same things on jurisdiction of the court and limitation of Actions. This was unnecessary. I have stated this, time and again, that we do not have to burden the clients and the court with many applications, which are unnecessary.



26. The central issue in the 1st, 3rd and 5th Defendants’ preliminary objection is that the Plaintiff’s suit is time-barred under the provisions of the *Limitation of Actions Act*, Cap 22, Laws of Kenya.
27. On the question whether an issue of limitation of time can be raised through a preliminary objection, the court in the case of *Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi* [2019] eKLR at paragraph 13 and 14 stated thus:

“The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The court should formulate limitation as one of the issues for determination and decide it on evidence adduced at the trial. On this see the case of *Oruta & Another vs. Nyamato* [1998] KLR 590, where the court held that limitation of action:-

”... could only be queried at the trial but not by... a preliminary objection... The appellant could raise the objection at the trial and the trial judge would have to deal with the matter on the evidence to be adduced at the trial”

See also the case of *Divecon Ltd vs Shirinkhanu S. Samani* Civil Appeal No. 142 Of 1997, where the court quoted with approval the words of Gachuhi, J.A., the leading judge in the *Oruta* case (ibid) that:

‘It will be up to the judge presiding at the trial to decide the issue of limitation as one of the issues but not as a preliminary point. The raising of the preliminary issue that would cause the suit for the plaintiff to be struck out is not encouraged by the *Limitation of Actions Act*...’

28. The Plaintiff has pleaded fraud which she has indicated that she became aware of the same in December 2023 and reported the issue to Kaptembwo Police Station where she was issued with OB No.37/6/02/2024.
29. Section 26 of the Limitation of Actions states that:

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.

30. In the instant case, the Plaintiff has raised allegations of fraud by the actions of the Defendants which facts if any, must be ascertained by the court through the process of a full trial where evidence will have to be adduced. Further the Plaintiff has pleaded that she became aware of the fraud in December 2023 and reported the matter at Kaptembwo Police Station in February 2024. It therefore follows that time started running in December 2023 hence the suit is not time barred.



31. In the case of *Justus Tureti Obara v Peter Koipeitai Nengisoi* [2014] KEHC 7219 (KLR) the court held that:

“I am in agreement with the Plaintiff’s submission that the Plaintiff’s claim is for the recovery of the suit property from the defendant and as such the limitation period for such a claim is 12 years as provided for in section 7 of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya. I would wish to point out further that the Plaintiff’s case although for recovery of land is based on fraud. The proviso to section 26 (a) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it. As to when the Plaintiff herein discovered the fraud alleged against the defendant is a matter to be ascertained at the trial.”

32. Similarly, in the case of *Joseph Mwaniki Muchira v Godfrey Muchangi* [2018] KEHC 1130 (KLR) the court held that:

“This is to say that time starts to run when the plaintiff discovers the fraud. So where fraud committed and does not come to the notice or is not known by the party who is affected by it and who would be entitled to sue as a plaintiff time does not run. Time starts to run when the would be plaintiff becomes aware of the fraud.”

33. I find that this ground of the preliminary objection lacks merit and it therefore fails.

34. The 9th Defendant raised a Preliminary Objection dated 7th February 2025 challenging the jurisdiction of this court to handle this case on the basis that the jurisdiction lies with the High Court/Commercial Court and not the Environment and Land Court. It is the 9th Defendant’s submission that matters relating to charges, mortgages, collection of dues and rent fall exclusively within the jurisdiction of the High Court.

35. The Plaintiff’s pleadings do not in any way deal with the accounts, or charges, but on the issue of fraudulent activities on how the transfers were effected to the defendants. The court is cognizant of the issue of jurisdiction, which flows from *the Constitution* or legislation and cannot arrogate to itself jurisdiction. If it does so then it shall be acting ultra vires and without jurisdiction as was stated in the case of *Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited* [1989] KLR 1 where the court held:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

36. Similarly, in the case of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others* (2012) eKLR the Court held that:

“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. “



37. Article 162(2) of *the Constitution* states as follows:

‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

- a. ...
- b. the environment and the use and occupation of, and title to, land.’

38. Section 13 of the *Environment and Land Court Act*, states as follows:

“ 13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes –
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.”

38. As earlier stated, this dispute is not about accounts arising from the charge but the fraudulent activities therefrom. This suit also call for the application of the predominant test as was held in the case of Kisekem Limited v *National Bank of Kenya Limited (Land Case E014 of 2023*(2024) KEELC 5233 (KLR) that:

“what is important is not so much the purpose of the transaction, but the subject matter or the issue before the Court...”

39. In the case of Republic –vs- Chairman, Business Premises Rent Tribunal & another Exparte; Carrington Complex Limited [2019] eKLR Nyamweya J. now a J.A, held that:

“the test to apply was the predominance test. In hybrid cases where there is concurrent jurisdiction by both the High Court and the Environment and Land Court as the issues cut across the exclusive jurisdiction reserved for the two courts.”



40. The court also stated that courts have resolved the issue of concurrent jurisdiction by inquiring what the most substantial question or issue presented in the controversy is.
41. Similarly, in the case of *Suzanne Butler & 4 Others v Redhill Investments & Another* (2017) e KLR the Court stated as follows:

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.

The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.

Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”

42. I have considered the Preliminary Objections by the Defendants, the submissions, the relevant judicial authorities and find that they lack merit and are dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

