



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 538 OF 2013

JOHN NJOROGE GITAU.....1ST PLAINTIFF

DANCAN NJOROGE GITAU.....2ND PLAINTIFF

DAN NJOROGE GITAU.....3RD PLAINTIFF

VERSUS

DAVID MWANGI GITAU.....1ST DEFENDANT

LEAH WANJIKU MUIGAL.....2ND DEFENDANT

JOEL MBARIA MAGU.....3RD DEFENDANT

MICHAEL MUKUNDI KURIA.....4TH DEFENDANT

RULING

1. The plaintiffs commenced proceedings herein through a plaint filed on 20th September 2013. They averred therein that they were at all material times the registered proprietors of the parcels of land known as Ndundori/Miroreni Block 2/1202, Ndundori/Miroreni Block 2/1203, Ndundori/Miroreni Block 2/1197 and Ndundori/Miroreni Block 2/1198 (hereinafter “the suit properties”) and that the 1st defendant fraudulently sold off the suit properties to the 2nd, 3rd and 4th defendants who then became registered thereof. They therefore prayed for cancellation of the 2nd, 3rd and 4th defendants’ titles and re-issuance of titles in their names. Among the documents accompanying the plaint is a witness statement by the 1st plaintiff in which he stated that the subdivision process that resulted in the suit properties “was finalized in 1995 or thereabouts”. There is also a list of documents to which are annexed copies of titles issued between 1995 and 1997.

2. The 3rd and 4th defendants responded to the plaint through a statement of defence in which they stated that the 1st plaintiff sold parcels of land known as Ndundori/Miroreni Block 2/1202 and Ndundori/Miroreni Block 2/1203 to the 3rd and 4th defendants respectively in the years 1997 and 1999. They denied the allegations of fraud and further averred that the plaintiffs’ claim is barred by **Section 7** of the **Limitation of Actions Act** since the cause of action arose more than 12 years ago. Vide the defence, they gave notice of a preliminary objection to that effect. This ruling is in respect of the said preliminary objection.

3. By consent of parties, the preliminary objection was canvassed through written submissions. The consent notwithstanding, only the 3rd and 4th defendants filed submissions. Counsel for the plaintiffs urged the court to render a ruling on the basis of the submissions on record. No explanation was offered by the other defendants for failure to file submissions.

4. It is argued on behalf of the 3rd and 4th defendants that the cause of action herein accrued in 1999 when the last of their titles in respect of the suit properties was issued and when the alleged fraud was discovered. That **Section 7** of the **Limitation of Actions Act** prohibits the bringing of an action for recovery of land after 12 years from the date when the cause of action accrued and that since this suit was filed on 20th September 2013, more than 12 years elapsed before its filing. It is argued that the court lacks jurisdiction to entertain the matter. The cases of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, **Edward Moonge Lengusuranga v James Lanaiyara & another [2019] eKLR**, **IGA VS MAKERERE UNIVERSITY [1972] EA 65** and **Haron Onyancha v National Police Service Commission & another [2017] eKLR** are cited in support of the submissions.

5. I have considered the preliminary objection and the submissions thereon. The objection targets the plaint herein yet the plaintiffs opted not to advance any submissions in response. In essence therefore, the preliminary objection is unopposed.

6. The law relating to preliminary objections is settled. For a preliminary objection to be valid, it must raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. Lastly, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. This was succinctly summed up in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, by Law JA as follows:

So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

7. The objection herein is based on **Section 7** of the **Limitation of Actions Act** which 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 some person through whom he claims, to that person.

8. The plaintiffs herein have prayed in the plaint for cancellation of the 2nd, 3rd and 4th defendants' titles and re-issuance of titles in their names. They allege that the titles were fraudulently issued to the 2nd, 3rd and 4th defendants. The suit is therefore one for recovery of land which must be filed no later than 12 years from the date when the cause of action accrued. The question then is: when did the cause of action arise in this matter? According to the 3rd and 4th defendants the cause of action herein accrued in 1999 when the last of their titles in respect of the suit properties was issued and when the alleged fraud was discovered. As I noted at the beginning of this ruling, filed alongside the plaint herein was also a list of documents to which was annexed copies of titles issued between 1995 and 1997 as well as a witness statement by the 1st plaintiff in which he stated that the subdivision process that resulted in the suit properties "was finalized in 1995 or thereabouts". That in essence confirms the 3rd and 4th defendants' contention that the cause of action herein had accrued by 1999. It seems that it accrued even earlier, in 1997. This suit ought to have been filed by the end of the year 2009. Having been filed on 20th September 2013, it violates the provisions of **Section 7** of the **Limitation of Actions Act**. The preliminary objection is meritorious. I uphold it.

9. In the result, I strike out the plaintiffs' suit with costs to the 3rd and 4th defendants.

Dated, signed and delivered at Nakuru this 24th day of September 2020.

D. O. OHUNGO

JUDGE