



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

MISC. APP NO. 8 OF 2020

JULIUS NJUGUNA MWANGI

(suing on behalf of the estate

of Mwangi Mura -deceased.....APPLICANT

VS

KARIUKI KAMAU MBIUKI.....1ST RESPONDENT

HANNAH WARIGIA MWANGI2ND RESPONDENT

WAMBUI MWANGI.....3RD RESPONDENT

SARAH WAMAITHA.....4TH RESPONDENT

LAND REGISTRAR-MURANGA.....5TH RESPONDENT

JUDGMENT

1. What is placed before the Court is an ex parte application brought under Order 37 Rule 6 of the Civil Procedure Rules and Section 26, 27, and 28 of the Limitations of Actions Act, Cap 22 of the Laws of Kenya.

2. In the application the Applicant seeks orders for leave to file the suit out of time.

3. The application is supported by the grounds disclosed in the application as well as the Supporting Affidavit of the Applicant deponed and sworn on the 21/9/2020. The suit revolves around the parcel No LOC 20/MIRIRA/4481 (suit land) previously owned by Mwangi Mura, the father of the Applicant and the husband of the 2nd Respondent. That upon the death of Mwangi Mura the suit land was fraudulently transferred to the 2nd Respondent using a grant in succession cause No 44 of 2007 in the name of Rueben Ngugi Kiagu, a total stranger to the estate of the late Mwangi Mura. Thereafter the suit land became registered in the name of the 1st Respondent in 2014. That he filed suit vide ELC 425B of 2017 seeking the revocation of title however the suit was struck out for being filed out of time and without the leave of the Court hence this application.

4. Further the Applicant explains that he was unable to file suit within the stipulated period as he was unaware that the suit ought to have been filed within the stipulated period of time. In addition, that the delay in filing the suit was not deliberate as he had to obtain letters of grant ad litem for the estate of Mwangi Mura inter alia.

5. He urged the Court to enlarge time to enable him pursue his claim to its logical conclusion.

6. Order 37 Rule 6 of the Civil Procedure Rules provides that;

“(1) An application under Section 27 of the Limitation of Actions Act made before filing a suit shall be made ex parte by originating summons supported by affidavit.

(2) Any such application made after the filing of a suit shall be made ex parte in that suit.”

7. Section 28 (1) of the Limitations of Actions Act provides that an application for leave of the Court for the purposes of [Section 27](#) of this

Act shall be made ex parte, except in so far as rules of Court may otherwise provide in relation to applications made after the commencement of a relevant action.

8. It is noted that the Applicant had filed a suit that was struck out for being filed out of time without the leave of the Court. The Applicant explains that he sought help from the Directorate of Criminal investigations with respect to the claim of fraud in an attempt to recover the land. The earlier suit having been struck out, the Applicant's application herein seeking leave of the Court to file suit out of time, in my view, stands on sound footing.

9. Other reasons advanced by the Applicant for not filing the suit within the statutory period are that he was unaware of the time limits. That the delay was not deliberate because time was expended on the alternative means of recovering the land through pursuing the Land Registrar, registering caution on the suit land and filing of the succession cause in respect to the estate of his late father.

10. While all the above are necessary actions, rectification/cancellation and disputes involving fraud are matters within the jurisdiction of the Environment and Land Court and ought to have filed suit as soon as he became aware of the breaches.

11. That said, the scale of justice in the current dispensation tilts towards substantial justice. It would be a travesty of justice if a party is turned away from the seat of justice by denying him an opportunity to present his claim in a Court of law. Appreciating that this Court has jurisdiction over the cause of action and that the nature of the action is one that requires parties to be heard on merit, it is only fair and just that the Applicant be given an opportunity to prosecute his case.

12. The issue that the Court concerns itself at this stage of the ex parte application is whether on the face of it the Applicant has given a plausible explanation for failing to file the suit within time. Having analyzed the reasons advanced by the Applicant for not seeking leave in the first place, the Court is satisfied that the application has merit.

13. It is therefore allowed as prayed with no orders as to costs.

14. **It is so ordered.**

DATED, SIGNED & DELIVERED THIS 30TH DAY OF NOVEMBER 2020.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of;

Kiroko Ndegwa HB for Kariuki for the Applicant

1st – 5th Respondents: Absent

Njeri & Kuiyaki: Court Assistants