



Anyega (Suing as Legal Administrators of the Late John Kiriago Sangaka) v Ruitha & 2 others; Ruitha & another (Plaintiffs to the Counterclaim); Anyega (Suing as Legal Administrators of the Late John Kiriago Sangaka) & 3 others (Defendant to the Counterclaim) (Environment and Land Case 36 of 2024) [2025] KEELC 6304 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND CASE 36 OF 2024**

MC OUNDO, J

SEPTEMBER 25, 2025

**REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND CASE 36 OF 2024 MC OUNDO, J SEPTEMBER 25, 2025**

BETWEEN

**LYDIA BOSIBORI ANYEGA (SUING AS LEGAL ADMINISTRATORS OF THE
LATE JOHN KIRIAGO SANGAKA) PLAINTIFF**

AND

JAMES WAGEM A RUITHA 1ST DEFENDANT

IRENE WANJIRU WAGEM A 2ND DEFENDANT

DISTRICT LAND REGISTRAR, NAIVASHA 3RD DEFENDANT

AND

JAMES WAGEM A RUITHA PLAINTIFF TO THE COUNTERCLAIM

IRENE WANJIRU WAGEM A PLAINTIFF TO THE COUNTERCLAIM

AND

**LYDIA BOSIBORI ANYEGA (SUING AS LEGAL ADMINISTRATORS OF THE
LATE JOHN KIRIAGO SANGAKA) . DEFENDANT TO THE COUNTERCLAIM**

LOIS WAMBUI THUO DEFENDANT TO THE COUNTERCLAIM

LAND ADJUDICATION AND SETTLEMENT OFFICER -

NAIVASHA DEFENDANT TO THE COUNTERCLAIM

**LAND SETTLEMENT FUND BOARD OF TRUSTEES DEFENDANT TO THE
COUNTERCLAIM**



RULING

1. The Plaintiffs herein filed suit vide a Complaint dated 2nd March, 2018 and Amended on 14th May 2024 wherein they sought for the following orders:
 - i. That the 1st and 2nd Defendants, their agents, relatives, servants, and or anybody working under their instructions be permanently restrained by the orders of the court from trespassing, entering, wasting, cultivating, building, excavating, mining, grazing or in any way disturbing or threatening the life of the Plaintiff, her family, children or anybody authorized by her to use the farm, occupy or act in any way for the good of the land parcels Moi Ndabi/Settlement Scheme/1287 and 1288 respectively, the estate of the late John Kiriago Sangaka.
 - ii. The 3rd Defendant be ordered to correct the register and cancel the names of the 1st and 2nd Defendants and have the land revert to the original names of the owner Johnson Kiriago Sangaka to enable the Plaintiff proceed with the succession of the estate of the deceased John Kiriago Sangaka in respect to land parcel Nos. Moi Ndabi/Settlement Scheme/1287 and 1288 respectively.
 - iii. General damages.
 - iv. Mesne profits for the illegal entry by the 1st and 2nd Defendants to a portion of the suit parcels.
 - v. That the court be at liberty to make any further orders in the interest of justice.
2. Pursuant to the service of the Amended Complaint upon the parties herein, the 1st and 2nd Defendant filed a Defence and Counterclaim against the Plaintiff, Lois Wambui Thuo, Land Adjudication and Settlement Officer-Naivasha and Land Settlement Fund Board of Trustees as the 1st to 4th Defendants respectively seeking the following orders;
 - a. A declaration that the 1st Defendant has no legal capacity to sue on behalf of the estate of the late Johnson Sangaka.
 - b. A declaration that the 1st Defendant procured the letters of administration through fraudulent means.
 - c. A declaration that the Plaintiffs are the rightful owners and proprietors of the properties Land Reference No. Moi Ndabi/Settlement Scheme/ 1287 and Moi Ndabi/Settlement Scheme/1288;
 - d. An order cancelling any ownership documents held by the 1st Defendant to wit Moi Ndabi/Settlement Scheme/ 1287 and Moi Ndabi/Settlement Scheme 1288 under the name of Johnson Sangaka or Fred Bundi Kiriago.
 - e. In alternative to prayer (c) above, an order directing the 2nd Defendant to refund the Plaintiffs the full purchase price of Kes 4,400,000 together with interest at commercial rate calculated from 11th April 2011 until payment in full;
 - f. Interest in (d) above at Court rate from the date of default until payment in full;
 - g. Costs of the suit and the Counterclaim; and
 - h. Any such other relief or further relief that the court may deem fit to grant.



3. In response, 2nd Defendant in the counter-claim, filed a Preliminary Objection vide a Notice of Preliminary Objection dated 28th April 2025 seeking for the dismissal of the suit against her in limine and with cost for the reason that the said suit was time barred having been brought both outside the statutory limitation period of 6 years required for actions to recover money out of a contract in view of Section 4 of the [Limitation of Actions Act](#) and also outside the statutory limitation period of 12 years required for actions to recover land in view of Section 7 of the [Limitation of Actions Act](#).
4. In response and in opposition to the Preliminary Objection, the 1st and 2nd Plaintiffs in the Counter-claim filed their Replying Affidavit dated 27th June 2025 sworn by James Wagemu Ruitha, the 1st Plaintiff in the counterclaim who deponed that the Preliminary Objection was misconceived, devoid of merit and an abuse of the court process and ought to be dismissed with costs.
5. That it was not in dispute that the 2nd Defendant in the Counter-claim sold and transferred the suit parcel of land to him and the 2nd Plaintiff in the counterclaim. That she had then delivered vacant possession and facilitated registration of the land in their names thereby passing title to them, which on the face of it, was valid and indefeasible at the time of the transaction.
6. That the action in the Counter-claim against the 2nd Defendant is not time-barred, as the same was contingent upon and consequential to a finding by the court that the title they held was defective or invalid. That the cause of action against the 2nd Defendant in the Counter-claim had been premised on the possibility of the court making a finding that was adverse to his title thus the same could not be deemed to have accrued at the point of the execution of the Sale Agreement or registration of the title. That in any case, no breach or injury had accrued capable of founding a cause of action until and unless the court determined that the title that had been passed to them was defective, unlawful and fraudulent.
7. That he was still in possession of the suit property enjoying quiet possession and use thereof to date and that there had been no dispossession or challenge affecting his possession to trigger any limitation period. That subsequently, the joinder of the 2nd Defendant in the Counter-claim was solely for the purpose of enabling the court to determine the full chain and root of title and to pronounce itself on the legality or otherwise of the transaction.
8. That indeed, the claim against the 2nd Defendant in the Counter-claim was a consequential or alternative prayer whose necessity and enforceability depended on the outcome of the Plaintiff's claim in the main suit. That however, in the absence of any judicial finding that the title that he held was unlawful or invalid, time did not start running for purposes of limitation hence the instant Preliminary Objection was premature and untenable in law.
9. The Preliminary Objection was disposed of by way of written submissions wherein the 2nd Defendant in the Counter-claim vide her submissions dated 19th May 2025 and in support of her Notice of Preliminary Objection dated 28th April 2025 summarized the factual background of the matter and then framed her issues for determination as follows:
 - i. Whether the Plaintiff's suit was is statutory time barred.
 - ii. Who pays the costs.
10. On the first issue for determination as to whether the Plaintiff's suit against the 2nd Defendant in the counterclaim was statutory time barred, the 2nd Defendant in the counterclaim placed reliance on the decided case of Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Company Limited (1969) EA 696 and on the provisions of Sections 4 (1) (a) and 7 of the [Limitation of Actions Act](#) to



submit that the Plaintiffs suit against her had been filed on 24th April, 2024 which was way after the 6 years limitation period for recovery following the contract of 13th April, 2011, and more than 12 years for recovery of land.

11. That the expiry of 6 years limitation period on a contract of the sale agreement of 13th April 2011, had expired in the year 2017 wherein the expiry of the 12 years limitation for recovery of land had expired in the year 2023. She placed reliance in the decided case of *Bosire Ogero v Royal Media Services* [2015] eKLR to submit that limitation of actions went to the jurisdiction of the court and did not require ascertainment of fact or evidence for a determination to be made. She thus urged the Court to find that the Plaintiffs' suit against her was time barred.
12. That secondly, pursuant to the provisions of Section 27 of the *Civil Procedure Act*, costs followed the events and therefore given the trouble caused to her in filing responses and the instant preliminary objection to the suit filed on 24th April 2024, that the Plaintiff be ordered to pay her the costs and her Preliminary Objection dated 28th April 2025 be upheld.
13. The 1st and 2nd Defendants/Plaintiffs in the Counterclaim on the other hand vide their Submissions dated 30th June 2025 in opposition of the 2nd Defendant's Notice of Preliminary Objection dated 28th April 2025 confirmed that they had filed the counterclaim against the 2nd Defendant seeking an alternative prayer for the refund of the sum of Ksh. 4,400,000/= which was the purchase price paid following the agreement for sale of land between them and the 2nd Defendant in the counterclaim, dated 13th April 2011 and which transaction was concluded on 25th May 2011.
14. They then framed one (1) issue for determination, to wit; whether the claim against the 2nd Defendant in the counterclaim was statute barred.
15. That their Counter-claim seeking an alternative prayer for refund of the purchase price was contingent upon and consequential to a finding by the court that the title they held was defective or invalid thus the same was not time barred.
16. They placed reliance on the definition of a cause of action as was held in the case of *Edward Moonge Lengusuranga v James Lanaiyara & another* [2019] KEHC 6758 (KLR) to maintain that in the absence of any judicial finding that the title that they held was unlawful or invalid, time had not started running for purposes of limitation hence the instant Preliminary Objection was premature and untenable in law.

Determination.

17. I have given due consideration to the rival arguments and the authorities cited; I find that the 2nd Defendant in the counterclaim seeks to attack the jurisdiction of the court to try the matter against her for reason that the said suit was time barred.
18. Applying the principles in *Mukisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Ltd.* (1969) EA 696 to wit that an objection must consist of a point of law which if argued as a preliminary objection is capable of disposing of the suit, the 2nd Defendant in the counterclaim has argued that the Plaintiffs in the counterclaim cannot bring a suit against her for the reason that the same was time barred having been brought both outside the statutory limitation period of 6 years required for actions to recover money out of a contract in view of Section 4 of the *Limitation of Actions Act* and also outside the statutory limitation period of 12 years required for actions to recover land in view of Section 7 of the *Limitation of Actions Act* and therefore should be struck out in limine.
19. I thus find the matters that arise for determination as being:



- i. Whether the Preliminary Objection raised is sustainable.
 - ii. Whether the said Preliminary Objection has merit and should be upheld.
20. It is trite that a question of limitation touches on the jurisdiction of the court wherein if a matter is statute barred, the court would lack jurisdiction to entertain it. I therefore find and hold that the preliminary objection raised in the instant case is on a point of law, and the same is validly and properly taken.
 21. The 2nd Defendant in the counterclaim has argued that having sold the suit land to the Plaintiffs in the counterclaim, vide a sale agreement of 13th April 2011, wherein the land was transferred and titles issued on the 25th May 2011, bringing a suit against her on 24th April, 2024 was time barred both by virtue of the provisions of Sections 4(1) (a) and 7 of the *Limitation of Actions Act*.
 22. The Plaintiffs in the counterclaim have confirmed that indeed the suit land had been sold and transferred to them where vacant possession had been delivered in the year 2011. However, the action in the Counter-claim against the 2nd Defendant was not time-barred, as the same was contingent upon and consequential to a finding by the court that the title they held was defective or invalid.
 23. There having been no contestation that the cause of action giving rise to the Plaintiff's counterclaim having arisen in the year 2011, I have looked at the prayers sought by the Plaintiffs in their counter claim against the 2nd Defendant therein and find that they had sought for an alternative prayer of refund of the purchase price of Ksh. 4,400,000/= together with interest at a commercial rate calculated from 11th April 2011 until payment in full.
 24. A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings suit.
 25. Section 7 of the *Limitation of Actions Act* provides:

“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
 26. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. Since parties shall be held responsible for their pleadings, in the present counterclaim, the Plaintiffs therein had not sued the 2nd Defendant therein to recover the suit land from her and therefore the provisions of Section 7 of the *Limitation of Actions Act* were inapplicable in the circumstance because the Plaintiff's claim was for a refund of the purchase price which is an action founded on a contract and not for the recovery of land but the recovery of money. The Cause of Action herein was the breach of the sale agreement, and not the dispossession from land.
 27. On the other hand, Section 4(1) (a) of the *Limitation of Actions Act* provides as follows;

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a)actions founded on contract;”
 28. Under this section of the law, founded on a contract it has a limitation period of six years. The Plaintiffs in their counterclaim were essentially suing for a breach of a sale agreement (a contract) by the 2nd



Defendant in the counterclaim as an alternative of them not being declared as proprietors to the suit parcels of land. In other words, should it be found that the 2nd Defendant in the counterclaim failed to provide valid titles, then she had breached their contractual obligation.

29. It is not in dispute that the 2nd Defendant in the counterclaim sold the suit parcels of land to the Plaintiffs in the counterclaim, vide a sale agreement of 13th April 2011 and therefore to bring a suit where the cause of action was founded on contract, the same would generally accrue on the date of the breach of contract when time will start running.
30. In the case before us, it has to be established that the 2nd Defendant in the counterclaim breached the terms of the sale agreement of 13th April 2011 between her and the Plaintiffs in the counterclaim and this is because the primary issue, the validity of the titles, has yet to be resolved by the court upon which the right to sue (the "cause of action") would accrue. In this regard therefore, the Plaintiff's action in the counterclaim was contingent upon and consequential to the court's verdict on whether or not the titles to the suit land were defective or not.
31. I therefore find that in the absence of such finding, time had not started running for purposes of limitation. All in all, I find no merit in the Preliminary objection dated the 28th April 2025 herein raised and proceed to dismiss it with costs.

Dated and delivered via Microsoft Teams at Naivasha this 25th day of September 2025.



M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

Naivasha Elcl No. 36/2024 Ruling Page 3 Of 3

