



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA NO E049 OF 2024

EDWIN MUCHIRI MWANGI..... 1ST APPELLANT
JACOB MAKUMI MWANGI..... 2ND APPELLANT
VERSUS
MARY WAMBUI KAMAU1ST RESPONDENT
MURANG'A COUNTY GOVERNMENT.....2ND RESPONDENT

JUDGMENT

- 1) In the Memorandum of appeal dated 4-12-2024 the Appellants seek the following orders.
 1. **This appeal be allowed.**
 2. **The ruling/order of the learned magistrate in Murang'a CMMISC application Case No. E028/2024 in favour of the Applicant be set aside and the application dated 26-6-2024 be dismissed.**
 3. **That the costs of the appeal and in the lower court be awarded to the Appellants.**
- 2) The four grounds of appeal are as follows. The learned magistrate erred in law in-
 - (i) **extending time to file suit based on fraud despite the absence of an explanation by the Respondent on why after discovering the fraud on 10-12-2019, she did not file a suit within 3 years, i.e. by the year 2022 but instead waited for a further 2 years to file miscellaneous application No. E028 of 2024,**
 - (ii) **in the alternative to ground (1) above, in not finding that the Applicant had a right, without the need for an extension of time to file a suit immediately on discovery of fraud on 10-12-2019 and the application for extension of time was superfluous and an abuse of the Court process,**
 - (iii) **in relying on the case of VCB Vs Mukoome Agencies (1982) HCB22 whose ratio *decidendi* in the matter was that an issue of fraud, should go to trial**

whereas the issue before the court was different i.e. whether there were sufficient grounds for extension of time to file the suit,

(iv) in deciding an application for extension of time to file suit on the wrong criteria.

- 3) The facts of the case are as follows. The first Respondent filed a suit dated 25-6-2024. The Defendants were the two Appellants and the 2nd Respondent. In the suit the 1st Respondent sought to recover land which she alleged was fraudulently and illegally transferred to the 1st Appellant by the 2nd Appellant.
- 4) On the same 25-6-2024, the 1st Respondent had obtained an ex parte order allowing her to institute the suit outside the time allowed by the law. It is this decision that precipitated this appeal.
- 5) The only submissions on record are by the Appellants and the 2nd Respondent. I have not seen any by the 1st Respondent.

The issues identified for determination are as follows.

- (i) Whether sufficient and legally justifiable grounds were presented by the 1st Respondent to warrant extension of time under Section 26 of the Limitation of Actions Act, Cap 22.**
 - (ii) Whether the trial Court misapplied the provisions of Cap 22.**
 - (iii) Whether prejudice would be occupied to the Appellants by allowing the filing of a suit more than two decades after the cause of action allegedly arose.**
 - (iv) Whether the Court exercised its discretion judiciously in granting the ex parte order dated 25-6-2024.**
- 6) I have carefully considered the appeal in its entirety including the record, the submissions by learned counsel for the parties and the law cited therein. The main issue in this appeal is simply whether the 1st Respondent complied with the strict conditions set in **Section 28(2)** of the **Limitation of Actions Act**. It provides as follows.

“ Where such an application is made before the commencement of a relevant action, the Court shall grant leave in respect of any cause of action to which the application

relates if, but only if, on evidence adduced by or on behalf of the Plaintiff, it appears to the Court that, if such an action were brought forthwith and the like evidence..."

The Appellants contend that the 1st Respondents affidavit dated 25-6-2024 did not meet the threshold set above and paragraph 10 thereof was general, vague and insufficient in law for failure to provide the alleged logistical challenges, when they occurred and how they hindered the commencement of legal action.

The Appellants' counsel relief on the authority of **Y.H Wholesalers Ltd vs. Kenya Revenue Authority Civil Case no. E190 of 2021, High Court of Kenya at Nairobi Commercial and Admiralty Division.** In this case it was held that an Applicant for leave must give a full explanation for the delay.

7) I find that paragraph 10 of the 1st Respondent's supporting affidavit dated 25-6-2024 does not give a full explanation for the delay as required by **Section 28(2)** of the **Limitation of Actions Act**. I am persuaded by the holding in the case of **YH Wholesalers** which is good law.

8) For the reason set out in the foregoing paragraph, I find **merit** in the appeal which is allowed in the following terms.

(1) Appeal dated 4-12-2024 is hereby allowed.

(2) The ruling dated 6-11-2024 together with all consequential orders issued in Murang'a CMMISC Case No. E028/24 are set aside and the application dated 25-6-2024 is set aside.

(3) The costs of this appeal and those in the lower court to the Appellants.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 29th day of September, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Absent.

1st Respondent's Counsel – Mr Njoroge

2nd Respondent's Counsel – Mr Rono