



**Njagi (Suing as the Personal Representative of the Estate of the Late Njagi Gitari)  
& another v Waichuhi & 2 others (Environment and Land Case E013 of 2025)  
[2025] KEELC 6288 (KLR) (Environment and Land) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6288 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE E013 OF 2025  
MC OUNDO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**MILKAH WANGARI NJAGI (SUING AS THE PERSONAL REPRESENTATIVE  
OF THE ESTATE OF THE LATE NJAGI GITARI) ..... 1<sup>ST</sup> PLAINTIFF**

**DANIEL GITARI NJAGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MICHAEL KAHONO WAICHUHI ..... 1<sup>ST</sup> DEFENDANT**

**HON. SAMSON OMWANZA OMBATI ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, NAIVASHA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The instant suit was instituted vide a Complaint dated 27<sup>th</sup> February, 2025 wherein the Plaintiffs sought for the following orders:
  - i. A permanent injunction be issued restraining the Defendants herein either by themselves, their agents, servants and/or employees from entering into, disposing off, cultivating and/or in any other way dealing with parcel of land known as Gilgil/Gilgil Block 1/2498 (Kekohey).
  - ii. A Declaration that the 1<sup>st</sup> Plaintiff is the legal owner of parcel of land Gilgil/Gilgil Block 1/2498 (Kekohey).
  - iii. Eviction order be issued evicting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from parcel of land Gilgil/Gilgil Block 1/2498(Kekohey).
  - iv. Cost of this suit



2. Simultaneously with the Plaint, the Plaintiff filed a Notice of Motion Application brought under the provisions of Order 40 Rule 1 of the Civil Procedure Rules, Section 3A and 63(e) of the Civil Procedure Act Cap 21 Laws of Kenya and all other enabling Provisions seeking that pending the hearing and determination of the suit, the Honorable court be pleased to issue a temporary injunction restraining the Respondents herein either by themselves, their agents, servants and/or employees from entering into, disposing off, constructing and/or in any other way dealing with parcel of land known as Gilgil/ Gilgil Block 1/2498 (Kekohey). They also sought for cost.
3. The said Application was premised on the grounds stated on the face of it as well as on the Supporting Affidavit of an equal date sworn by Milka Wangari Njagi, the 1<sup>st</sup> Plaintiffs herein who deponed that she was a wife to the late John Njagi Gitari who was the proprietor of the suit land herein No. Gilgil/ Gilgil Block 1/2498 (Kekohey).
4. That the deceased who was a member and shareholder of Agricultural & Industrial Holdings PLC (formerly GEMA Holdings LTD), was allocated a parcel of land, specifically Block M/284 Parcel No. 2498. After paying the required fees for the title deed, the company vide a letter dated the 1<sup>st</sup> February 2005 called him to collect his title. Unfortunately, by this time, the deceased had already passed away and the 2<sup>nd</sup> Applicant collected the title on his behalf.
5. However the 1<sup>st</sup> Respondent, in collaboration with the 3<sup>rd</sup> Respondent, illegally and fraudulently transferred the land to the 1<sup>st</sup> Respondent, who then sold it to the 2<sup>nd</sup> Respondent who has since illegally encroached on the land, fenced it, and started constructing permanent structures, thereby depriving the 1<sup>st</sup> Applicants of their rights.
6. In response to the said Notice of Motion Application, the 1<sup>st</sup> Respondent filed his Replying Affidavit sworn on the 11<sup>th</sup> April 2025 deponing that the suit was defective as the suit property could not devolve by succession, the same having been sold to him by the deceased during his lifetime vide a sale agreement dated the 19<sup>th</sup> February 2000 wherein he took possession of the same in the year 2004 and built a temporal structure thereon. That he obtained the title to the suit land in 2021 and thereafter sold the suit land to the 2<sup>nd</sup> Defendant vide a sale agreement of 13<sup>th</sup> July 2021. That the transfer of the land was effected wherein the 2<sup>nd</sup> Respondent acquired proprietary rights over the land. That the Applicants were guilty of the doctrine of laches wherein they sought to recover land after 22 years. He sought for the dismissal of the Application.
7. The 2<sup>nd</sup> Respondent on the other hand filed a Replying Affidavit and a Notice of Preliminary Objection both dated 9<sup>th</sup> April, 2025 wherein he sought for the Applicants' suit and the Notice of Motion Application dated 27<sup>th</sup> February 2025 be struck out in limine for having been in contravention of the provisions of Section 7, 16 and 17 of the Limitation of Actions Act (Cap 22, Laws of Kenya) to the effect that the Applicants' Application and suit were time barred having been brought more than 12 years period granted by the said provisions of the law.
8. The Preliminary Objection was disposed of by way of written submissions wherein the 2<sup>nd</sup> Defendant/ Respondent vide his submissions dated 13<sup>th</sup> May 2025 in support of his Notice of Preliminary Objection dated 9<sup>th</sup> April 2025 summarized the factual background of the matter and then framed one (1) issue for determination to wit; Whether the instant suit is bad in law; for being caught up by the provisions of the Limitation of Actions Act (Cap 22 Laws of Kenya).
9. Directions were taken for the disposal of the Preliminary Objection in the first instance since the same attacked the jurisdiction of the court and sought to determine the matter at its preliminary stage.



10. The 2<sup>nd</sup> Respondent, vide his submissions dated 13<sup>th</sup> May 2025 in support of his Notice of Preliminary Objection, summarized the factual background of the matter and then framed one (1) issue for determination to wit;

**i. Whether the instant suit is bad in law; for being caught up by the provisions of the Limitation of Actions Act (Cap 22 Laws of Kenya).**

11. Reliance was placed on the decision in *Mukisa Biscuits v West End Distributors Limited* [1969] EA 696 and the provisions of Section 7 of the Limitation of Actions Act to submit that the Preliminary Objection herein had raised a pure point of law (Limitation of action) and fell within the four corners of the *Mukhisa Biscuits's* case (supra) ratio. Further reliance was placed on the decisions in Ontario Court of Appeal of Canada, in *Levesque et al. v. The Estate of Father Crampton et al* 2017 ONCA 455, *Janet Magoma Onkundi*, Civil suit No. 492 of 2013 (O.S) and in *Haward v Fawcetts* [2006] 1 WLR 682 (“Haward”) on the policy rationale of Parliament enacting the Limitations of Actions Act.
12. That it was not disputed that the late John Njagi Gitari passed away on 1<sup>st</sup> April 2003 and that the Death Certificate to that effect had been furnished before the Court. That the Applicants had also tabled the Grant of Letters of Administration that had been issued in Nakuru Succession Cause No. 375 of 2005 –In the matter of the Estate of John Njagi Gitari (Deceased). That it was a common cause that between the date of John Njagi’s death and the date of instituting the present suit, 22 or so years had lapsed and placed reliance on the decided case of *Dhanesar Melita – vs – Manilal 20 Shah* 1965 EA 321.
13. That the implication of provisions of Section 16 of the Limitation of Actions was that in computing the limitation period, the number of years was calculated from the date of death and not the date when letters of administration had been issued.
14. Reliance was also placed on the decisions in the cases of *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] KECA342(KLR), *Beatrice Wambui Kiarie & 2 Others v Tabitha Wanjiku Ng’ang’a & 9 others* [2018] eKLR and *Theresa Wanjiru* (Suing as the administrator of the Estate of Joseph Gichuki Riunge v Andrew Kimata Gachanga & another; George Mwai Mburu (3rd Party) [2021] KEELC 2362 (KLR), to submit that the Applicants’ suit was for striking out with costs, as it was bad in law and contra statute.
15. That the rationale for Limitations of Actions was to prevent ‘stale claims’ being brought to courts because inordinate delay in pursuing causes of action was likely to prejudice Defendants who may be forced to defend suits when they could no longer obtain relevant evidence/testimony. Further reliance was placed on the decisions in the cases of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KECA 10 (KLR) and *Janmohammed (SC)* (Suing as the Executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi) & another v District Land Registrar Uasin Gishu & 4 others [2024] KESC 39 (KLR) wherein the 2<sup>nd</sup> Respondent’s conclusion was that the instant suit be struck out with costs.
16. In support of the 2<sup>nd</sup> Respondent’s Notice of Preliminary Objection, the 1<sup>st</sup> Respondent vide his Submissions dated 19<sup>th</sup> May 2025 framed one issue for determination to wit;

**i. Whether the instant suit was time barred by the Limitation of actions Act.**

17. The 2<sup>nd</sup> Respondent then proceeded to place reliance on the decisions in the cases of *Mukisa Biscuits v West End Distributors Limited* (supra), *Joho & another v Shahbal & 2 others* (Petition 10 of 2013) [2014] KESC 34 (KLR) (4 February 2014) (Judgment) and *Hassan Nyanje Charo v Khatib Mwashetani, Independent Electoral and Boundaries Commission, Juma Musa & Gideon Mwangangi Wambua* (Civil Application 23 of 2014) [2014] KESC 5 (KLR) (8 December 2014) (Ruling) to



- submit that since it was not disputed that John Njagi Gitari died on 1<sup>st</sup> April 2003, the only issue for determination was whether the suit herein was time-barred.
18. That the provisions of Section 7 of the *Limitation of Actions Act* were crafted to provide for a limitation period of time to recover possession of land and not title to land. That subsequently, upon failing to institute a suit for recovery of possession of the suit land within 12 years from the time the 1<sup>st</sup> Respondent took possession of the same on 19<sup>th</sup> February 2000, the title holder had lost the said right on 19<sup>th</sup> February 2012. He placed reliance on the Beatrice Wambui Kiarie's case (supra)
  19. That it was not in doubt that the late John Njagi Gitari died on 1<sup>st</sup> April 2003 and legal interest in the land could not vest in a dead person. He placed reliance on the provisions of Section 16 of the *Limitation of Actions Act* and the decided case of Njoki v Pussy (Environment and Land Appeal E006 of 2022) [2023] KEELC 945 (KLR) (16 February 2023) (Judgment) to submit that the Applicants ought to have instituted these proceedings by 1<sup>st</sup> April 2015, failure to which such right stood extinguished. That Applicants sat on their rights for 12 years before the same were extinguished and 10 years after the statutory bar kicked in there being a cumulative period of 22 years, and as such, the court of law should not aid the indolent Applicants who were guilty of laches.
  20. That the courts have generally interpreted the timelines in the statute of limitation of actions in a very strict so that barely one month's delay was enough to warrant the striking out of a suit for being time-barred. He placed reliance in the decided case of Mutuku v Multichoice Kenya Limited & another (Cause E1039 of 2023) [2024] KEELRC 1028 (KLR) (17 April 2024) (Ruling) to submit that a delay of 10 years should therefore warrant an even faster dismissal of a suit if possible so as to achieve the purpose of limitation of actions which is to bar stale suits and protect Defendants from unreasonable claim. Reliance was placed in the decided case of Alba Petroleum Limited v Total Marketing Kenya Limited [2019] eKLR.
  21. Reliance was also placed on the provisions of Section 17 of the *Limitation of Actions Act* and the decided case of Susan Wanjiru Waweru v Musa Kimengich Kimuge [2019] eKLR to submit that upon such an inordinate delay in instituting a claim for recovery of land, the title holders right stood extinguished. That the cumulative effect of the provisions of Sections 7, 16 and 17 of the *Limitation of Actions Act* was that the suit herein was time-barred as at 1<sup>st</sup> April 2015 hence the deceased's title stood extinguished after the said date.
  22. In conclusion, he urged the court to find that the issue of limitation went to the jurisdiction of the court to entertain stale claims for which the court had no jurisdiction to entertain a matter that was statutorily time-barred and therefore the instant suit should be struck out with costs on an indemnity basis.
  23. In opposition to the 2<sup>nd</sup> Respondent's Preliminary Objection dated 9<sup>th</sup> May 2025, the Applicants vide their Submissions dated 23<sup>rd</sup> May 2025, summarized the factual background of the matter and then framed their issues for determination as follows:
    - i. Whether the present Preliminary Objection is merited.
    - ii. Whether the present suit is time -barred by dint of Sections 7, 16 and 17 of the *Limitation of Actions Act*
  24. On the first issue for determination as to whether the Preliminary Objection was merited, they submitted in the negative to the effect that the same was improperly raised and did not satisfy the threshold set out in the Mukisa Biscuits's Case (supra). They submitted that the Preliminary Objection raised by the 2<sup>nd</sup> Respondent herein should fail as it ought to have been premised on undisputed facts



- that needed not be ascertained. They placed reliance in the decided case of *Oraro v Mbaja* (2005) 1 KLR 141 to submit that from the pleadings filed by the Applicants and the responses by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, there were various disputed facts that required the full hearing and determination of the suit for them to be established.
25. That the issue as to when the cause of action accrued was contested hence the objection before court was not on a pure point of law. That it was their case that the cause of action arose on or around December 2024 when the 1<sup>st</sup> Applicant and her children had found permanent structures constructed on their parcel of land thus computation of time started running after the discovery.
  26. That no evidence had been annexed to prove that the 1<sup>st</sup> Respondent had allegedly taken possession of the parcel of land immediately after he had allegedly purchased the same from the deceased, wherein he had built a temporary structure and employed a guard to take charge of the suit property.
  27. That although the 2<sup>nd</sup> Applicant frequently visited the suit land in the company of his siblings, there were no structures thereon hence there had been no reason to suspect that anyone had grabbed it. That in any case, they could not have filed suit in court upon the demise of the deceased as no cause of action had accrued then.
  28. That they had taken action on or around December 2024 when permanent structures were constructed on their parcel of land hence started the process of inquiry and locating the owner of the structures from the Naivasha Land registry with the help of the DCIO.
  29. They disputed the nature of the transaction that had resulted in transfer and acquisition of title deed by the 1<sup>st</sup> Respondent as well as the alleged signature of the deceased on the sale agreement dated 19<sup>th</sup> February 2000 which was not witnessed. It was their submission that the transaction was suspect and would require a full hearing and determination to ascertain the authenticity of the same. That in any case, the 1<sup>st</sup> Defendant had not annexed the transfer and consent forms that had been used in the land's registry to process the title deed in order to authenticate the transfer process.
  30. In the second issue for determination as to whether the present suit was time barred by dint of the provisions of Sections 7, 16 and 17 of the *Limitation of Actions Act* Section, reliance was placed on the provisions of Section 7 of the Limitation of Action Act, the definition of the word 'accrue' from the Black's Law Dictionary (10<sup>th</sup> Edition) and the definition of a cause of action in the decided case of *Edward Moonge Lenguurangai v James Lariyara & Another* [2019] eKLR to submit that the cause of action had accrued around December 2024 when the Plaintiffs had realized that their right to ownership and possession of the parcel of land had been infringed, hence the time had started running at the time.
  31. They placed reliance in the decided case of *Mugo Muruachimba alias Mugo Nyaga v Moffat Nyaga Kagau & 2 Others*; Embu ELC No 322 Of 2015 to submit that they had pleaded and particularized fraud against the Respondents for which a suit for recovery of land based on fraud could be brought outside the 12-year limitation period. They maintained that they had discovered the fraud in December 2024 after they had been supplied with the Green Card, for the suit property, that 1<sup>st</sup> Respondent had been registered as the owner of the suit property. Reliance was placed on the provisions of Section 26 of The *Limitation of Actions Act* as well as on the decisions in the cases of *Justus Tureti Obara v Peter Koipeitai* [2014] eKLR, *Keneth Kipkosgei Kemboi & Caroline Jerotich v Leah Tuwei & 5 Others* ELC No 130 Of 2018 and *James Kiragu Karaya & Thomas Kiragu Karaya (Sued as the Legal Representative of the Estate of James Karaya Kiragu (Deceased) v Gusii Mwalimu Investment Co Ltd & 4 Others* ELC No 006 Of 2022.



32. In conclusion, they submitted that the 2<sup>nd</sup> Respondent's Preliminary Objection should be dismissed with costa as it was hinged on several disputed facts.
33. In a rejoinder to the Applicant's written submissions dated 23<sup>rd</sup> May 2025 & in further support of the their Notice of Preliminary Objection dated 9<sup>th</sup> April 2025, the 2<sup>nd</sup> Respondent through his Supplementary Written Submission dated 11<sup>th</sup> June 2025 submitted that the argument by the Applicants that the cause of action had accrued in December 2024 when they had 'discovered fraud' was erroneous and contradictory to their own case.
34. He reiterated the Applicant's sworn statements in their Supporting Affidavit and the Witness Statement respectively had been that prior to his death, the late John Njagi Gitari had showed them all his properties including the suit property wherein did not disclose that he had disposed it. That upon the demise of the deceased, the 1<sup>st</sup> Applicant petitioned for Letters of Administration wherein a Grant had been issued on 29<sup>th</sup> May 2015 and the 2<sup>nd</sup> Applicant and his brother Paul Mwangi Njagi continued to visit the properties of their late father. That whereas the Plaintiff had alleged 'fraud' in their Plaint, their case did not fall within the exceptions stipulated in under the provisions of Section 26 of the Limitation of Actions Act. That the 1<sup>st</sup> Respondent's uncontroverted position was that he had taken possession of the suit land in the year 2004 after having purchased the same through a sale agreement dated 19<sup>th</sup> February 2000.
35. That by dint of the provisions of Section 9 (2) of the Limitation of Actions Act, the Applicants' right to recover the deceased's property was deemed to have accrued on the date of his death. That in interpreting the provision of Section (9)(2) of the Limitation of Actions Act, it should be appreciated that by dint of Section 16 of the Limitation of Actions Act, administration dated back to the date of death.
36. He placed reliance in the decided case of Edward Moonge Lengusuranga vs James Lanaiyara & Another (2019) eKLR to submit that whether time was computed from the date of death of the deceased, that is, 1<sup>st</sup> April 2003, or from the date of the 1<sup>st</sup> Respondent's entry and possession in the year 2004, the Applicants' suit would still be statute-barred. That in any case, the provisions of Section 2 (3) of the Limitation of Actions Act was to the effect that a right of action to recover land included a right to enter into possession of the land, and bringing of an action in respect of such a right of action which included the making of such an entry.
37. That indeed, the exceptions under the provisions of Section 26 of the Limitation of Actions Act were not absolute in view of the proviso therein. That by virtue of the provisions of Section 17 of the Limitation of Actions Act, the time of the expiration of the limitation period was in the year 2015, when the title of the late John Njagi Gitari had stood extinguished.
38. On 18<sup>th</sup> June 2025, the Counsel for the parties, save for Counsel for the Applicants who chose to rely on his written submissions, highlighted on their submissions wherein 2<sup>nd</sup> Respondent's Counsel, Mr. Ngatia (SC) outlined the common fundamental grounds as follows: -
  - i. The deceased owner of the suit property passed away in April 2003 prior to which he had sold the suit land to the 1<sup>st</sup> Respondent on 19<sup>th</sup> February 2000. That after his death, his administrator, the 1<sup>st</sup> Applicant herein obtained letters of administration intestate pursuant to a Succession Cause that had been instituted in the year 2005.
  - ii. That subsequently 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Respondent who proceeded to out vast improvements on the property.



39. That on the said common grounds, the only issue that had arisen was whether at the time the administrator commenced the instant suit in the year 2025, the suit was within the time allowed by the *Limitation of Actions Act*.
40. That based on the authorities herein submitted, even if the court was to consider whether to compute time of limitation from the time of death or at the time the Letters of Administration had been issued, looking at both options, the suit was instituted in excess of 20 years. That the correct approach was the one taken in the Limitations of Actions Act which is that the actual cause of action was from the date of death.
41. That the Applicants' defence that the cause of action occurred at the time of discovery of the developments run afoul of the provisions of Section 9 (2) of the *Limitation of Actions Act* because it could not be a litigant who decides when the cause of action accrues or from which date the time was calculated. That the provisions of Section 7 of the *Limitation of Actions Act* limited the period to 12 years and once the 12 years expired, the cause of action was regarded as stale and the court could not give remedy to a stale cause of action.
42. That the principle of law according to the case in Peter Michuki (supra) was that the letters of Administration date back to the date of death which meant that an Administrator was taken lay a claim on the basis that there was no interval on the date of death and the date that the Letters of Administration were issued. That in essence, the Applicants knew this all along the date when 1<sup>st</sup> Respondent acquired the suit property in the life time of the deceased, and could not therefore say that they had closed their eyes and opened them on the date of their choice which was equal to the commencement of the suit. That the suit be struck off.
43. Mr. Okore, Counsel for the 1<sup>st</sup> Respondent confirmed that Counsel for the 2<sup>nd</sup> Respondent had laid a proper background. He then urged the court to take note of two important dates being 19<sup>th</sup> February, 2000 which was the year that the 1<sup>st</sup> Respondent had purchased the suit property from the deceased for a good consideration, and 13<sup>th</sup> June 2021 when the 1<sup>st</sup> Respondent sold the property and passed title to the 2<sup>nd</sup> Respondent. That the deceased died in the year 2003 hence the sole issue was on the computation time.
44. It was their submission that even by the greatest stretch of imagination, the filing of the suit in the year 2025 was way past the time set in the Limitations of Actions Act. That computation was from the date of the deceased person's death.
45. He referred to the decision in the case of Beatrice Wambui and 9 Others. (supra) to urge the court that find that the position of the law could not be contested and that a suit brought 22 years after the occurrence of the cause of action should suffer the consequence of a dismissal with costs.

### **Determination.**

46. I have considered the Applicants' application herein dated the 27<sup>th</sup> February, 2025 wherein they sought for interim orders of injunction against the Respondents restraining them either by themselves, their agents, servants and/or employees from entering into, disposing off, constructing and/or in any other way dealing with parcel of land known as Gilgil/Gilgil Block 1/2498 (Kekohey) pending the hearing and determination of the suit herein.
47. I have also considered the Respondents' Replying affidavits and Preliminary objection therein raised to the effect that both the Application and the suit herein were time barred, in contravention of the



provisions of Section 7, 16, 17 and 26 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya) and therefore should be struck out in limine.

48. Briefly, the present matter revolves around land parcel No. Gilgil/Gilgil Block 1/2498 (Kekopey) measuring 0.809 hectares wherein the 1<sup>st</sup> Applicant being a personal representative of the estate of the deceased John Ngugi Gitari, and the 2<sup>nd</sup> Applicant seek to recover the same from the Respondents on a claim that the deceased was its registered proprietor for which the same was fraudulently transferred and acquired by the Respondents who should subsequently be evicted from thereon.
49. That Applicants' case is that the deceased John Ngugi Gitari who was a member and shareholder of Agricultural & Industrial Holdings PLC (formerly GEMA Holdings LTD), was allocated a parcel of land, specifically Block M/284 Parcel No. 2498. After paying the required fees for the title deed, the company vide a letter dated the 1<sup>st</sup> February 2005 called him to collect his title. Unfortunately, by this time, the deceased had already passed away and the 2<sup>nd</sup> Applicant collected the title on his behalf.
50. That the 1<sup>st</sup> Respondent, in collaboration with the 3<sup>rd</sup> Respondent, illegally and fraudulently transferred the land to the 1<sup>st</sup> Respondent, who then sold it to the 2<sup>nd</sup> Respondent who has since illegally encroached on the land, fenced it, and started constructing permanent structures, thereby depriving the 1<sup>st</sup> Applicants of their rights.
51. In response, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents objected to both the Application and the suit stating the same were time barred. That it was not disputed that the late John Njagi Gitari passed away on 1<sup>st</sup> April 2003 wherein the Applicants were issued with a Grant of Letters of Administration in Nakuru Succession Cause No. 375 of 2005. That between the date of the deceased's death and the date of instituting the present suit, 22 or so years had lapsed.
52. That by virtue of the provisions of Sections 7, 16, 17 and 26 of the *Limitation of Actions Act*, time started ticking from the date of death and not the date when Letters of Administration had been issued. That subsequently, upon failing to institute a suit for recovery of possession of the suit land within 12 years from the time of death and/or when the 1<sup>st</sup> Respondent took possession of the suit land in the year 2004, the Applicants could not now seek to recover the land as the cause of action was regarded as stale and the court could not give remedy to a stale cause of action. That both the Applicants' application and suit ought to be struck out.
53. In response to the Preliminary objection, the Applicants' argument had been that the same was not based on pure points of law. That there were facts that needed to be ascertained, like the validity of the land transfer that resulted in the 1<sup>st</sup> Respondent acquiring the property. Their key points were that they disputed the transaction, claiming the signature of the deceased on the sale agreement dated 19<sup>th</sup> February 2000, was not authentic. Secondly that the sale agreement had no witness to attest to the deceased's signature, raising further suspicion and third that the 1<sup>st</sup> Respondent had not provided the transfer and consent forms used at the land's registry, which would have authenticated the transfer process.
54. The Applicants then submitted that their lawsuit was not time-barred because the cause of action accrued in December 2024, when they first discovered that their rights to the land had been infringed upon through the construction of permanent structures. That upon this discovery, they immediately took steps to identify the trespasser and visited the Naivasha Lands Registry with the help of the DCIO to verify the ownership. Their assertion was that while the fraudulent transfer may have occurred earlier, the clock for the statute of limitations pursuant to the provisions of Section 26 of the *Limitation of Actions Act* began ticking when they became aware of fraud and/or the infringement on their property rights. They sought for the dismissal of the Preliminary objection with costs.



55. Having summarized the party's submissions and/or arguments on a point of Preliminary Objection and the summation of the matter herein, the following facts arise as having not been disputed.
- i. That the deceased John Njagi Gitari was once the registered proprietor of parcel of land No. Gilgil/Gilgil Block 1/2498 (Kekopey) measuring 0.809 hectares having been registered as such on the 8<sup>th</sup> November 2004 wherein a title was issued on the 2<sup>nd</sup> December 2004.
  - ii. That the said John Njagi Gitari died on the 1<sup>st</sup> April 2003 wherein the Letters of Administration had been issued to the 1<sup>st</sup> Applicant on the 16<sup>th</sup> November 2005 and confirmed vide a Grant of 29<sup>th</sup> May 2015 vide Nakuru High Court Succession Cause No 375 of 2005.
  - iii. Lastly, that the Deceased did not take possession or occupy the said parcel of land during his lifetime.
56. In this regard thereof, I find the issues arising therein for my determination as being;
- i. Whether the Applicants/Plaintiffs suit is time barred by virtue of the provisions of Sections 7, 9, 16 and 17 of the *Limitation of Actions Act*.
  - ii. Whether the Preliminary Objection herein raised is sustainable.
57. The all-important case decided by the Court of Appeal in the case of Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors Limited (1969) EA. 696 was clear as to what comprised a Preliminary Objection in that the court had held thus: -
- “So far as I am 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.”
58. It is evident that a Preliminary Objection consists of pure points of law and it is also capable of bringing the matter to an end preliminarily. See the case of Quick Enterprises Ltd. vs. Kenya Railways Corporation, Kisumu HCCC No.22 of 1999, where the Court held that:-
- “When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”
59. The issue of a suit being time-barred is a legal issue that directly relates to the court's authority to hear the case, and is considered a matter that attacks the court's jurisdiction. The *Limitation of Actions Act* sets a time limit for bringing a lawsuit, and is based on the principle that legal claims should be pursued within a reasonable period so as to ensure fairness to the Defendant (by preventing stale claims where evidence may be lost or memories faded) and to provide a "quietus" or finality to legal matters.
60. When a statute of limitation has expired therefore, it affects the court's power to grant a remedy. A time-barred suit is not just a weak claim, but is often one that the court is legally prohibited from entertaining as it makes the time a bar which is fundamental legal issue that touches on the court's jurisdiction. When a statute of limitation extinguishes the underlying right, it is considered a substantive issue.



61. The Supreme Court in the case of Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others [2015] eKLR at Paragraph 21 observed as follows:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

62. Having warned myself as above, 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. This means that Plaintiff could only sue to recover the suit land from the Defendants within twelve years after the cause of action as is coached 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”.

63. The import of Section 7 of the *Limitation of Actions Act*, is that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. The clock thus starts ticking from the date on which the right of action "accrued," meaning the date when the person who is the rightful owner could have taken legal action.

64. Section 9(2) of the *Limitation of Actions Act* addresses Succession Interests as follows;

“(2) Where a person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to be in possession of the land, the right of action accrues on the date of death.”

65. In essence therefore, this provision of the law envisages a situation where a person suing to recover the deceased's land does so within 12 years from the deceased's death that is, the right of action for the person entitled to the succeeding estate or interest begins to accrue at the end of twelve years from the date the preceding person's interest ended and there is a proviso to this provision of the law to wit that provided that the deceased was in possession of the land at that time of his death. This means that the cause of action began in the year 2003 when the deceased died and ended after 12 years in the year 2015. The suit herein was filed vide a Plaint dated the 27<sup>th</sup> February 2025 which was 33(thirty-three) years after the death of John Njagi Gitari and out of the prescribed time frame of 12 years. The deceased was also not in possession of the suit land during his life time.

66. Section 16 of the *Limitation of Actions Act* provides as follows;

“For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.”

67. The effect of this provision of the law is to prevent a gap in the limitation period and ensure that the clock for adverse possession continues to run seamlessly, even when the property is part of a deceased person's estate. For purposes of land recovery actions under the Act, an administrator of a deceased



- person's estate is considered to have claimed the land as if there was "no interval of time between the death of the deceased person and the grant of the letters of administration."
68. This means that since the deceased died on 1<sup>st</sup> April 2003, and the Respondents herein took over the land, wherein the Applicant was appointed as an administrator on 16<sup>th</sup> November 2005, the 12-year clock for adverse possession would not stop running during that two-year interval. The suit to recover the land would be time-barred in the year 2015 and not 2017.
69. In *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR, the Court of Appeal held as follows:
- “...The issue is whether the claim for adverse possession survives the death of a plaintiff. Section 16 of the *Limitation of Actions Act* (Cap 22 of the Laws of Kenya) provides that actions for the recovery of land, an administrator of the estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration. The effect of this provision is that when the letters of administration was granted for the estate of the plaintiff in this case, the administration of the estate dates back to the date of death”
70. Further the provisions of Section 17 of the *Limitation of Actions Act* provide that;
- “Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished.”
71. This provision of the law states in clear terms that at the end of the prescribed limitation period, the title of the person who had the right to sue for the land is extinguished. This means the original owner's ownership of the land is not just temporarily suspended; it is legally and permanently lost.
72. This is the most severe and definitive implication. If the person filing the suit fails to prove that their claim is not time-barred, Section 17 states that the title of the deceased to the land is extinguished. This means the estate no longer legally owns the land. The court will not only dismiss the suit but will also effectively declare that the adverse possessor has acquired legal title by operation of the law.
73. I thus find that the Applicant's pleading and submissions that their claim was based on fraud, illegality and misrepresentation and therefore the limitation period did not begin to run until the fraud was discovered pursuant to the provisions of Section 26 of the *Limitation of Actions Act* ousted by dint of the above captioned provisions of the law on the *Limitation of Actions Act*.
74. Indeed, the Court of Appeal in the case of *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] KECA 54 (KLR), held as follows;
- “The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”
75. Since the issue of limitation goes to the jurisdiction of the court to entertain claims, if therefore a matter is statute barred the court has no jurisdiction. It is trite as was held in the locus classicus case on



jurisdiction in the celebrated case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 where Justice Nyarangi of the Court of Appeal had held as follows;

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

76. The Applicants/Plaintiffs needed to commence their claim within the time prescribed by Section 7, 9(2), 16 and 17 of the Limitation of Actions Act. It follows therefore that by the time they filed this suit, the claim was statute barred. Clearly, this Court lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further step. The Preliminary Objection dated 9<sup>th</sup> April, 2025 herein succeeds in its entirety with the result that the Plaintiff’s suit is herein struck out with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondents.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

