



**RNI & 2 others (Suing as Guardians of INM a Person of Unsound Mind)  
v Ndegwa & another (Suing as the Legal Administrators of the Estate of  
Martin Ndegwa Githinji (Deceased)) (Environment and Land Appeal  
E007 of 2023) [2025] KEELC 6222 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6222 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

**JM MUTUNGI, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**RNI ..... 1<sup>ST</sup> APPELLANT  
PGI ..... 2<sup>ND</sup> APPELLANT  
MWI ..... 3<sup>RD</sup> APPELLANT  
SUING AS GUARDIANS OF INM A PERSON OF UNSOUND MIND**

**AND**

**CHARITY WAIRIMU NDEGWA ..... 1<sup>ST</sup> RESPONDENT  
BETH WAKUTHII THEURI ..... 2<sup>ND</sup> RESPONDENT  
SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF MARTIN  
NDEGWA GITHINJI (DECEASED)**

*(Being an Appeal from the Judgment of Hon. G. W Kirugumi (P.M) at  
Kerugoya in ELC No. E41 of 2022 delivered on the 8th day of February 2023)*

**JUDGMENT**

1. This is an Appeal from the Judgment of the Honourable Principal Magistrate G.W. Kirugumi delivered on 8<sup>th</sup> February 2023 in Kerugoya CM ELC No. E041 of 2022. In that suit, the Appellants, acting as guardians of INM, a person of unsound mind, sought a declaration that the subdivision and transfer of land parcel Mutira/Kaguyu/xxx into Mutira/Kaguyu/xxx and Mutira/Kaguyu/xxx was fraudulent and unlawful. They sought cancellation of the titles, reversion of the land to the original title, and eviction of the Respondents from land parcel xxx.



2. The Trial Court dismissed the suit, prompting this appeal which they lodged vide the Memorandum of Appeal dated 20<sup>th</sup> February 2023. The Appellants raised Seven grounds challenging the Trial Court's findings on limitation, fraud, evidentiary weight, and capacity to contract. These grounds are as follows:
  1. That the Learned Trial magistrate erred in law and in fact in dismissing the Appellants' suit against the weight of the evidence adduced by the Appellants.
  2. That the Learned Trial Magistrate erred in law and in fact in finding that the registered owner of Land Parcel Mutira/Kaguyu/xxx IN was deceased while no such evidence was tabled by any party.
  3. That the Learned Trial Magistrate erred in law and in fact in finding that the agreements dated 21<sup>st</sup> August 2002, agreement dated 1<sup>st</sup> February 2000 and the subsequent acknowledgement slips dated 11<sup>th</sup> February 2000, 25<sup>th</sup> February 2000, 4<sup>th</sup> April 2000 and 3<sup>rd</sup> July 2000 were valid and disregarding that IN was of unsound mind during the time the agreements were entered into.
  4. That the Learned Trial Magistrate erred in law and in fact in failing to allow the Appellants' claim despite the finding that the Respondents did not adduce evidence to prove that IN had recovered or had lucid moments when he signed the contract.
  5. That the Learned Trial Magistrate erred in law and in fact in failing to find that the Respondent had obtained the suit land fraudulently despite finding that the contract was vitiated by the mental status of the deceased.
  6. That the Learned Trial Magistrate erred in law and in fact in finding that the suit by the Appellants was time barred.
  7. That the Honorable Court erred in law and in fact in finding that the Respondents were in open uninterrupted occupation for over 20 years while no such claim had been made by the Respondents.
3. The Appellants prayed that their Appeal be allowed and that the Judgment delivered on 8<sup>th</sup> February 2023 be substituted with an order allowing the Appellants' suit.
4. The Appellants' case in the Lower Court was that IN was the registered proprietor of Mutira/Kaguyu/xxx, measuring 0.81 hectares. They alleged that in June 2002, the late Martin Ndegwa Githinji, through fraud and irregular dealings, subdivided the land into land parcels Mutira/Kaguyu/xxx and xxx, and caused land parcel 3626 to be registered in his name. They stated the transactions were undertaken without knowledge or lawful representation of IN, who it was claimed of unsound mind. The Appellants further contended that land parcel xxx was transferred to them as trustees for other family members, again without their knowledge or consent.
5. The Respondents' position was that Martin Ndegwa lawfully purchased 0.405 hectares from IN vide agreements dated 1<sup>st</sup> February, 2002 and 21<sup>st</sup> August 2002 for Kshs. 450,000/-. They asserted the sale was done to enable IN pay a decretal sum awarded in a Judgment against him in Kerugoya CMCC No. 52 of 2000. They argued that the subdivision and transfer were lawfully sanctioned as the cautions and restrictions against the title were ordered to be removed by the Court. The Respondents further averred the Appellants claim was fatally defective and statute barred.
6. On 9<sup>th</sup> October 2024, the Court directed that the appeal be canvassed through written submissions. Both the Appellants' and Respondents' filed their respective submissions.



7. The Appellants filed their written submissions dated 18<sup>th</sup> February 2025 and submitted that they had sought and obtained leave to file the suit out of time through Misc. Application No. E006 of 2022, and that the trial Court erred in ignoring that leave. They submitted that IN was alive but mentally unfit, and that no guardian was appointed under the *Mental Health Act* at the time of the sale and subdivision of the suit land. The Appellants in support of their submissions relied on the case of MKN v NMN [2019] KLR in regard to incapacity and binding nature of contracts made by persons of unsound mind.
8. The Appellants further submitted that the Trial Court wrongly referred to IN as deceased, contrary to the uncontroverted testimony from PW1 that he was alive. They also pointed out that the trial court stated that the plaintiff was cross-examined on the Respondents' long occupation of the land, yet the record does not reflect any such Cross examination.
9. The Appellants maintained that the suit was properly before the court and urged that the appeal be allowed with costs.
10. The Respondents on their part filed their written submissions dated 6<sup>th</sup> May 2025. They argued that the suit was time-barred under Section 7 of the *Limitation of Actions Act*, as the transfer to Martin Ndegwa occurred in 2002. They contended that the claim, being one to recover land, should have been filed by 2014.
11. The Respondents further submitted that the sale was regular and that Martin Ndegwa was a bona fide purchaser for value. They argued that the sale agreements complied with the *Law of Contract Act*, and that statutory requirements for subdivision and registration were complied with. They cited prior proceedings in Kerugoya CMCC No. 52 of 2000, in which the Executive Officer was appointed as guardian ad litem to facilitate transactions involving IN.
12. The Respondents further submitted that no direct or circumstantial evidence of fraud was adduced and that the Appellants did not meet the threshold required for proving fraud. On incapacity, they maintained that the Appellants did not demonstrate that the Respondents had knowledge of any impairment that IN may have had if at all, and/or that the sale transaction was invalid on account of such alleged incapacity of the vendor.
13. I have considered the Memorandum of Appeal, record of appeal and parties' submissions. The following issues arise for determination.
  1. Whether the suit was time-barred under the *Limitation of Actions Act*.
  2. Whether the subdivision and transfer of the suit land were void ab initio on account of the vendor's mental incapacity

**Whether the suit was time-barred under the *Limitation of Actions Act***

14. Section 7 of the *Limitation of Actions Act* provides that:

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.



15. In the case of Edward Moonge Lengusuranga v James Lanaiyara & Another [2019] KEHC 6758(KLR), the Court in considering the application of Section 7 of the Limitation of Actions Act stated as follows:-

“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 the 1<sup>st</sup> Defendant having bought the suit land in the year 1999 (as per Paragraph 6 of the Plaintiff) and taken possession of the same, the Plaintiff herein could only seek to recover it from the 1st Defendants, but only if he did so within twelve years after the Sale Agreement.”

16. In the present case, the transfer and registration of land parcel Mutira/Kaguyu/xxx to the late Martin Ndegwa Githinji was effected on 28<sup>th</sup> June 2002. That is when the cause of action to challenge the subdivision and transfer accrued. The Appellants filed the suit before the Kerugoya Chief Magistrate’s Court on 17<sup>th</sup> March 2022 (nearly) 20 years later. On the face of it, the suit was clearly outside the twelve-year (12) limitation period and would ordinarily be time-barred unless it fell within the narrow statutory exceptions. The Appellants raised two grounds as follows to counter the contention by the Respondents:-

1. That they obtained leave to file the suit out of time, as per Kerugoya Misc. Application No. E006 of 2022, and Secondly;
2. That the claim was based on fraud and/or disability, which are recognized grounds for suspension or extension of time under the Act.

#### **A. Effect of Leave Granted in Misc. Application No. E006 of 2022**

17. The Appellants relied heavily on the fact that the Chief Magistrate’s Court in Misc. No. E006 of 2022 granted them leave to file suit out of time. However, it must be appreciated from the outset that limitation is a matter of substantive law, not procedural formality. The jurisdiction to extend time for various causes of action is a creature of statute and no order of the Court however well-intentioned can confer jurisdiction where the statute does not permit it.

18. In the case of Divecon Limited vs. Samani [1995 – 1998] EA 48 at page 49, the Court of Appeal overturned the leave to file suit out of time in a matter involving contract. The Court of Appeal stated thus:

“...to us, the meaning of the wording of section 4(1)...is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for bringing or the action.”

19. In the case of Mary Osundwa vs. Nzoia Sugar Company Ltd 2002 eKLR, the trial judge had granted an order for extension of time by consent of the parties in a case falling outside the provision of Section 27 (1) of the Act. The Court of Appeal, in allowing the Appeal, held that:

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the tort of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to extend time



for filing suit in cases involving contract or any other cause of action than those in tort. Accordingly, Osiemo J had no jurisdiction to extend time as he purported to do on 28<sup>th</sup> May, 1991. That the order was by consent can neither be here nor there; the parties could not confer jurisdiction on the judge by their consent.”

20. In the case of *Iga vs Makerere University* [1972] EA, the Court had this to say on the Law of Limitation;

“A Plaintiff which is barred by limitation is a Plaintiff barred by law. Reading these Provisions together, it seems clear that unless the Applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption, the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time-barred, the Court cannot grant the remedy or relief sought.”

21. Therefore, the leave granted in Misc. E006 of 2022 could not revive a cause of action that was already extinguished by Section 7, unless the Appellants could bring themselves within the permitted exceptions namely, disability under Section 22 or fraud under Section 26. The leave on its own, absent a statutory foundation, had no curative power.

### **B. Whether the Claim Falls Under Section 26 — Fraud**

22. The Appellants pleaded fraud and relied on Section 26 of the Act, which provides:

Where in the case of an action for which a period of limitation is prescribed, either-(a)The action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent; or(b)The right of action is concealed by the fraud of any such person as aforesaid; or(c)The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.

23. While it is true that the Appellants pleaded fraud particularly that the Respondents caused the subdivision and transfer while knowing that IN was mentally unfit, Section 26 requires more than a general pleading of fraud. It imposes a specific obligation that is, the Plaintiff must show when the fraud was discovered, or at the minimum, when it ought to have been discovered with reasonable diligence. This is a precondition for the operation of Section 26 of the *Limitation of Actions Act*. A party cannot merely plead fraud and expect the limitation period to be suspended indefinitely just because he has intimated there was fraud.

24. In the case of *Justus Tureti Obara v Peter Koipetai Nengiso* (2014) e KLR Okongo J. stated as follows;

“The proviso to Section 26 (a) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it. As to when the Plaintiff herein discovered the fraud alleged against the defendant is a matter to be ascertained at the trial.”

25. Although the Appellants pleaded fraud and gave particulars of the alleged fraud, principally that the Respondents transacted with a person of unsound mind, and the issue did arise whether the Appellants claim was in fact founded on fraud within the meaning of Section 26 of the *Limitation of Actions Act*. A scrutiny of the pleadings and the evidence reveals that:-



1. The substance of the claim was not based on deceit, misrepresentation, forgery, or concealment;
  2. Rather, it rested on the allegation that IN was of unsound mind, and that the Respondents transacted with him despite this incapacity.
26. That is, fundamentally, a claim of legal incapacity, not of fraud. While the term “fraudulent” is used, the conduct complained of lacks the dishonest intent and deliberate deception that characterizes common law fraud. Moreover, even if fraud were properly pleaded:
1. The Appellants did not specify when the fraud was discovered or why it was not discovered earlier.
  2. The Appellants did not show that they acted with reasonable diligence;
  3. The Appellants reliance on procedural leave they obtained suggested that the invocation of fraud was strategic, rather than substantive.
27. The High Court in the case of *Mehta v Shah* [1965] EA 321 stated the rationale of Limitation Laws to be as follows:-
- “The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”
28. In the case of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104, the Court of Appeal held as follows;
- “...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
29. The Appellants in the present matter predicated their claim before the Magistrate’s Court on fraud. The Appellants further pleaded that at the time INM transacted with Martin Ndegwa Githinji in 2002 he was of unsound mind and thus insinuated the said INM lacked the capacity to enter into a sale transaction of the suit land. The Appellants itemized the alleged lack of legal capacity to transact, on the part of IN as constituting an incidence of fraud. The Appellants to succeed in their plea that their kin was of unsound mind and incapable of transacting, needed to demonstrate that indeed he was of unsound mind and that the said Martin Ndegwa Githinji (deceased) had knowledge that the said INM was of unsound mind and therefore took advantage of his lack of capacity. The law presumes every person to be of sound mind and in case a party contends a person was of unsound mind at the time of entering into a contract and/or transaction that is in issue, the burden lies on the person alleging the party was of unsound mind at the time of contracting to establish and prove the person was of unsound mind.
30. The Court in the case of *African Cotton Industries Ltd –vs- Rural Development Services Ltd* (2021) eKLR cited with approval the decision in the Case of *Patrick Muchira –vs- Patrick Kahiaru HCCC* No. 113 of 1999 where the Court held:-
- “It is a very serious thing to say of, and concerning a person, that such person is a person of unsound mind or suffers mental disorder. The law presumes that every person is mentally



sound, unless and until he is proved mentally disordered. And even where one person is shown to be of unsound mind one must always bear in mind that the degrees of mental disorder are widely variable, and incompetence to do any legal act or inability to protect one's own interests, must not be inferred from a mere name assigned to the malady from which a person may be suffering. The validity of ordinary contracts entered into by persons of unsound mind depends mainly on the circumstances which accompany the act. If there is nothing unreasonable in the conduct of the person of unsound mind and the party with whom he contracts has no knowledge or suspicion of his mental disorder, the contract will be binding on the person of unsound mind and his representatives.

A contract with a person of unsound mind is valid and enforceable against him if at the time when the agreement was made he was not of unsound mind and soundness of mind may be presumed if it appears that the negotiation of the agreement was conducted by him with apparent prudence, sanity, and Judgment, although in fact he was insane both before and after the transaction. The general rule is that when a person of apparently sound intellect enters into an ordinary contract, and the parties cannot be restored to their former condition, the mere fact that one of them was at the time non compos mentis is no ground for setting aside the contract. But contracts of a person who is non compos mentis may be avoided when there is proof that his condition was known to the other party. There is no right to avoid a contract made with a person of unsound mind unless it is proved that the other party either knew that he was of unsound mind or knew such facts about him that the other party must be taken to have been aware that he was of unsound mind. Moreover, supervening mental disorder does not release a person from his obligations under a contract unless the nature of the mental disorder renders the performance of the contract impossible.”

31. In the present case, there was no evidence adduced before the trial Court to prove that Irungu Munyi was suffering from mental disorder within the meaning of Section (2) of the *Mental Health Act* and/or had been adjudged by the High Court under Section 26(3) of the Act to be suffering from mental disorder as to be incapable of handling his own affairs.
32. The transaction complained about occurred in 2002 and there is irrefutable evidence that the Respondent was put in possession of the land he purchased. The 1<sup>st</sup> Respondent testified that she had been in possession of the land since 1997 and has been picking the tea bushes thereon ever since. The Appellants reside in the neighborhood and it cannot be said they never knew the Respondents were in possession of the land and have been utilizing the land ever since it was transferred to Martin Ndegwa (deceased husband of the 1<sup>st</sup> Respondent). No explanation was given why it took the Appellants a whole 20 years to challenge the title of the deceased. In my view, the Appellants action of instituting the suit smirks of “litigation adventurism” where a party casts a dice in the off chance that they could be lucky and get a favourable result. Litigation is not about adventurism but about Justice.
33. Upon review and evaluation of the evidence, I am satisfied Martin Ndegwa (deceased) genuinely purchased the land from IM and has utilized the portion he bought ever since it was transferred to him in 2002 with the knowledge of the Appellants. The Appellants were nonsuited on the basis that the suit was statute barred and had failed to satisfy the Court that Irungu Munyi was a person who was suffering from mental disorder such that he lacked capacity to enter into any binding transactions. There was no evidence adduced to demonstrate that if he had such mental incapacity, the said Martin Ndegwa had notice of it.



34. In the circumstances, I find no basis to interfere with the Judgment of the Learned Magistrate. The Appeal lacks any merits and I dismiss the same with costs to the Respondents.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

