

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC SUIT NO. 1111 OF 2016

WILLIAM NJENGA KIORE..... PLAINTIFF

VERSUS

SAMUEL WAINAINA KIORE.....1ST DEFENDANT

SENIOR CHIEF, KIAMBAA LOCATION.....2ND DEFENDANT

RULING

The plaintiff brought this suit against the defendants on 14th September, 2016 seeking the following reliefs:

1. A mandatory injunction compelling the 1st defendant to refund to the plaintiff a sum of Kshs.50,000/- which was paid by the plaintiff to the 1st defendant as purchase price for L.R No.Kiambaa/Thindigwa/863 (hereinafter referred to as “the suit property”).
2. Costs of the suit.

In his plaint, the plaintiff averred that pursuant to a sale agreement entered into in 1994 between him and the 1st defendant, the 1st defendant sold to him the suit property at Kshs.50,000/- which he paid in full. The plaintiff averred that the 1st defendant acquired the suit property as a beneficiary of the estate of his (the 1st defendant’s) mother who was also the mother of the plaintiff. The plaintiff averred that the 1st defendant denied him access to the suit property. The plaintiff averred that sometimes in the year 2016, he conducted a search on the title of the suit property which revealed that the property was still registered in the name of their deceased mother, Mweru Kiore. The plaintiff averred that the 1st defendant refused to transfer to him the suit property or to refund the purchase price which he paid for the property despite several demands. The Plaintiff averred that the 1st defendant claimed that he had given to the 2nd defendant a sum of Kshs.40,000/- to deliver to the plaintiff in part payment of the said sum of Kshs.50,000/-. He averred that the 2nd defendant did not remit the said sum of Kshs.40,000/- to him. The plaintiff averred that the 1st defendant was in breach of the said agreement for sale and as such he was entitled to a refund of the said sum of Kshs.50,000/- which he paid to the 1st defendant as the purchase price for the suit property.

The 1st defendant entered appearance and filed a notice of preliminary objection dated 22nd February, 2017. In his preliminary objection, the 1st defendant contended that the plaintiff’s suit was time barred in that the plaintiff’s claim which was based on contract could not be brought after the expiry of 6 years from the date when the cause of action accrued. It is this preliminary objection which is the subject of this ruling.

On 12th July, 2017, the court directed that the preliminary objection be heard by way of written submissions. The 1st defendant filed his submissions on 11th January, 2018 while the plaintiff failed to file submissions even after time was extended for him to do so. I have considered the 1st defendant’s notice of preliminary objection together with the submissions filed in support thereof. I am in agreement with the 1st defendant that the plaintiff’s suit as against the 1st defendant is time barred. The plaintiff’s claim against the 1st defendant is for the recovery of a sum of Kshs.50,000/- being a refund of the purchase price for the suit property which the plaintiff paid to the 1st defendant sometimes in 1994. Under section 4 of the Limitation of Action Act, Chapter 22 Laws of Kenya, actions founded on contract cannot be brought after the end of 6 years from the date of the accrual of the course of action. The contract between the plaintiff and the 1st defendant was made in 1994. According to the material before the court, a dispute had already arisen as at 1999 between the plaintiff and the 1st defendant over the said agreement for sale. The plaintiff brought this suit in 2016, 22 years after the date of the contract between him and the 1st defendant and 17 years after his right to claim a refund of the purchase price from the 1st defendant had accrued.

For the foregoing reasons, the plaintiff’s suit is as against the 1st defendant is time barred. I therefore uphold the 1st defendant’s objection and strike out the suit as against the 1st defendant. Since the dispute is between family members, each party shall bear its own costs.

Delivered and Dated at Nairobi this 21st day of February 2019

S. OKONG’O

JUDGE

Ruling read in open court in the presence of:

N/A for the Plaintiff

N/A for the 1st Defendant

N/A for the 2nd Defendant

Catherine-Court Assistant