



**Ismael v Mandera County Government (Environment and Land Case E006 of 2024) [2025] KEELC 5797 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5797 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT AND LAND CASE E006 OF 2024**

**JM MUTUNGI, J**

**JULY 31, 2025**

**BETWEEN**

**ADAN MAALIM ISMAEL ..... PLAINTIFF**

**AND**

**MANDERA COUNTY GOVERNMENT ..... DEFENDANT**

**RULING**

1. This Ruling is in regard to the Applicant’s Notice of Motion Application dated 23<sup>rd</sup> February 2025. The Applicant seeks the following orders:
  1. That the Honourable Court be pleased to strike out the Plaint dated 11<sup>th</sup> March 2024.
  2. That this Honourable Court be pleased to dismiss the suit herein with costs to the Defendant.
  3. That the Plaintiff do bear the costs of the application.
2. The application is premised on the grounds on the face of the application and the supporting affidavit sworn by Hussein Adam Somo, the County Attorney of the Defendant. The Defendant asserts that, according to the registration certificate issued on 1<sup>st</sup> July 1985, the Mandera Vocational Training Centre (formerly known as Mandera Youth Polytechnic) was constructed and registered on LR no 13139/656 Grant I.R 5424 (the suit property). The Defendant argues that fraud is a tort governed by the provisions of Section 4(2) of the *Limitation of Actions Act* and therefore, the Respondent should have filed this claim within three years of the alleged action. The Defendant further contends that the suit is time-barred under Section 7 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya.
3. The Defendant avers that if the orders sought are granted, it will disrupt learning at the Mandera Vocational Training Centre. The Defendant asserts that there is no valid explanation for the delay in taking action, particularly since the Defendant commenced using the suit land in 1985. The Defendant emphasises that there have been annual admissions and graduations of students at the



Mandera Vocational Training Centre, and hence the Plaintiff cannot claim he only became aware of the Defendant's presence on the property in 2024. The Defendant asserts the Plaintiff was guilty of indolence and melt on his rights.

4. The Plaintiff/Respondent filed his Replying Affidavit dated 13<sup>th</sup> March 2025, opposing the application. He stated that the Mandera Vocational Training Centre continues to occupy the disputed land. He stated that, to date, the Defendant/Applicant had not provided any compensation to him for the acquisition or occupation of the land in question. He maintained that this ongoing occupation constitutes a fresh trespass, giving rise to a new cause of action. As such, he averred that the statute of limitations had no application and that the Defendant's application lacked merit.
5. The application was canvassed by way of written submissions. The Defendant/Applicant filed its written submissions dated 20<sup>th</sup> May 2025 where Counsel for the Applicant submitted on two issues. Whether the Plaintiff's suit was time-barred and whether the Court had jurisdiction to hear the case.
6. Regarding the first issue, Counsel argued that the cause of action arose under two circumstances, specifically Section 4(2) and Section 7 of the *Limitation of Actions Act* Cap 22 Laws of Kenya. Under Section 4(2), Counsel contended that the cause of action accrued on 1<sup>st</sup> July 1985, and lapsed after three years the cause of action having been a tort. With respect to Section 7, Counsel maintained that the cause of action accrued when the Defendant took possession of the suit land on 1<sup>st</sup> July 1985, and lapsed after twelve years and hence the suit was statute barred on account of limitation. Counsel cited the case of *George Ouma Odinga v Republic & Another* (2023) KECA 1592 (KLR), where the Court observed that the expiration of the limitation period extinguishes not only the remedy but also the underlying right unless there is statutory intervention.
7. On the second issue, Counsel cited the cases of *James Nyika v Charles Nyakundi & 2 Others* (2004) KEHC 319 (KLR) and *Bosire Ongero v Royal Media Services* (2015) eKLR. In both cases, the Courts held that once a statutory limitation period had lapsed, the Court lacked jurisdiction to entertain the matter. Consequently, Counsel submitted that the Plaintiff's Plaint should be struck out as the suit was time barred.
8. The Plaintiff filed his written submissions dated 18<sup>th</sup> March 2025 and Counsel broadly submitted that the Defendant's application lacked any merit. He argued that the claim that the suit was time-barred was incorrect because the Mandera Vocational Training Centre continues to occupy the suit land. Counsel argued the ongoing occupation, constitutes fresh acts of trespass, thus creating a new cause of action every day. Counsel further contended that continuous damage to the land generates separate legal actions. He emphasized that the persistent and well-known occupation of the property, especially in the absence of compensation, clearly violates the Plaintiff/Respondent's rights. Counsel asserted that the Defendant had constructed permanent structures on the disputed property. To support his position, Counsel cited the following cases: *Muthiora v Marion Muthama Kiara (Suing on behalf of the Estate of Erastus Muthamia Kiara – Deceased)*, 2022) KECA 28 (KLR); *The County Government of Laikipia v James Kimani Mburu & 3 Others* (2020) KEELC 2091 (KLR); and *Silvester K. Kaitany v Nyayo Tea Zones Development Corporation & Another; National Land Commission & Another (Interested Parties)*, 2020) KEELC 529 (KLR).
9. I have reviewed and considered the Notice of Motion Application, the Replying Affidavit, the parties' written submissions, and the primary issue to be determined is whether the suit was barred by the statute of limitation. The law that governs the time frame for filing suits related to various causes of action is outlined in the *Limitation of Actions Act*. Section 4(2) of the *Limitation of Actions Act* provides as follows:-



- (2) “An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued; Provided that an action for libel or slander may not be brought after the end of twelve months from such date”.
10. Section 7 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya prescribes the limitation period in regard to an action to recover land and provides as follows: -
- (7) “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, it first accrued to some persons through whom he claims, to that person.”
11. The Defendant argues that the cause of action arose in 1985 when it took possession of the disputed property and began operating the Mandera Vocational Training Centre. The Defendant asserts that because the Plaintiff's claim is for the recovery of land, the Plaintiff's case is statute-barred, as more than 12 years have elapsed since the Defendant took possession of the land. Additionally, the Defendant contends that since the Plaintiff's claim is based on allegations of fraud, this cause of action is also statute-barred under Section 4(2) of the *Limitation of Actions Act*.
12. The Plaintiff, for his part, asserts that while the Defendant's occupation began in 1985 and continues up until now, he has remained the owner of the land and avers that no compensation or legal acquisition has ever occurred and thus offending his proprietary rights. His pleadings confirm that the Defendant has constructed permanent structures on the land and continues to occupy and operate the vocational institution on the suit property.
13. In this case, my view is that the Plaintiff deserves the opportunity to express his concerns. It is undisputed that the Defendant is currently operating a vocational training centre on the property in question and/or part of the property. Additionally, the Defendant acknowledges that it took possession of the property in the 1980s without providing any compensation or restitution to the Plaintiff, who has presented a certificate of ownership for the land. Both parties affirm that the Defendant remains on the property to this day. This situation constitutes a continuing trespass. The Law recognizes that, in such cases, the passage of time does not eliminate the right to pursue legal action, as long as the trespass continues.
14. In the case of *Eliud Njoroge Gachiri v Stephen Kamau Ng'ang'a* (2018) eKLR, the Court stated thus:-
- “However in a case of continuing trespass, a trespass consists of a series of acts done on consecutive days that are of the same nature and that are renewed or continued from day to day so that the acts are aggregate form of one indivisible harm.”
15. The Court of Appeal in the case of *Muthiora v Marion Muthama Kiara (Suing on behalf of the Estate of Erastus Muthamia Kiara - Deceased)* (Civil Appeal 43 of 2017) [2022] KECA 28 (KLR) (4 February 2022) (Judgment), affirmed that in cases of continuing trespass, a fresh cause of action arises from day to day for so long as the unlawful occupation continues. They observed at paragraphs 53 and 54 of the Judgment as follows:-
53. “Trespass is described under the Trespass Act Cap 294 to mean “any person who without reasonable excuse enters, in or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier



thereof". On the other hand, a continuing trespass is defined in Jowitt's Dictionary of English Law 2nd Edition (page or paragraph?) as follows:-

"A continuing trespass is one which is permanent in its nature; as where a person builds on his own land so that part of the building overhangs his neighbor's land".

In Black's Law Dictionary 10<sup>th</sup> Edition (page 1734), a continuing trespass is defined as:-

"A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property" Finally,

Finally, in Clerk & Lindsell on Torts 16th Edition, paragraph 23 - 01, it is stated that:-

"Every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues".

54. From the above definitions of the term "trespass" by the eminent learned authors, it is clear that any unauthorized entry, whether present or continuous, is trespass. In this case, it is indeed common ground that the Appellant entered into and has remained in occupation of the suit property. The appellant's continued occupation of the said property from the first date of entry in so far as it is unauthorized by the Respondent, amounts to trespass and remains as such to date. The Respondent's claim for trespass being a continued tort is, therefore, not time-barred. We find no fault with that finding by the trial Court."
16. In the case of *Gladys Koskey v Benjamin Mutai* [2017] eKLR the Court held as follows;
- "On the first issue, the suit is founded on trespass, which is a tort. Under Section 4 of the *Limitation of Actions Act*, an action founded on a tort must be instituted within three years. However, as the Plaintiff indicates, the trespass is continuous and the *Limitation of Actions Act* does not come into play. This is supported by the case of *Nguruman Limited v Shompole Group Ranch & 3 Others* Civil Appeal No 73 of 2004 reported in 2007 KLR. Citing Clerk and Lindsell on Torts 16<sup>th</sup> Edition, paragraphs 23-01 the Court of Appeal stated that:
- Every continuance of a trespass is a fresh trespass in respect of which a new cause of action arises from day to day as the trespass continues."
17. It is not disputed that the Plaintiff is the registered proprietor of LR no. 13139/656 Manderu and it is his position that the Defendant have been in continuous trespass without any colour of right and that they took occupation of the suit land without following due process. The Defendant's averment is that on the suit land, there is a duly registered Manderu Vocational Centre (formerly Manderu Youth Polytechnic) which has been in existence since 1985. From the pleadings, it is not clear when the Polytechnic was established on the suit land. In the suit the Plaintiff seeks to be declared as the lawful owner of the suit property and that the Defendant has no legal right over the property and should be ordered to vacate failing which they be evicted.
18. The Plaintiff's claim is one of ownership and is not founded on an incident of trespass. The trespass has been continuing and Section 4(2) of the *Limitation of Actions Act*, would be inapplicable. The Plaintiff additionally holds title to the suit property and consequently Section 7 of the *Limitation of Actions Act* would be inapplicable as he is seeking to assert his right of ownership of the suit property.



19. Accordingly, the Defendant's Notice of Motion dated 23<sup>rd</sup> February, 2025 is without merit and the same is dismissed with costs to the Plaintiff.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

