



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. 26 OF 2017**

**SAMUEL NGUGI NGANGA.....PLAINTIFF**

**VERSUS**

**ELENA CHEPKURGAT KIPTALAM**

**(SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF**

**KIPTALAM ARAP KOGO (DECEASED).....DEFENDANT**

**RULING**

1. By way of preliminary objection dated **29/1/2019** the defendant challenged the entire suit herein on the ground that the suit being one for the recovery of land is statutorily barred by provision of **Section 7 of the Limitation of the Actions Act**. On **30/1/2019** this court ordered the parties to file submissions on that preliminary objection.
2. The defendant filed submissions on **31/1/2019** and in support of the preliminary objection. He reiterates the contents of the preliminary objection and replicates the contents of **Section 7 of the Limitation of the Actions Act** and by reference to the pleadings and other documents in court avers that this suit cannot survive and its defects cannot be cured by **Article 159 (2) (d)**
3. The plaintiff filed submission in opposition to the defendant's preliminary objection on **6/2/2019**.
4. The defendant cited **Nairobi Civil Appeal No. 304/1997** where the Court of Appeal found that time period required for adverse possession cannot run as against the Settlement Fund Trustees. He avers that the land subject matter herein became a property of Settlement Fund Trustee which is an arm of the government, in **2006** and the defendant was registered as owner of the suit land in **2016**. He avers that the plaintiff has been occupying **2** acres exclusively and with the knowledge of the defendant and her late husband and the **Plot No. Maridadi 315** whose register closed on subdivision gave rise to **Malidadi/Kosprin/318 and 302. Title no. 381** is a product of subdivision of **Title No. 315** which was registered in the name of the defendant in **2016** three years before the institution of the suit.
5. I have examined the plaint and I do not find any claim under adverse possession, which is the subject matter of the preliminary objection at hand.
6. It is the correct position that the land was registered in the name of the Settlement Fund Trustees until the year **2016** when it was registered in the name of Kiptalam arap Kogo. As correctly observed by the plaintiff's counsel on the basis of the decision in **Nairobi Civil Appeal No. 304/1997 Samuel Ndungu Gitu Vs Danson Ndungu and 2 Others**, the law on limitation can not run as against the Settlement Fund Trustees.
7. The period between the date of the registration of the deceased as the proprietor of the land and the date of filing of this suit is about one year. Clearly this suit is not time barred.
8. The preliminary objection dated **29<sup>th</sup> January 2019** is therefore dismissed with costs.

**Dated, signed and delivered at Kitale on this 26<sup>th</sup> day of March, 2019.**

**MWANGI NJOROGI**

**JUDGE**

**26/03/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Lowasikou holding brief for Teti for defendant

N/A for plaintiff

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**26/03/2019**