



REPUBLIC OF KENYA



**Kiraga (Administrator to the Estate of Nzai Kiraga) v Ganiwalla & 3 others (Environment and Land Case E036 of 2022) [2025] KEELC 7337 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7337 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E036 OF 2022  
EK MAKORI, J  
OCTOBER 15, 2025**

**BETWEEN**

**SIDI NZAI KIRAGA (ADMINISTRATOR TO THE ESTATE OF NZAI KIRAGA) ..... PLAINTIFF**

**AND**

**HUSSEIN KASSAM GANIWALLA ..... 1<sup>ST</sup> DEFENDANT  
SETTLEMENT FUNDS TRUSTEE - KILIFI ..... 2<sup>ND</sup> DEFENDANT  
LANDS REGISTRY - KILIFI ..... 3<sup>RD</sup> DEFENDANT  
ATTORNEY GENERAL - MOMBASA ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff filed an amended plaint on November 26, 2024, seeking the following prayers:
  - a. A permanent injunction is hereby issued to restrain the 1st defendant, including himself, agents, employees, servants, and any other persons acting on her behalf, from developing, alienating, subdividing, transferring, selling, or otherwise dealing with the suit parcel of land in any manner whatsoever.
  - b. A declaration is hereby issued affirming that the Plaintiff holds both the legal and beneficial ownership of Plot No. Mtwapa Settlement Scheme, Plot 582 (Old Title), and Plot No. Kilifi / Mtwapa/878 (New Title).
  - c. The registration for Plot No. Mtwapa Settlement Scheme Plot 582 (Old Title) and Plot No. Kilifi/Mtwapa/878 (New Title) should be amended to reflect the plaintiff, Sidi Nzai Kiraga, as the registered owner of the plots and on the title, deeds issued.
  - d. The previous title deed issued to the 1<sup>st</sup> defendant should be revoked without its presentation.



- e. An order should be issued to the Lands Registrar in Kilifi, without gazettal, to proceed to issue a Title Document for the land known as Plot No. 582, Mtwapa Settlement (Old Title), Plot No. Kilifi/Mtwapa/878 (New Title), located North of Mtwapa Creek in the Kilifi District, covering four point six (4.6) acres, in the name of the applicant, Sidi Nzai Kiraga (Administrator to The Estate of Nzai Kiraga).
  - f. Cost and interest at court rates.
  - g. Any other relief that the court deems fit to grant.
2. The 1st defendant filed a statement of defense dated August 11, 2022, but did not submit any witness statements or documents, and therefore did not call any witnesses to testify. The 2nd-4th defendants, on the other hand, filed a statement of defense and witness statements but failed to call any witnesses.
  3. On June 14, 2022, the plaintiff was granted permission to file an out-of-time suit after discovering that the land had been fraudulently registered in the 1st defendant's name. The plaintiff then filed this suit on June 20, 2022, and later amended the plaint because the original plaintiff had passed away.
  4. The plaintiff, acting as the legal administrator of the estate of the late Nzai Kiraga, files this suit concerning a land parcel known as Mtwapa Settlement Scheme Plot No. 582 (Old Title), now registered as Kilifi/Mtwapa/878 (New Title). The deceased, Nzai Kiraga, was the original allottee of the land. The suit seeks to revoke the registration of the 1st defendant and to restore the property to the plaintiff as the legal and beneficial owner.
  5. Evidence was presented that the deceased, Nzai Kiraga, died in 1979. However, the 1st defendant's statement of defense claims that the deceased allegedly transferred the subject matter to the 1st defendant in 1981. According to the plaintiff, it is legally impossible for a deceased person to execute or authorize any transfer of property after death. It is also asserted that at no point were letters of administration produced or granted in respect of the deceased's estate to authorize such a transfer. Without a confirmed grant, the alleged transaction constitutes unlawful interference with the estate of a deceased person, contrary to Section 45(1) of the *Law of Succession Act* (Cap. 160). Accordingly, the alleged transfer is a legal nullity from the outset and cannot confer any valid ownership interest in the 1st defendant or any other person.
  6. As already stated, although the defendants filed defenses and the 2nd, 3rd, and 4th defendants submitted witness statements, none of the defendants called any witnesses to testify.
  7. At the conclusion of both the plaintiff's and the defendant's cases, the court directed the parties to submit written arguments. I received submissions from learned counsels Ms. Omollo and Mr. Mugambi for the plaintiff and the 1<sup>st</sup> defendant, respectively, which significantly aided in resolving the issues at hand, for which I am sincerely grateful.
  8. The issues that I frame for the determination of this court are whether the current suit is statutorily barred, whether the plaintiff has established ownership and beneficial interest in the suit property, whether the registration of the 1st defendant was unlawful and fraudulent, whether the plaintiff is entitled to the orders sought, and the costs of the suit.
  9. I will address the issues sequentially.
  10. I will start with the question of whether this suit is time-barred. Mr. Mugambi contends that the statute of limitations bars the suit because it was filed 12 years after the cause of action arose, and he notes that the plaintiffs admit this. Ms. Omollo explains that her clients, after learning that the case involved land recovery and that the statutory period had expired, filed a miscellaneous suit in Malindi to seek



an extension of time, Malindi ELC Misc. Applic. No. E010 of 2022. This court (Odeny J.) granted that extension.

11. The court's jurisdiction is challenged based on the limitation of actions, which is a jurisdictional matter that must be addressed first. It is undisputed that this suit was filed with the leave granted by this court on June 14, 2022, in Malindi ELC Misc. Applic. No. E010 of 2022. No evidence needs to be called in rebuttal on this point
12. It is settled through judicial precedents that when leave is granted, it is not final, and the court hearing the case must review the granting of the leave, as seen in *Mary Wambui Kabugu v Kenya Bus Service Limited* [1997] KECA 402 (KLR):

“Now, when a judge of the superior court grants leave ex parte, under the Limitation Act to institute proceedings which can be challenged at the trial, he in a way, does no more than a judge does when he for instance, grants an ex parte injunction, which can also be successfully challenged before another judge at its inter partes hearing. Furthermore, the question of a judge of the superior court sitting on appeal on the granting of an ex parte order under the Limitation Act by another judge of the superior court, does not in the particular circumstances, arise. Lord Denning, M. R., had this to say about it in *Cozens* at 801:

“Now I quite agree that in general a party affected by an ex parte order can apply to discharge it. We applied this rule as of course in *R v. Morley (Valuation Officer) E.P. Peachy Property Corporation Ltd* recently; but the procedure under the Limitation Act 1963 is altogether exceptional. It says in terms that an application shall be made ex parte. This is a strong indication that the judge is to decide the application on hearing one side only. No provision is made for the defendant being heard; and I do not think that we should allow it to be done at this stage. It must be remembered that, even when the Judge grants leave, there is nothing final about it. It is merely provisional. The defendant will have every opportunity of challenging the facts and the law afterwards at the trial. The judge who tries the case is the one who must rule finally whether the plaintiff has satisfied the conditions for overcoming the time bar. He is not in the least bound by the provisional view expressed by the judge in chambers who gave leave.”

13. Judicial authorities typically restrict the grant of leave to bring suit out of time to tort cases involving negligence, nuisance, or breach of duty. See, for instance, *Willis Onditi Odhiambo v Gateway Insurance Co Ltd* [2014] KECA 186 (KLR), and *Mary Osundwa v Sugar Company Limited* [2002] KECA 203 (KLR), in the latter case, the court had this to say:

“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 torts 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 the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo, J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent. Though Tanui, J. dismissed the suit on a different basis, we think the suit was bound to be dismissed in any event on the issue of limitation, which was specifically pleaded in the defence.”



14. Section 7 of the *Limitation of Actions Act* states that the period for a person to recover land is 12 years from the date the right of action accrued:

“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 this case, the property was initially allocated to the late Nzai Kiraga, who allegedly died in 1979. The challenged transfer to the 1st defendant occurred in 1981. For the purpose of calculating the land recovery period, we consider 1981 as the start date of the cause of action. Counting 12 years from that date, the suit should have been filed in 1993, which makes it 29 years late.

16. As I have already reiterated, leave to file suit for recovery of land out of time is not available consequently, and without discussing other attendant issues, I conclude that the plaintiffs' suit is defeated by operation of the Statute. It is time-barred. It is hereby dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025.**

**E. K. MAKORI**

**JUDGE.**

In the presence of:

Ms. Apiyo for the Plaintiff

Mr. Ojwang for the 2<sup>nd</sup> - 4th Defendants.

Happy: Court Assistant

In the absence of:

Mr. Mugambi for the 1<sup>st</sup> Defendant

