



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCL CASE NO. E006 OF 2025

GODFREY MBAE

M'RINKANYA.....PLAINTIFF

=VERSUS=

EVASIO NTWIGA MBABU-

MUROMBI.....DEFENDANT

RULING

1. The plaintiff initiated this suit in the **Environment and Land Court** at Chuka through a plaint dated 29/4/2025. The plaint was drawn as a pleading designated for filing in the **Chief Magistrate Court** at Chuka. It was, however, uploaded at the Environment and Land Court.
2. The plaintiff averred in the plaint that in the year 1983, he sold to the defendant one acre out of land parcel number **Muthambi/U-Karimba/444** (*now subdivided into Muthambi/U-Karimba/1286 and 1287*). The defendant requested him to allow him to retain the original title and arrange for attendance at the Land Control Board to obtain consent to transfer the one acre. Subsequently, whenever he raised the issue, the defendant always “excused himself.”

Recently, the defendant descended on the suit land with goons; subdivided it; erected barbed wire on it; and felled the plaintiff's trees. On making inquiry at the Lands Registry, he discovered that the defendant had caused the suit land to be subdivided into the two parcels and had caused parcel number **1286** to be registered in his name.

- 3.** The plaintiff termed the subdivision and the registration as fraudulent. He itemized various particulars of fraud. He prayed for: (i) a permanent injunction restraining the defendant and his agents/servants against entering the suit land or “erecting or causing to be subdivided” or interfering with his use and enjoyment of the suit land; (ii) an order decreeing the Land Registrar to annul the subdivision and reinstate the initial parcel register; (iii) an order decreeing removal of the subdivision boundary; and (iv) damages.
- 4.** Subsequent to filing the suit, the plaintiff brought a notice of motion dated 23/5/2025 praying for an order transferring the suit to the **Chief Magistrate Court** at Chuka on the ground that the said court is properly seized of jurisdiction and that the suit was intended to be filed in the Chief Magistrate Court. The above application is one of the two items that fall for determination in this ruling.
- 5.** The suit and the application attracted a notice of preliminary objection dated 16/6/2025 from the defendant, inviting the court to dismiss or strike out this suit on the ground that it is statute-barred. The said preliminary objection is the second item that falls for determination in this ruling.

6. The preliminary objection raises a jurisdictional question focusing on the competency of the suit. Because only a competent suit can be transferred to the lower court, the court will first dispose the preliminary objection before focusing on the plea for transfer of the suit.
7. Subsequent to the filing of the preliminary objection, the plaintiff filed what he described as "*FURTHER AFFIDAVIT*," through which he exhibited a court order issued by the **Senior Principal Magistrate Court** at Chuka (**Hon Ocharo**) enlarging the limitation period for bringing his claim by 30 days. Relying on the said order, the plaintiff contends vide his written submissions dated 1/9/2025 that, because the limitation period was enlarged, his claim is competent.
8. On his part, the defendant argues that once a claim is statute-barred, the court has no discretion to extend the limitation period unless the statute itself expressly provides for extension of limitation period and sufficient cause is demonstrated to warrant the extension. The defendant adds that the order dated 24/4/2025 was *ex parte* and therefore fatally defective, emphasizing that an *ex-parte* order cannot be used to conclusively determine substantive rights. The defendant further argues that, even if the order dated 24/4/2025 were to be considered to have been validly issued, the 30-days extension lapsed on 24/5/2025. Counsel argues that a transfer order cannot be used to sanitize an incompetent suit. He urges the court to dismiss or strike out the suit on the ground that the plaintiff's claim is statute-barred.

9. The court has considered the preliminary objection and the parties' respective submissions on the preliminary objection. The key issue to be determined in this ruling is whether the enlargement order issued by the **Senior Principal Magistrate Court** on 24/4/2025 breathed life into the plaintiff's claim which, at the time of seeking the enlargement order, was statute-barred. I will be brief in my analysis.
10. I should observe at the outset that, if the plaintiff had not, tendered and waved the enlargement order *suo motto*, the court would have had doubts on the suitability of the preliminary objection as a platform on which to raise the issue of limitation period. It, however, became clear from the plaintiff's documents that, the limitation period had lapsed and that is the reason which made him seek an enlargement order.
11. The claim in this suit is one for recovery of land. The limitation period for initiating a suit for recovery of land is prescribed under **Section 7** of the **Limitation of Actions Act** which provides as follows:
- “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.”***
12. Jurisdiction to enlarge time for bringing an action is donated by the Constitution, the statute or the relevant rules. Where

the Constitution, statute or rule has prescribed a limitation period for bringing action and has not vested in the court jurisdiction to enlarge the limitation period, the court cannot purport to enlarge the limitation period beyond what the Constitution, statute or rule has prescribed. Indeed, the Court of Appeal emphasized this principle not too long ago in ***Kenya Airports Authority v Shadrack Abraham Kisongochi (2016) eKLR***.

13. The **Supreme Court of Kenya** emphasized the centrality of jurisdiction in ***Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR*** in the following words:

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

14. Prior to the pronouncement in ***Kenya Airports Authority v Shadrack Abraham Kisongochi*** (supra), the **Court of Appeal** outlined the law on enlargement of limitation period under **Section 27** of the **Limitation of Actions Act** in ***Mary Osundwea v Nzoia Sugar Company Limited (2002) eKLR*** as follows:

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That 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. This section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other cause of action other than those in tort.”

- 15.** Not too long ago, the **Court of Appeal** outlined the law on limitation period in ***Pius Kimaiyo Langat v The Co-operative Bank of Kenya Ltd; Nairobi Civil Appeal No 48 of 2015*** as follows:

“It is also trite law that the period of limitation cannot be extended. If any authority is necessary, this Court in Divecon v Samani (1995-1998) EA 48 stated as follows:-

“....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 the bringing of the action. A

perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that „„the wording of Section 4 (1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked?”

- 16.** The Limitation of Actions Act which prescribes a limitation period of 12 years for a claim for recovery of land does not vest in the courts discretionary jurisdiction to enlarge the limitation period of 12 years. It therefore follows that, the enlargement order which the plaintiff is waving was issued without jurisdiction. Put differently, the enlargement order did not breath life into the plaintiff’s stale claim. This means that, the plaintiff’s claim was statute-barred and remains statute-barred. No court has jurisdiction to entertain the claim.
- 17.** It is now settled law that where a court finds that it has no jurisdiction, it must immediately down its tools. **Nyarangi JA** in ***The Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Limited (1989) KLR 1*** outlined the above principle as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the

moment it holds the opinion that it is without jurisdiction.”

- 18.** Consequently, the preliminary objection by the defendant is upheld and this suit is struck out on the ground that the plaintiff's claim is statute-barred. It accordingly follows that, there is no competent suit to transfer to the **Chief Magistrate Court** at Chuka.
- 19.** On costs, the general principle is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the above general principle. The result is that the plaintiff will bear costs of the suit.
- 20.** In the end, for the above reasons, the defendant's preliminary objection dated 16/6/2025 is upheld and this suit is struck out on the ground that it is statute-barred. The plaintiff shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 31ST DAY OF OCTOBER, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Ms. Thuo for the Plaintiff.

Ms. Kamau Advocate for the Defendant.

Court Assistant - Mr. Mwangi