



**Ng'ang'a v Opiyo & 3 others (Environment and Land Case
E199 of 2025) [2025] KEELC 7466 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E199 OF 2025**

**MN KULLOW, J
OCTOBER 30, 2025**

BETWEEN

ANN NG'ANG'A PLAINTIFF

AND

TOBIAS MORGAN ODHIAMBO OPIYO 1ST DEFENDANT

CHRISTOPHER ONYANGO OTIENO 2ND DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

A. Introduction:

1. Before the Court for determination is a Notice of Preliminary Objection dated 10th May 2025, filed by the 1st and 2nd Defendants. The objection seeks to strike out the Plaintiff's entire suit and application dated 14th April 2025 on the following grounds:
 - a. That the suit is time-barred, having been filed outside the 12-year statutory limitation period prescribed under Section 7 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya;
 - b. That by reason thereof, this Honourable Court lacks jurisdiction to hear and determine the matter; and
 - c. That the suit is incompetent, bad in law and incurably defective, and ought to be dismissed with costs.
2. The Court directed that the preliminary objection be dispensed with by way of written submissions. The Plaintiff opposed the objection through written submissions, asserting that the cause of action is founded on fraud discovered on 15th January 2019, thereby falling within the purview of Section



26 of the *Limitation of Actions Act*. The 3rd Defendant, in submissions dated 26th June 2025, and the 4th Defendant, in submissions dated 15th July 2025, supported the objection. Similarly, the 1st and 2nd Defendants filed their submissions dated 5th June 2025 in support of their preliminary objection.

B. Submissions

1st and 2nd Defendants Submissions

3. The 1st and 2nd Defendants aver that the suit is time-barred, the cause of action having accrued upon registration of the 1st Defendant as proprietor in 2001. They submit that under Section 7 of the *Limitation of Actions Act*, a claim to recover land must be instituted within twelve (12) years of accrual; the Plaintiff's suit, filed in 2025, was 24 years too late. They argue that limitation being a jurisdictional bar, the Court must down its tools once time has expired.
4. They further submit that Section 26 of the Act does not rescue the Plaintiff because even taking the pleaded discovery date of 15 January 2019, the Plaintiff failed to file within three years of discovery. They rely on *Edward Moonge Lengusuranga -Vs- James Lanaiyara & Another* [2019] eKLR, where the court struck out a claim filed more than three years after discovery of fraud, observing that "Section 26 defers, but does not suspend indefinitely, the running of time."

3rd Defendants Submissions

5. The 3rd Defendant (County Government of Nairobi) aligns with the objection. It cites *Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors* [1969] EA 696, reaffirmed by the Supreme Court in Petition No. 19 (E022) of 2020, to contend that limitation is a pure point of law properly raised as a preliminary issue.
6. The County also cites *Benjoh Amalgamated Ltd & Another -Vs- Kenya Commercial Bank Ltd* [2014] eKLR, where the Court of Appeal observed that "equity aids the vigilant, not the indolent." It submits that the certificate of title having been issued in 2001, the Plaintiff's claim filed in 2025 is hopelessly out of time and incapable of resurrection through equitable argument.

4th Defendants Submissions

7. The 4th Defendant (Chief Land Registrar), represented by the Honourable Attorney General, supports the objection and submits that the Court's jurisdiction is extinguished by limitation. Citing *Sohanladurgadass Rajput & Another -Vs- Divisions Integrated Development Programmes Co. Ltd* [2021] eKLR, the Registrar reiterates that the issue of limitation goes to jurisdiction and that once the limitation period lapses, a court has no authority to entertain the matter.
8. The Registrar further relies on *Mehta* (supra) and *Gathoni* (supra) to argue that limitation law protects both parties—plaintiffs are encouraged to act diligently, while defendants are spared the burden of defending ancient disputes. The Registrar notes that the Plaintiff herself pleads discovery of fraud in January 2019, yet filed the current suit in April 2025, a delay of six years, and thus Section 26 cannot avail her.

Plaintiff's Response Submissions

9. In response, the Plaintiff maintains that the objection fails the Mukisa test because it rests on contested facts. She submits that the date of accrual, the existence and discovery of fraud, and the running of limitation are all issues that require viva voce evidence. She relies on *Hassan Nyanje Charo -Vs- Khatib*



Mwashetani & 3 Others [2014] eKLR, where the court held that a preliminary objection cannot be founded on facts that require proof.

10. The Plaintiff further argues that her claim is saved by Section 26 of the *Limitation of Actions Act*, since it is based on fraud and the limitation period did not begin until discovery in 2019. She relies on Margaret Wairimu Magugu -Vs- Karura Investment Ltd & 4 Others [2019] eKLR and Yasmin Anwar Khan Yusuf (eKLR), both affirming that time does not begin to run in fraud-based actions until the fraud is discovered.
11. She contends that she acted promptly by filing CMCC No. 496 of 2019, which was dismissed for lack of jurisdiction, and that she has been in continuous litigation since then. In her view, this demonstrates diligence rather than indolence. She therefore prays that the objection be dismissed to allow a full hearing on the merits.

C. Issues for Determination

12. The Court has carefully considered the pleadings, the objection, and the rival submissions. The main issues for determination are:
 - a. Whether the defendants have met the threshold for a Preliminary Objection and;
 - b. If the answer to (a) above is in the affirmative, whether the Preliminary Objection raised is merited.

D. Analysis and Determination

13. In *Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors* [1969] EA 696, the Court of Appeal defined a Preliminary Objection as follows;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and if which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

14. In *Republic -Vs- Eldoret Water & Sanitation Company Ltd Exparte Booker Onyango & 2 Others* (2007) eKLR, the Court stated that an Objector cannot introduce any factual dispute or controversy and must stick to pure points of law.
15. Therefore, a Preliminary Objection can only be premised on undisputed facts, must raise pure points of law and cannot be raised where facts have to be ascertained or where the Court is asked to exercise judicial discretion. For a Preliminary Objection to be maintained, the pure points of law raised must sprout from the pleadings.
16. In the case of *Avtar Singh Bhamra & Ano. -Vs- Oriental Commercial Bank HCC No 53 of 2004*, the Court stated as follows;“A preliminary objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”



17. Applying those principles, the objection before the Court turns on statutory limitation. The material chronology is not disputed. The Plaintiff pleads that she was allocated the suit property (Nairobi Block 63/670 – Jamhuri Phase II – Plot 121) by the Nairobi City Commission in 1992 and paid all requisite fees. She further pleads that she occupied the land until 15th January 2019, when the 1st and 2nd Defendants allegedly invaded and demolished her structures, prompting her to discover that a Certificate of Lease had been issued to the 1st Defendant on 26th October 2001. While the present suit was filed on 14th April 2025.
18. On these uncontested dates 26th October 2001 (registration of title), 15th January 2019 (alleged discovery of fraud), and 14th April 2025 (filing of suit) no evidence is needed. The objection therefore raises a pure point of law and is properly before the Court.
19. The Plaintiff’s cause of action, on the face of the plaint, seeks to recover land by impeaching the title issued to the 1st Defendant in 2001, alleging that the registration was fraudulent and unlawful. Accordingly, Section 7 of the *Limitation of Actions Act*, Cap 22 applies. It provides that: “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.”
20. From the record, the right of action accrued on 26th October 2001, when the 1st Defendant was registered as proprietor. On a strict computation, twelve years expired on 25th October 2013. The Plaintiff’s suit filed in April 2025 came twenty-four years after the accrual of the cause of action.
21. The purpose of the Law of Limitation was stated in the case of *Mehta v Shah* [1965] E.A 321, as follows;

“The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”
22. Similarly, in *Gathoni -Vs- Kenya Co-operative Creameries Ltd* [1982] KLR 104, the Court of Appeal held as follows;

“...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
23. A suit barred by limitation is a claim barred by law, hence by operation of law, the Court cannot grant the relief sought. In the case of *Iga -Vs- Makerere University* [1972] EA, the Court had this to say on the Law of Limitation;

“A Plaint which is barred by limitation is a Plaint barred by law. Reading these Provisions together it seems clear that unless the Applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption, the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the Court cannot grant the remedy or relief sought.”
24. The Plaintiff, however invokes Section 26 of the *Limitation of Actions Act* provide as follows;

“Where in the case of an action for which a period of limitation is prescribed, either-



- (a) The action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent; or
 - (b) The right of action is concealed by the fraud of any such person as aforesaid; or
 - (c) The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.
25. Contending that the cause of action is based on fraud and that time did not begin to run until she discovered the fraud on 15th January 2019.
 26. I have perused the Plaint in detail. The Plaintiff indeed pleads fraud in paragraphs 22, particularizing the alleged irregular reallocation and unlawful registration of title in the 1st Defendant's name. However, her own pleadings show that the alleged fraud was discovered on 15th January 2019, when the Defendants allegedly entered the property and demolished her structures. Despite this discovery, the Plaintiff filed the instant suit only on 14th April 2025 a delay of six years.
 27. Courts have consistently held that Section 26 does not suspend limitation indefinitely; it only defers the starting point until discovery. In *Edward Moonge Lengusuranga -Vs- James Lanaiyara & Another* [2019] eKLR, the Court struck out a suit filed beyond three years after discovery of fraud, holding that "Section 26 defers, but does not indefinitely suspend, the running of time." The Court of Appeal in *Benjoh Amalgamated Ltd & Another -Vs- Kenya Commercial Bank Ltd* [2014] eKLR reiterated that "equity aids the vigilant, not the indolent."
 28. The Plaintiff contends that she first pursued CMCC No. 496 of 2019, which was withdrawn for lack of jurisdiction, and that she filed the present suit after obtaining a valuation showing the ELC's jurisdiction. While this may demonstrate persistence, it does not stop limitation from running. In *Divecon Ltd -Vs- Samani* [1995–1998] 1 EA 48, the Court of Appeal held that limitation is substantive law; proceedings in a court without jurisdiction do not toll or suspend time.
 29. Even accepting the Plaintiff's version, by the time she filed this suit, both the twelve-year statutory period and any deferred period under Section 26 had long lapsed. The claim is therefore statute-barred.
 30. The question of limitation is not a mere technicality but goes to the jurisdiction of the Court. As held in *Bosire Ongero -Vs- Royal Media Services* [2015] eKLR, limitation "touches on the jurisdiction of the court, which means that if a matter is statute-barred, the court would lack jurisdiction to entertain it." The Court of Appeal in *Owners of the Motor Vessel "Lilian S" -Vs- Caltex Oil (Kenya) Ltd* [1989] KLR 1 famously stated: "Jurisdiction is everything; without it, a court has no power to make one more step."
 31. Accordingly, whether time is reckoned from the date of registration of the 1st Defendant's title in 2001 under Section 7, or from the date of discovery of fraud in 2019 under Section 26, the limitation period had long expired by April 2025. The suit is therefore statute-barred, and this Court lacks jurisdiction to entertain it.
 32. The upshot of the above is that the Preliminary Objection dated 10th May 2025 is upheld. I therefore order that the Plaintiff's suit dated 14th April, 2025 be struck out in its entirety for being time-barred under Section 7 of the [*Limitation of Actions Act*](#), Cap 22 Laws of Kenya.



33. In view of the fact that the dispute concerns ownership of land originally allocated to the Plaintiff by a public authority, and considering that the Plaintiff had been in continuous litigation since 2019 albeit in a court later found to lack jurisdiction, I direct that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 30TH DAY OF OCTOBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Ms. Nasabu for the Plaintiff

Mr. Kubia for the 1st and 2nd Defendants

Mr. Mackutwa for the 3rd Defendant

Mr. Mwandaje for the 4th Defendant

Philomena W. Court Assistant

