Kamau & another v Mjad Investments Limited & 3 others (Civil Appeal E106 of 2021) [2025] KECA 1824 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KECA 1824 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPEAL E106 OF 2021

P NYAMWEYA, KI LAIBUTA & GW NGENYE-MACHARIA, JJA

NOVEMBER 7, 2025

BETWEEN

MONICA WAMBUI KAMAU ..... 1ST APPELLANT

ZACHARIA NJENGA KAMAU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES KAMAU THIONG'O (DECEASED) .... 2ND APPELLANT

AND

MJAD INVESTMENTS LIMITED ..... 1ST RESPONDENT

AFRICA GAS & OIL LIMITED ..... 2ND RESPONDENT

GOLDEN SPARROW TRADING LIMITED ..... 3RD RESPONDENT

THE REGISTRAR OF TITLES ..... 4TH RESPONDENT

(Being an appeal from the ruling and order of the Environment and Land Court of Kenya at Mombasa (Yano, J.) delivered on 14th June 2021 in ELC Case No. 161 of 2013)

JUDGMENT

1. This appeal arises from the ruling and order of Yano, J. dated 14th June 2021 in Mombasa ELC Case No. 161 of 2013. The learned Judge allowed the Notice of Motion dated 30th October 2019 filed by the Registrar of Titles (the 4th respondent) and struck out the suit filed by Monica Wambui Kamau and Zacharia Njenga Kamau (the appellants) for being an abuse of the court process and for contravening Sections 7 and 9 of the *Limitation of Actions Act*.

2. As pleaded by the appellants in their plaint dated 20th June 2013 and subsequently amended on 22nd May 2017, James Kamau Thiong'o, their deceased father, was the bona fide registered proprietor of Plot No. 755/MN (the suit land). It was their case that the 1st respondent, in collusion with officials in the lands office, fraudulently obtained title to plot No. MN/VI/4737; that, in the alternative, the

1st respondent fraudulently subdivided the suit land and, as a result of amalgamation of parcel Nos. MNb/VI/515, MN/VI/673, MN/VI/1674/MN/VI/1798, MN/VI/3690, MN/VI/4737 and MN/VI/4810 (the subdivided portions), a new parcel of land known as MN/VI/4838 which is currently registered in the name of Africa Gas and Oil Company Limited (the 3rd respondent) was created.

3. The appellants contended that one of the amalgamated plots, being Parcel Number MN/VI/4737, which was registered in the names of Golden Sparrow Trading Company Limited (the 1st respondent), Mjad Investments Limited (the 2nd respondent) and the 3rd respondent, had partially encroached onto the suit land; and that the purported amalgamation was procured through fraud and/or collusion between the respondents. The 1st, 2nd, 3rd and 4th respondents' fraudulent and illegal acts were particularised as:

> " a) The Respondents were fully aware of the deceased's ownership to Plot No. 755/VI/MN and its possession of the suit property.
>
> b. The Respondents were fully aware of the deceased estate were and remains in exclusive possession of the suit property.
>
> b. The deceased's estate had never surrendered the land to the 1st, 2nd and 3rd Respondents to make it available for consolidation and/or further alienation to give rise to Plot No. MN/VI/4737.
>
> b. Procuring a title deed to the 1st, 2nd and 3rd Respondents knowing of the existence of Plot Number 755/VI/MN.
>
> b. Allowing the encroachment into Plot Number 755/VI/MN by Plot Number MN/VI/4737 and subsequently MN/VI/4838.
>
> b. Plot Number 755/VI/MN was and is not free land capable of being legitimately disposed to the 1st, 2nd and 3rd Respondents (or part of it) or any other person by the 2nd and 4th Respondents since the Deceased's estate has never surrendered title to the said land.
>
> b. As a result of the foregoing, the Appellants aver that the 1st Respondent's title Plot No. MN/VI/4737 and subsequently Parcel Number MN/VI/4838 is illegal void and does not counter any proprietary interest on the said 1st Respondent and in particular to the current registered owner of the amalgamated parcels of land to the extent that it encroaches upon Plot No. 755/VI/MN."

4. The appellants prayed for among other reliefs,: a permanent injunction restraining the 1st respondent by itself, agents, servants and/or employees from dispossessing or

> encroaching on all that property known as Plot No. 755/VI/MN; a declaration that Plot No. MN/VI/4737 encroaches upon Plot No. 755/VI/MN; an order that the 2nd and 4th respondents do rectify the boundaries of Plot No. MN/VI/4737 so as to effectively restore the appellants' title and interest in the suit land; vacant possession of the suit land; and costs and interests at court rates.

5. The 1st, 2nd and 4th respondents filed statements of defence dated 14th April 2015, 18th February 2015 and 28th October 2014 respectively. That of the 4th respondent was later amended on 23rd May 2018.

The 3rd respondent, which was joined in the suit by the amended plaint did not file a defence, although it participated in subsequent pleadings and proceedings alongside the 1st and 2nd respondents.

6. The common thread running through the respective defences of the 1st and 2nd respondents was that the subdivided portion referred to as MN/VI/4737 was initially referenced as No. 90750/IX/ UNS Industrial Plot-Miritini, which was acquired pursuant to the principle of eminent domain; that the 1st respondent had an allotment letter to Plot No. MN/VI/4737 for which it made a total payment of Kshs.1,260,840; and that the survey map and sheet for the year 1995 indicated delineation of Plot No. MN/VI/4737 before it was allotted to it (the 1st respondent).

7. On the part of the 4th respondent, he averred that there was a Gazette Notice No. 737 of 12th March 1976 that advertised the intention to compulsorily acquire the suit land; that, on 20th April 1976, an inquiry was conducted with respect to the nature and extent of the claims payable pursuant to the compulsory acquisition; and that the deceased was paid compensation to the value of the suit land.

8. Before the suit could proceed for hearing, the 4th respondent filed a Preliminary Objection dated 11th October 2019 praying that the suit be struck out for being time barred in contravention of Sections 4, 7, 8 and 9 of the *limitation of Actions Act*.

9. Notably though is that the same issue was raised in the Notice of Motion dated 30th October 2019 the subject of the impugned ruling, and which sought orders to strike out the suit for being an abuse of the court process, or that it be dismissed for contravening the provisions of Sections 7 and 9 of the *Limitation of Actions Act*.

10. The affidavit in support of the application of even date was sworn by Samuel K. Mwangi, the then Land Registrar Mombasa. He deposed that the deceased's suit land was compulsorily acquired vide Gazette Notice No. 737 dated 12th March 1976; that, by a letter dated 16th February 2017, the Chairman of the National Land Commission confirmed that the deceased was paid a sum of Kshs.100,690.70 in two instalments of Kshs.93, 555.70 directly to National Bank of Kenya to offset outstanding loan that the deceased owed the bank, and Kshs.17,135 directly to the deceased; that the Commissioner of Lands further issued a notice dated 6th February 1979 to the deceased on the intention to take possession of the suit land; that there was no objection to the acquisition; and that, upon completion of the compulsory acquisition on 12th March 1976 and the taking over of the suit land, the title to the deceased was automatically extinguished.

11. It was also deposed that the suit filed by the appellants for recovery of land, and the same having been brought after 12 years, that is 40 years down the line since the cause of action arose, contravened Section 7 as read with Section 9 (1) of the *Limitation of Actions Act*; and that it should be dismissed for being statute barred.

12. The appellants opposed the application and the Preliminary Objection vide a replying affidavit of Vivianne Wachanga, an advocate in the law firm having the conduct of the matter on behalf of the appellants, sworn on 20th November 2019 and a supplementary affidavit of Joseph Nyingi Kamau, one of the administrators of the deceased's estate, sworn on 13th January 2020. Both deponents deposed to the fact that the appellants raised a complaint on the alleged encroachment of the deceased's suit land and that, by a report dated 3rd December 2015, the National Land Commission confirmed the alleged encroachment; and that the allegations that the deceased's land was compulsorily acquired by the Government was untrue since it was registered in the 3rd respondent's name for private as opposed to public use.

13. It was further deposed that the dispute partially related to encroachment of the boundary, but that it was not in respect of recovery of the deceased's land; that the encroachment of the suit land was noted in the year 2011, and that the suit was filed in 2013; that, as such, the suit was not statute barred since the encroachment persisted as at the date of filing the suit; that it was true that an enquiry was conducted with respect to land that was proposed to be acquired by the government; that the suit land was never compulsorily acquired by the government; and that it was not true that the 4th respondent had produced evidence to prove that the deceased had been compensated as a result of the compulsory acquisition thereof.

14. In a ruling dated 14th June 2021, the learned Judge held that, from the material placed before him, it was proved that the government compulsorily acquired the suit land vide Gazette Notice Nos. 737 and 738 of 12th March 1976; that there was no evidence that there was cancellation of the compulsory acquisition; that there was evidence that the deceased was compensated upon the acquisition, and that he vacated the suit land; that, consequently, the government of Kenya was the owner of the suit land since 1977; that , for this reason, the appellants' claim over the title was extinguished; and that the suit was an abuse of the court process.

15. As to whether the suit was statute barred, the learned Judge held that the process of acquiring the suit property was completed in the year 1977 without being challenged; that, the suit having been filed on 2nd August 2013, was more than 36 years from the time the suit land was compulsorily acquired, more than 21 years after the demise of the deceased, and more than 13 years after the grant of letters of administration in respect of the deceased's estate were obtained; that the suit was therefore statute barred contrary to the provisions of Sections 7 and 9 (1) and (2) of the *Limitation of Actions Act*; and that time started running between the years 1976 to 1977 and lapsed in 1989 after 12 years. The 4th respondent's Motion dated 30th October 2019 was accordingly allowed and the suit struck out with costs to the respondents.

16. Aggrieved, the appellants filed this appeal. In their undated Memorandum of Appeal, they raised 10 grounds of appeal, which we have summarised to the following four (4) grounds, namely that:

    i. the learned Judge erred in law and in fact by holding that the government compulsorily acquired all that property known as MN/VI/755 vide Kenya Gazette Notice Nos. 737 and 738 of 12th March 1976, yet this was a disputed fact which should have been ventilated in a full hearing;

    ii. the learned Judge erred in law and fact by holding that James Kamau Thiong'o was compensated by the government for the compulsory acquisition of MN/VI/755 when this was clearly a disputed fact that called for ventilation in a full hearing;

    iii. the learned Judge erred in law and in fact by failing to consider and apply the principles for determination of an application for striking out pleadings under Order 2 Rule 5 of the Civil Procedure Rules; and

    iv. the learned Judge erred in law and in fact by admitting into evidence contested facts and upholding a false proposition that the Gazette Notice No. 737 of 12th March 1976, ipso facto, concluded the process of compulsory acquisition of Plot No. MN/VI/755 by the Government of Kenya.

17. The appellants urged that we allow the appeal; that the ruling dated 14th June 2021 and the subsequent orders made in ELC No. 161 of 2013 be set aside and the appellants' amended plaint therein be reinstated; that, in place of the ruling and orders of 14th June 2021, there be substituted an order

dismissing the application dated 30th October 2019 with costs; and that the costs of this appeal be awarded to the appellants.

18. We heard this appeal on 9th April 2025. Learned counsel Mr. Wameyo appeared for the appellants, learned counsel Mr. Ken Nyaundi appeared for the 1st, 2nd and 3rd respondents while learned counsel Mr. Kemei appeared for the 4th respondent. Each counsel highlighted their respective written submissions. Those of the appellants are dated 4th April 2025; those of the 1st, 2nd and 3rd respondents on 8th April 2025; and those of the 4th respondent on 7th April 2025.

19. The appellants contended that the learned Judge understood the suit to be challenging the compulsory acquisition of the suit land; that this was an error on the part of the trial court as per the amended plaint dated 22nd May 2017, which was the primary pleading; that, instead, the suit was challenging the acquisition of Plot No. MN/VI/4737, which was allegedly hived off from the suit land and later amalgamated with 7 other plots to create plot No. MN/IV/4838; that this process was as a result of fraudulent activities of the respondents; that the fraudulent activities were committed in the years 2008 by the acquisition of plot No. MN/IV/4737, and in 2011 in respect of the creation of plot No. MN/IV/4838; that it was the 4th respondent who raised the issue of the alleged compulsory acquisition of the suit land; that, therefore, the trial court, in making its decision, focussed on the 4th respondent's defence as opposed to the appellants' claim as pleaded; and that, in any event, the 4th respondent did not file a counterclaim to plead that the suit land had been compulsorily acquired by the Government.

20. As regards the question as to whether the suit was properly struck out on the ground that it was time-barred, it was submitted that the learned Judge misapplied the provisions of Sections 7 and 9(1) and (2) of the *Limitation of Actions Act* in computing the 12-year period within which the suit ought to have been filed to be the time when the suit land was allegedly compulsorily acquired; that, instead, time started running in the years 2008 and 2011 when plot Nos. 4737 and 4838 were amalgamated and created respectively; and that, the suit having been filed in 2013, it meant that it was not time barred for want of compliance with Sections 7 and 9 of the *Limitation of Actions Act*.

21. The appellants further contended that, as at 30th October 2019 when the application the subject of the impugned ruling was filed, the suit land was still in the name of the deceased; that at the time, the alleged compulsory acquisition was still contested; that this was demonstrated by the fact that Gazette Notice No. 737 of 12th March 1976 was a notice of intention to acquire the suit land but not of acquisition; that, therefore, the process by which the suit land ought to have been acquired was not followed; that, furthermore, no award was made to the deceased pursuant to Section 10(1) of the Land Acquisition Act, or filed with the Commissioner of Land as per Section 10(2), or even served upon the deceased as per Section 11 and 33 of the Act; that, in any case, the documents exhibited as proof that the deceased had been compensated were not signed by him or the author; that there was no evidence that the deceased vacated the suit land after the alleged compulsory acquisition as required; that, therefore, there was an error on the part of the trial court in determining contested issues at an interlocutory stage under Order 2 rule 15 of the Civil Procedure Rules instead of subjecting them to a full hearing.

22. Further, the appellants submitted that the learned Judge, in striking out the suit, failed to consider the principles for striking out a suit under Order 2 rule 15(a), (b) and (c) of the *Civil Procedure Act*, but instead applied Order 2 rule 15(d), which required the 4th respondent to demonstrate how the suit was otherwise an abuse of the court process as opposed to: not disclosing a reasonable cause of action; being frivolous and vexatious; and being likely to prejudice, embarrass or delay the fair trial of the action; and that rule 15(a), (b) (c) of Order 2 not having been invoked, the learned Judge had no business applying it.

23. The appellants urged that the trial court ought to have allowed the issues to be ventilated in the main hearing for the parties to have their day in court; and that the striking out of a suit being an exercise of the court's discretion, it ought to be exercised only in the clearest of the cases and, even then, very sparingly. The case of DT Dobie & Co. (K) Ltd vs. Muchina (1982) (KLR) 1 was cited where Madan, JA. held that no suit ought to be summarily dismissed unless it appears hopeless, but which situation does not obtain in the instant case; and Co-operative Merchant Bank Limited vs. George Fredrick Wekesa - Civil Appeal No. 54 of 1999 (unreported), which was quoted with approval in the case of Simon Kirima Muraguri & another vs. Equity Bank Kenya Limited & another (2012) eKLR for the proposition that striking out of pleadings is a draconian act, which may only be resorted to in plain cases; and that failing to give the appellants the opportunity to ventilate their case was tantamount to denial of their right to a fair hearing.

24. In the end, and in view of the foregoing, the appellants submitted that the learned Judge reached a wrong finding, and that we should accordingly allow the appeal as prayed.

25. On behalf of the 1st to 3rd respondents, it was submitted that this appeal is an attempt to breathe life into an interest that was extinguished by virtual of the operation of the *Limitation of Actions Act*; that the cause of action arose on 3rd March 1976 when the government issued a notice for compulsory acquisition of the suit land, and that, subsequently, the process of compulsory acquisition was completed; and that the award was paid to National Bank of Kenya since the deceased owed the Bank money.

26. It was submitted that Plot No. 4737 was initially referenced as No. 90750 - 9 UNS Industrial Plot Miritini, but not as the suit land; that, upon the compulsory acquisition of the suit land, its title ceased to exist and the appellants' title to and rights therein were extinguished. Reliance was placed on the decision of Town Council of Awendo vs. Nelson O. Onyango & Others (2019) KESC 38 (KLR) where the Supreme Court referred to the decision of the Privy Council in Blanchfield & Others vs. Attorney General & Another (2002) 4 LRC 689 where it was held that, when land is compulsorily acquired, there is no automatic reversion in favour of the original owners or their descendants; this Court's case of Commissioner of Lands vs. Essaji Jiwaji & Public Trustee (1978) KECA 5 (KLR) for the holding that once property is compulsorily acquired by the government, the previous owner loses its ownership; and that, therefore, failure to surrender the title for cancellation did not negate the acquisition process.

27. The 1st to 3rd respondents contended that the 1st respondent was allocated the suit land 22 years after the acquisition; that the government was at liberty to allocate the suit land to anyone if it was not utilising it; that the 1st respondent paid Kshs.1,000,000 for the allocation; and that the appellants had no right of claim to the suit property since it was currently vested on the 3rd respondent, who holds title thereto.

28. The 1st to 3rd respondents conceded that striking out of pleadings should be done sparingly as was held by this Court in the case of Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) 2000 KECA 427 (KLR); that, however, if the pleadings do not disclose triable issues, the same amounts to an abuse of the court process for which pleadings can be struck out; and that, in this case, the suit was already statute barred. We were urged to be persuaded by the decisions of the superior court in Gulam Rasul Mirdat vs. Datma Enterprises Limited (2017) KEHC 805 (KLR) and Nyarangi vs. Musyoki Mogaka & Co. Advocates (2022) KEHC 345 (KLR) where, in both instances, the suits being time barred were termed to be an abuse of the court process and were struck out; and that, in this case, the appellants were merely chancing on regaining possession and title to the suit land which they lost by virtue of compulsory acquisition.

29. The 4th respondent's submissions were essentially similar to those of the 1st to 3rd respondents. For emphasis, it was submitted that the suit was statute barred since the course of action arose in the year 1976; that, the suit having been filed in 2013, it means that it was filed outside the 12-year period that a suit for recovery of land ought to be filed under Section 7 of the *Limitation of Actions Act*; that, pursuant to the superior court's decision in Bosire Ogero vs. Royal Media Services (2015) KEHC 4728 (KLR), the issue of limitation of time goes to the heart of jurisdiction of a court to entertain a suit; that, as such, the suit was lawfully struck out; that the appellants acknowledged in their supplementary affidavit at paragraph 4 of the existence of the Gazette Notices by which the government intended to acquire the suit land; that there was no evidence that the gazette notices were ever revoked; and that, therefore, they (the appellants) did not exercise due diligence at the time they obtained the grant of the letters of administration in respect of the deceased's estate in 2001.

30. It was submitted that, as at the time of the acquisition, the suit land was charged to National Bank of Kenya, and that Kshs.100,000, being part of the award, was paid to the Bank to offset the loan the deceased owed the Bank; that the appellants were trying to revive an interest that had been extinguished through a process of compulsory acquisition; that, for an action of trespass to be sustained, the appellants need to demonstrate that they have proprietary interest but that, in this instance, since none exists, the appellants have no cause of action.

31. In conclusion, we were urged to find that the appeal is unmeritorious and dismiss it.

32. We have considered the appeal, the submissions by all the parties and the law. This being a first appeal, we are mandated under rule 31(1) (a) of the Court of Appeal Rules, 2022 to re-assess, re-evaluate and re-analyze the record of appeal so as to reach an independent finding.

33. The 4th respondent's contention is that the appellants' suit was statutorily time barred since the cause of action arose in 1977 when the process of compulsory acquisition was completed. The learned Judge held in favour of the 4th respondent thereby finding that he had no jurisdiction to hear and determine the suit, the same having been filed out of time. He accordingly downed his tools by striking out the entire suit for being statute barred. In view of the foregoing, the sole issue that arises for determination is whether the suit was time barred and, if so, whether the learned Judge erred in striking it out for being filed outside the limitation period.

34. The appellants' argument in their pleadings is that their deceased father was the bona fide owner of the suit land; that Plot No. MN/VI/4737 was allegedly superimposed on their deceased father's suit land; and that Plot No. MN/VI/4737 was amalgamated with six other parcels of land to form Parcel No. MN/VI/4838 which title is currently held by the 1st and 3rd respondents. The appellants alleged that Parcel No. MN/VI/4838 was fraudulently obtained by the respondents and sought, among others, a declaration that the deed plan be rectified so as to delink the suit land from Parcel No. MN/VI/4838. We have understood that all that the appellants wanted was to recover their deceased father's parcel of land from the alleged illegal encroachment.

35. The evidence on record shows that, on 15th April 1969, the suit land then known as parcel No. MN/VI/755 was transferred from Jenabi Zina Walji to the deceased at a cost of Kshs.8,000. As a result, it was registered at the Land Titles Registry in Mombasa as CR 4151/17. Later, the suit land was compulsorily acquired by the government.

36. The Land Acquisition Act, Cap 295, we add, was still in force as at the time when the suit land was compulsorily acquired by the government. The Act provided an elaborate procedure that the government required to follow when compulsorily acquiring land. Section 6 (1) provides that, when

the Minister of Lands was satisfied that land was required for public use, he may, in writing direct the Commissioner to acquire the land compulsorily. It reads:

1. Where the Minister is satisfied that any land is required for the purposes of a public body, and that-

    a. the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

    b. the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land, and so certifies in writing to the Commissioner, he may in writing direct the Commissioner to acquire the land compulsorily under this Part.

37. On the other hand, section 6(2) provides:

> On receiving a direction under subsection (1), the Commissioner shall cause a notice that the Government intends to acquire the land to be published in the Gazette and shall serve a copy of the notice on every person who appears to him to be interested in the land.

38. Further, Sections 8 and 9 of the Act provides for the elaborate procedure to be followed when an award of compensation to the affected parties is to be made as follows:

    8. Where land is acquired compulsorily under this Part, full compensation shall be paid promptly to all persons interested in the land.

    9. (1)The Commissioner shall appoint a date, not earlier than thirty days and not later than twelve months after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land, and shall-

        a. cause notice of the inquiry to be published in the Gazette at least fifteen days before the inquiry; and

        b. serve a copy of the notice on every person who appears to him to be interested or who claims to be interested in the land.

    2. The notice of inquiry shall call upon the persons interested in the land to deliver to the Commissioner, not later than the date of the inquiry, a written claim to compensation.

    3. On the date appointed under subsection (1), the Commissioner shall-

        a. make full inquiry into and determine who are the persons interested in the land;

        b. make full inquiry into the value of the land, and determine that value in accordance with the principles set out in the Schedule; and

        c. determine, in accordance with the principles set out in the Schedule, what compensation is payable to each of the persons whom he has determined to be interested in the land.

    4. The Commissioner may for sufficient cause postpone an inquiry or adjourn the hearing of an inquiry from time to time: Provided that a postponement or an adjournment under this subsection shall not extend the inquiry beyond twenty-four months from the date appointed under subsection (1) for the holding of the inquiry. (4A) Where an inquiry is not held within

the time prescribed under this section the Minister shall be deemed to have revoked his direction to acquire the land and section 23 shall mutatis mutandis apply.

5. For the purposes of an inquiry, the Commissioner shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to him of documents of title to the land.

6. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

39. In compliance with statute law, the Mombasa Land Office published Gazette No. 737 dated 12th March 1976, being a notice of intention to acquire land for industrial area, medium and low-cost housing and site and service scheme, and the suit land was listed as one of the parcels to be acquired. Further, the Mombasa Land Office published Gazette No. 738 also dated 12th March 1976 inviting persons whose land was being compulsorily acquired to attend a meeting to discuss their compensation.

40. After making the necessary inquiries, a cheque of Kshs.7,263,011 was drawn to the Commissioner for Lands to facilitate compensation to all persons whose land had been compulsorily acquired. As per the schedule of the persons who were to be compensated attached to the cheque, the deceased was listed as number 20. It showed that he was to be compensated to the tune of Kshs.93,553.70 and a further Kshs.17,135, thus making a total compensation of Kshs.110,688.70.

41. The Certificate of Search dated 22nd June 2016 confirmed that there was a charge dated 1st August 1973 registered against the suit land in favour of National Bank of Kenya to secure Kshs.100,000. Mr. Samuel Mwangi, the then Land Registrar Mombasa deposed in his affidavit in support of the application dated 30th October 2019 that Kshs.93,553.70 was paid directly to the National Bank of Kenya. However, there is no evidence to show that the money was paid to the Bank specifically to offset the outstanding loan owed by the deceased to the Bank. Be that as it may, we cannot entertain doubt that the money was actually paid to offset the said loan. If the loan was still outstanding as the appellants would want us to believe, we are not persuaded that National Bank of Kenya would idly sit for over 20 years without making any attempt to exercise its statutory power of sale to recover the outstanding loan. To our mind, the Government would, in ordinary cases, be bound to discharge any liabilities and charges attaching to compulsorily acquired land. Therefore, learned counsel Mr. Wameyo's argument that there was no evidence that the compensation award was completed, cannot stand.

42. The foregoing notwithstanding, we are satisfied that the 4th respondent demonstrated that, by Gazette Nos. 737 and 738 both dated 12th March 1976, the government compulsorily acquired the suit land, and hence, the deceased's interest in it was extinguished. The deceased ultimately ceased to have any proprietary interest in the suit land. It follows that any subsequent dealings with the suit land in any form, either

through subdivision or allocation to other persons by the government, would be of no concern to the deceased or his successors. The assertion by the appellants that the suit land was encroached upon by another parcel of land cannot hold since they did not state when the alleged encroachment took place. In any case, as we have observed, the deceased's interest and, by extension, the appellants' interest in the land was extinguished the moment the government compulsorily acquired the land.

43. The appellants' justification for filing the suit is the report by the National Land Commission in a letter dated 3rd December 2015, which recommended that a survey be done to determine the extent to which Plot No. MN/VI/4737 had encroached onto the suit land. A reading of the report shows

that it was as a result of a complaint from the Mombasa County Government for the National Land Commission to make an inquiry as to the basis on which the subdivided properties were allocated to the respective owners.

44. The deceased's suit parcel in question was only mentioned at the tail end of the proceedings, and perhaps the Committee of Inquiry of the National Land Commission was unaware of the fact that the suit parcel had already been compulsorily acquired by the Government. This is coupled by the fact that the original title was never cancelled and the deed rectified to reflect the new changes. That notwithstanding, and as submitted by the 1st to 3rd respondents, the fact that the original title was not cancelled does not negate the compulsory acquisition.

45. Section 7 of the *Limitation of Actions Act* 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."

46. The process of compulsorily acquiring the suit parcel having been completed in 1976, any claim or complaint in relation to the land ought to have been brought in court on or before the year 1989 when 12 years lapsed. The appellants having filed the suit in the year 2013 means that it was statute barred and could not be sustained by the trial court.

47. The issue of a suit being statute barred is a jurisdictional issue. Jurisdiction is defined as "the official power to make legal decisions and judgments" (https"//www.merriam- webster.com), and by the Black's Law Dictionary, 9th edition as "court's authority to entertain, hear, and determine a dispute before it."

48. This Court in the case of Phoenix of E. A. Assurance Company Limited vs. S. M. Thiga t/a Newspaper Service [2019] eKLR, explained the meaning of 'jurisdiction' as follows:

> " In common English parlance, 'Jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio, and any determination made by such court will be amenable to being set aside ex debito justitiae."

49. It is trite law as was held by the Supreme Court in Samuel Kamau Macharia vs. KCB & 2 Others [2012] eKLR that:

> "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"

50. In the locus classicus case of Owners of the Motor Vessel 'Lillian S' vs. Caltex Oil (Kenya) Ltd. (1989) eKLR, this Court observed thus:

> " 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

> .... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

51. It follows that the moment that the learned Judge observed that he had no jurisdiction to hear and determine the suit, the same having been filed outside the statutory limitation period, he had no choice but to down his tools. In effect, he was divested of the power to move one more step with the suit. Had he proceeded to hear the suit on its merit, he would have conferred upon himself jurisdiction which he did not have. We cannot therefore fault the good Judge for striking out the suit as that was the right thing to do.

52. In the end, we find and hold that this appeal is devoid of merit and is hereby dismissed with costs to the respondents. We accordingly uphold the ruling of the learned Judge (Yano, J.) dated and delivered on 14th June 2021.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF NOVEMBER, 2025.

P. NYAMWEYA

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JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.

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JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR