



Murgor (Suing as the administrator of the Estate of the Late Charles Chemimo Kimurgor) v Ridhisidhi Apartments Limited & 4 others (Civil Suit E003 of 2024) [2025] KEELC 7851 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7851 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT E003 OF 2024
JO OLOLA, J
NOVEMBER 13, 2025

BETWEEN

MATILDA CHEMELI MURGOR (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE CHARLES CHEMIMO KIMURGOR) PLAINTIFF

AND

RIDHISIDHI APARTMENTS LIMITED 1ST DEFENDANT
SCRAPTOF PROPERTIES LIMITED 2ND DEFENDANT
SALIM S MOHAMED 3RD DEFENDANT
LAND REGISTRAR, MOMBASA 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. By a Notice of Motion dated 17th February 2025, Ridhisidhi Apartments Limited and Scraptof Properties Limited (the 1st and 2nd Defendants/Applicants) pray for an order that the court be pleased to strike out the suit in its entirety for want of jurisdiction on account that the statutory limitation period in respect of the Plaintiff's cause of action has lapsed and that the Plaintiff lacks the requisite locus standi to bring this suit on behalf of the Estate of Charles Kemimoi Kimurgor.
2. The application is supported by an Affidavit sworn on 17th February 2025 by Chabilal Mulji Patel, a Director of both the 1st and 2nd Defendants and is premised on the grounds that:
 - i. The Plaintiff is a Co-Administrator of the Estate of the Deceased yet she has instituted the suit singly and has not provided any evidence that her Co-Administrator has delegated responsibility to her to bring this suit on behalf of the estate.



- ii. Even if the allegations in the suit were true, the statutory limitation period for the cause of action has lapsed and the Plaintiff cannot rely on the statutory extension given any alleged fraud could have been discovered with reasonable diligence, both on the part of the deceased and on the Plaintiff's part;
 - iii. The 1st and 2nd Defendants raised these points of law through a Preliminary Objection dated 6th January 2025 but upon further consideration of the facts appreciated that it would be necessary to adduce some factual evidence to substitute the assertion that the suit is time-barred; and
 - iv. The conservatory orders issued by this Honorable Court on 15th October 2024 are still in force preventing the 1st Defendant from being able to freely deal with its property and it is therefore in the interest of justice that the orders sought herein be granted.
3. Matilda Chemeli Murogr (the Plaintiff/Respondent) is opposed to the application. In her Grounds of Opposition dated 24th March 2025, the Respondent asserts:
 - a. That the Applicants have not established substantive evidence to warrant the grant of the orders sought under Section 7 and 9(3) of *Limitation of Actions Act*;
 - b. That the Applicants' application does not disclose any peculiar circumstances to warrant grant of orders sought and the same is an abuse of the Court process;
 - c. That the Applicants' application offends the provisions of Section 16 of the *Limitation of Actions Act*;
 - d. That the Applicants' application is fatally defective and does not conform to the provisions of Section 26 (c) of the *Limitation of Actions Act* on the period of Limitation does not begin to run until the Plaintiff has discovered the fraud and factoring in that the fraud on the deceased's estate was discovered on or around the year 2022 (sic);
 - e. That the Applicants' application offends the provisions of Section 82 (a) of the *Law of Succession Act* as the Administrator has the locus standi to institute the suit on behalf of the deceased's Estate the cause of action having arisen upon discovery of the fraud on part of the Defendants by virtue of Section 26 (c) of the *Limitation of Actions Act*;
 - f. That the Applicants' application is defective as there is no dispute between the Co-Administrators and that the other administrator has not objected to instituting and filing of this present suit on behalf of the Estate as it was held in John Wacira Wambugu Case 2016 eKLR (sic);
 - g. That the Applicants' application offends the provisions of Section 4 (3) of the *Environment and Land Court Act*; and
 - h. That the Applicants' application is a waste of judicial time aimed to delay the Plaintiff's suit, (is) unmerited and ought to be dismissed with costs.
 4. I have carefully perused and considered both the application as well as the Grounds of Opposition thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
 5. By their application before the court, the 1st and 2nd Defendants have urged the court to strike out this suit in its entirety for want of jurisdiction. It is the Defendant's case that the Plaintiff lacks the requisite locus standi to institute the suit and that the cause of action herein is statutorily time-barred.



6. As was stated in the case of *Daykio Plantations Limited –vs- National Bank of Kenya Limited & 2 Others* (2019) eKLR:

“... locus standi is the right to appear and be heard in Court or other proceedings and literally, it means ‘a place of standing’. Therefore, if a party is found to have no locus standi, then it means he/she cannot be heard even on whether or not he has a case worth listening to. It is further evident that if this Court was to find that the Applicant has no locus standi, then the Applicant cannot be heard and that point alone may dispose of the suit.”

7. Similarly, in the case of *Julian Adoyo Ongunga & Another -vs- Francis Kiberenge Bendera* (2016) eKLR, the Court stated as follows:

“Further the issue of locus standi is so cardinal in a civil matter since it runs through the heart of the case. Simply put, a party without locus standi lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction, it all amounts to null and void proceedings”.

8. In support of their contention that the Plaintiff lacks standing to institute this suit, the 1st and 2nd Defendants cite the fact that the Estate of Charles Chemimoi Kimurgor is represented by two administrators, the same being the Plaintiff and her sister. It is their case that as a Co-Administrator, the Plaintiff cannot purport to bring this action on behalf of the estate without the approval of her sister who is the Co-Administrator.

9. In the absence of any denial from the sister and co-administrator that she had authorized the institution of the suit, I was not persuaded that one could argue that the Plaintiff lacked standing to file the suit. That the co-administrator of the estate is aware of the suit can be discerned from the same statement of Shadrack Kosgei which the Defendants cite as authority for the evidence that there are two administrators to the estate. That statement clearly states that he informed the two administrators of the estate of the existence of the suit property and that they jointly carried out investigations leading to the institution of this suit. I therefore find and hold that the Plaintiff had the requisite capacity to lodge this suit on behalf of the estate.

10. On the issue of the *Limitation of Actions Act*, it is the Defendant’s position that the suit is time-barred under Section 7 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya. The said Section provides thus:

“7. Actions to recover land

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.”

11. From the material placed before the court, it is apparent that the Plaintiff and her said sister were issued with an Amended Certificate of Confirmation of Grant on 22nd February 2022. While the Defendants assert that the deceased was dispossessed of the suit property in the year 2004 and that that is the moment the cause of action crystalized, the Plaintiff has asserted in the Grounds of Opposition that the estate only discovered in the year 2022 that the property had been part of the deceased estate and that the same had been fraudulently taken away from him.



12. Whereas it is not in dispute that actions to recover land after the end of twelve years are expressly barred under Section 7 of the *Limitation of Actions Act*, an exception is provided to that rule under Section 26 of the said Act which provides as follows:

“26. Extension of limitation period in case of fraud or mistake

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.”

13. In her Plaint dated 22nd February 2024, the Plaintiff avers at Paragraph 9 thereof as follows:

“9. Upon conducting investigations in 2022, the Plaintiff not only discovered that the property was in the name of the 3rd Defendant but also that there has been a protracted legal case over the ownership of the property in Mombasa ELC (Case) No. 184 of 2006 which was dismissed in 2015.”

14. In addition, the Plaintiff has pleaded and particularised the alleged fraud attributed to the 1st to 4th Defendants at paragraph 15 of the Plaint. Those are matters which in my view need further interrogation by way of evidence at the trial.

15. In the premises, I was not persuaded that there was merit in the Motion dated 17th February 2025. The same is hereby dismissed.

16. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 13TH DAY OF NOVEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Gathu Advocate for the Plaintiff/ Respondent

Mr. Sugon Advocate for the 1st and 2nd Defendants/Applicants

Mr. Kemei for the 4th and 5th Defendants

