

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 206 OF 2018

ANDERSON CHENGO KAPOMBE (As Administrator of the Estate of KAPOMBE

BAYA THOYA (DECEASED).....PLAINTIFF/APPLICANT

VERSUS

SAID SALIM BASALIM (As Administrator of the Estate of SALIM

BASALIM (DECEASED).....DEFENDANT/RESPONDENT

RULING

1. By this Notice of Motion application dated 2nd November 2018, the Plaintiff prays for leave to file a suit out of time. In addition he prays that the Court be pleased to order that the Plaint annexed to the application be deemed as duly filed.

2. The application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds:-

i) That Kapombe Baya Thoya (now deceased) was the registered proprietor of Plot No. Gede/Mijimboni/249;

ii) That the said Plot was sold by public auction in 1990 over a debt of Kshs 40,000/- and one Hassan Juma Athman (also since deceased) was declared the highest bidder;

iii) That after the auction both Kapombe Baya Thoya and Hassan Juma Athman agreed that Kapombe be allowed to refund a total of Kshs 50,000/- to Hassan upon which Kapombe would be allowed to retain the land;

iv) That despite the refund of the money as agreed, the said Hassan went ahead to sell the land to the Intended Defendant herein;

v) That the Plaintiff intends to file a suit out of time seeking cancellation of the title deed in the name of the Intended Defendant.

3. The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand and on the other hand to protect a defendant after he had lost the evidence for his defence from being disturbed after a long lapse of time.

4. The transaction giving rise to the claim herein was apparently concluded in 1990. All three persons who were originally involved in the transaction are long dead. No explanation has been offered whatsoever in the application before me why no action was taken to bring up this suit for the past 28 years.

5. In the circumstances, I find no merit in the application before me. The same is dismissed with no order as to costs.

Dated, signed and delivered at Malindi this 9th day of April, 2019.

J.O. OLOLA

JUDGE