

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO. E001 OF 2025**

**MALINGI KATANA MARINGI (Suing for and on behalf of  
the estate of KATANA MALINGI MWAGONA) .....  
PLAINTIFF**

**VERSUS**

**1. EMMANUEL NDIMBA GANDE  
2. ELIAS MALINGI MWATSUMA  
3. MARTIN GANDE JACKSON  
4. NEWLIFE PRAYER CENTRE AND CHURCH .....  
DEFENDANTS**

**RULING**

1. The Plaintiff instituted this suit by way of a Plaint dated 17<sup>th</sup> January 2025 seeking *inter alia* a finding that the Plaintiff is the lawful owner of the lands identified as Plot No. Kilifi/Vyambani/624 and Plot No. Kilifi/Vyambani/625 (Original No. Kilifi/Vyambani/281) measuring approximately 16.62 HA, and that he be registered as such.
2. The Defendants entered appearance and filed preliminary objections which are the subject of the present ruling. The first is dated 6<sup>th</sup> February 2025, filed by the 1<sup>st</sup> -3<sup>rd</sup> Defendants, while the second is dated 28<sup>th</sup> March 2025, by the 4<sup>th</sup> Defendant. The grounds raised in the former were (i) *that the Plaintiff's suit is time barred under the provision of section 7 of the Limitation of Actions Act, Cap 22, (ii) that the suit offends section 26, 27 and 29 of the Land Adjudication Act, and (iii) that the entire suit is therefore fatally defective, incompetent, vexatious and otherwise gross abuse of the process of court therefore fit for being struck out with costs.*

3. The grounds in the 4<sup>th</sup> Defendant's objection were; *(i) that the suit is incompetent, bad in law, does not disclose any cause of action and is otherwise an abuse of the court process, (ii) that the suit against the 4<sup>th</sup> Defendant offends section 41 of the Societies Act Cap 108 as the 4<sup>th</sup> Defendant is a duly registered society under the Societies Act Cap 108 and therefore does not have the legal capacity to be sued, (iii) that the suit is time barred as the cause of action occurred on 28<sup>th</sup> January 2004 at the point when the decision by the Minister was issued which is more than the required 12 years provided for in section 7 of the Limitation of Actions Act Cap 22, (iv) that the suit offends section 27, 28 and 29 of the Land Adjudication Act Cap 284, as [at] the time the title for KILIFI/VYAMBANI/281 was processed, the adjudication register had already been declared final and the Chief Land Registrar did not place a restriction on the register as is required, (v) that there is non-joinder of the Chief Land Registrar whose actions, of registration of title with a determined appeal in place, are the basis of the suit, and (vi) that this suit is frivolous, vexatious and is an abuse of this Honourable Court's process.*
4. Parties canvassed the objections by way of written submissions.

**The 1<sup>st</sup> -3<sup>rd</sup> Defendants' submissions**

5. Counsel for the 1<sup>st</sup> -3<sup>rd</sup> defendants submitted that the Preliminary Objection met the test in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696* as it raised a pure point of law on limitation. He argued that the suit stemmed from a 2004 Minister's

decision and was filed outside the statutory timelines under the Land Adjudication Act and the Limitation of Actions Act. Citing *Bosire Ongero v Royal Media Services* (2015) eKLR, counsel submitted that limitation affected the Court's jurisdiction and, if upheld, the objection would dispose of the entire suit.

6. Counsel submitted that the suit was time-barred under Section 7 of the Limitation of Actions Act, which limits actions to recover land to 12 years from the date the right accrued. He argued that, by the Plaintiff's own pleadings, the right to the land arose from the Minister's decision delivered on 28<sup>th</sup> January 2004. Citing *Mbowa v East Mengo District Administration* [1972] EA 352, counsel asserted that time begins to run when a party can first successfully bring an action. He further relied on *Iga v Makerere University* [1972] EA, to submit that a plaint filed outside the limitation period is barred by law and the Court lacks jurisdiction to grant reliefs. As more than 20 years had elapsed, counsel contended that the Plaintiff slept on his rights and the Court could not entertain the suit.
7. Counsel further submitted that Sections 26, 27 and 29 of the Land Adjudication Act set clear timelines for determining disputes, lodging appeals and altering the adjudication register. He submitted that under Section 29, once an appeal is determined, the Land Adjudication Officer must alter the register within 60 days to reflect the decision. In this case, although the appeal was determined on 28<sup>th</sup> January 2004, the register was never amended, and neither the Plaintiff nor the Land Adjudication

Officer took any steps to enforce the decision. Counsel maintained that the Defendants acted in good faith as the land remained registered in their late father's name.

8. Counsel argued that liability lay either with the Land Adjudication Officer for failing to alter the register, or with the Plaintiff for failing to follow up on the award despite being aware of continued occupation. Invoking the equitable maxim that "*equity aids the vigilant, not the indolent,*" he argued that the Plaintiff slept on his rights, failed to seek alteration of the register, eviction or enforcement within the 12-year statutory limitation period, which had already lapsed. He thus submitted that granting relief in such circumstances would be unjust and contrary to equity. Counsel urged the court to uphold the preliminary objection.

#### **The 4<sup>th</sup> Defendant's submissions**

9. Counsel submitted that the Preliminary Objection raised pure points of law and therefore met the threshold in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696. He relied on *Delilah Ondari v Francis Ondieki Atandi* [2022] eKLR and *Koech v Siele & 18 Others* [2023] KEELC 861 (KLR), where courts reaffirmed that a preliminary objection must arise from the pleadings, be based on a pure point of law and, if successful, be capable of disposing of the suit.
10. On whether the plaint is time barred, counsel submitted that the suit was time-barred under Section 7 of the Limitation of Actions Act, which bars actions to recover land after twelve years from the date the right of

action accrued. He argued that the Plaintiff's cause of action, as seen from the pleadings, arose from the appeal decision delivered on 28<sup>th</sup> January 2004, which awarded the suit property to the late Katana Malingi Mwagona. From that point, he contended, all that remained was execution of the decision to effect registration. However, the late Katana Mwagona took no steps to enforce the award before his death in 2015, and the estate only moved the Court in 2025, more than 20 years later. Counsel maintained that any allegation of fraud related to events preceding the appeal was cured by the 2004 decision, and therefore the Plaint, being brought outside the statutory period, was statute-barred.

11. It was counsel's argument that the Plaint contravened Sections 26, 27, 28 and 29 of the Land Adjudication Act, which set strict timelines for objections and appeals. He submitted that the cancellation of Katana Malingi Mwagona's allocation occurred in 1994, yet the appeal was only lodged in 2004, well outside the 60-day period under Section 29. To counsel, this meant that the registration of Nganda Ndumba's interest followed due process and could not be termed fraudulent. Counsel further submitted that although the Minister heard the appeal and awarded the land to Katana Mwagona, it was his duty to enforce that decision by having the register altered, which he failed to do. Counsel contended that the Plaintiff waited over **21** years to act, contrary to statutory timelines, and thus could not now fault the Defendants or the process.

12. Counsel further submitted that the Chief Land Registrar was a necessary party, as the cause of action arose from the Registrar's actions in registering Nganda Ndumba. He argued that failure to join the Chief Land Registrar rendered the suit frivolous, vexatious and an abuse of the Court process. He urged the court to strike out the suit with costs.

**The Plaintiff's submissions**

13. On the issue of limitation, counsel argued that Section 7 of the Limitation of Actions Act does not apply to this case because the claim is based on fraud. He relied on the decision in Nyevu Luwali Mwawani & another v Thabit Swaleh & another (ELC No. 179 of 2018, Malindi), where the Court held that claims founded on fraud are exempt from statutory limitation so long as the claimant moves to court within a reasonable time after discovery of the fraud.

14. Counsel further submitted that Sections 26 - 29 of the Land Adjudication Act ought to have been interpreted in their favour, as Section 29 thereon marks the conclusion of all adjudication processes. It was argued that, upon determination of the appeal by the Minister, the adjudication register ought to have been amended to reflect the decision, and no further proceedings lay except on grounds of fraud. Counsel argued that the failure to amend the register did not confer any benefit upon the Defendants, nor did it validate a fraudulent acquisition.

15. Counsel added that the Land Adjudication Act did not permit a losing party to be registered as proprietor, and that Articles 40 and 64(a) of the

Constitution protected property rights only where lawfully acquired. He placed reliance on the case of *Dina Management Limited v County Government of Mombasa & Others*, SC Pet. No. 8 (E010) of 2021, where the Supreme Court held that Article 40(6) did not protect titles founded on illegality or fraud, even in favour of *bona fide* purchasers. On that basis, counsel asserted that the Defendants could not rely on Section 7 of the Limitation of Actions Act or the Land Adjudication Act to shield a fraudulent transaction, and urged that the preliminary objections were without merit.

16. On the objection based on non-joinder, counsel submitted that Order 1 Rule 9 of the Civil Procedure Rules of 2010 provides that non-joinder of parties should not defeat any suit. He argued that the Plaintiff had filed an amended plaint before close of pleadings as allowed under Order 2 Rule 13 as read with Order 8 Rule 1 of Civil Procedure Rules of 2010.

### **ANALYSIS AND DETERMINATION**

17. The first question the court needs to determine before delving into the merits or otherwise of the objections raise, is whether the grounds relied upon by the Defendants raise pure points of law which if demonstrated can dispose of the suit preliminarily. This is so because it is settled that preliminary objections are based on pure points of law. The Court of Appeal in **Interactive Gaming & Lotteries Limited v Ngatia & Associates Advocates [2025] KECA 1759 (KLR)** explained: -

“14. It is settled that preliminary objections are based on pure points of law, as confirmed by the Supreme Court of Kenya in the cases of Independent Electoral Boundaries Commission vs Jane Cheperenger & 2 others [supra) and Aviation & Allied Workers Union Kenya vs Kenya Airways Limited & 3 others [2015] eKLR, in which the following holding by Law J.A in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (supra) was cited with approval:

“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 has to be ascertained or if what is sought is the exercise of judicial discretion.”

15. To ascertain whether a point is pure law, the Supreme Court in Aviation & Allied Workers Union Kenya (supra) held that “the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record””

18. The Civil Procedure Rules are clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. Order 1 Rule 9 provides that *“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”*

19. This rule was affirmed by the Court of Appeal in William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others (2016) eKLR as follows:

“...Most critically Order 1 Rule 9 of the Civil Procedure Rules (2010) makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit.”

20. The rule stated above is clear, and I need not belabour the point. An objection based on non-joinder, insofar as it does not have the effect of defeating the suit, cannot constitute a preliminary objection and is

therefore disqualified. In the same breath, I disqualify the objection regarding the 4<sup>th</sup> Defendant's capacity to be sued, as the Plaintiff has since been amended and it is evident from the 4<sup>th</sup> Defendant's submissions that this ground has been abandoned.

21. Two common grounds of objection were raised by the Defendants, that the suit offends Sections 26, 27, 28 and 29 of the Land Adjudication Act and that the suit is time barred under the provisions of Section 7 of the Limitation of Actions Act.

22. The Defendants' objection under the Land Adjudication Act contends that the failure to amend the register in accordance with the Minister's 2004 decision was caused either by the Land Adjudication Officer or by the Plaintiff for allegedly sleeping on his rights. Sections 26 to 29 of the Land Adjudication Act provide for the settlement of disputes relating to land under adjudication or settlement schemes. With due respect to counsel, I find that this objection, as framed and argued, is misconceived, lacks coherence, and does not raise any pure point of law. It equally fails the test of what amounts to a preliminary objection. In any event, this Court would be required to delve into historical and factual matters spanning decades, including actions and omissions by the Land Adjudication Officer, the Land Registrar, the Plaintiff, and the Defendants. Such matters are inherently factual and cannot form the basis of a preliminary objection.

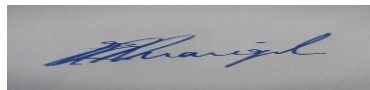
23. **Section 7** of the **Limitation of Actions Act** provides that

*“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.”*

24. The Defendants’ objection on one hand, was that the Plaintiff’s right accrued in 2004 when the Minister’s decision was entered in his favour, therefore the present suit was barred under Section 7 above. The Plaintiff on the other hand, contended that the suit is not time barred as it is based on fraud, particularly, fraudulent registration of the suit property in favour of the 1<sup>st</sup> -3<sup>rd</sup> Defendants’ father on 23<sup>rd</sup> November 2021 and subsequently transferring the same to themselves on 4<sup>th</sup> July 2022.
25. In determining when time began to run, the Court notes that while the Minister’s decision in 2004 created a right to have the adjudication register amended, the Plaintiff alleged that the Defendants were irregularly registered as owners only in 2021 and 2022. Where claims are founded on fraud or irregular registration, the limitation period runs from the date of discovery of the fraud. The Plaintiff’s claim, therefore, cannot be dismissed as time-barred at this stage, as determining the accrual of the right of action requires an examination of disputed facts, including the alleged fraudulent registration. This makes the objection unsuitable for determination as a preliminary point of law.
26. In the premises, I find all the objections raised by the Defendants unmerited. The outcome is that the notices of preliminary objections dated 6<sup>th</sup> February 2025 and 28<sup>th</sup> March 2025 are hereby dismissed.

27. The plaintiff shall comply with the rules within 30 days from today and the defendants shall also comply with the rules within 60 days from today. The suit shall be mentioned on 24/2/2026 to ascertain compliance. The main suit shall be heard on 17/3/2026.

**Dated, signed and delivered at Malindi on this 25<sup>th</sup> day of November, 2025.**

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE  
JUDGE, ELC, MALINDI.**