



**Okonjo (Suing as the Administrator of the Estate of Michael Okonjo - Deceased) & another v Agola & 6 others (Environment and Land Case E14 of 2022) [2025] KEELC 8134 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8134 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E14 OF 2022  
MAO ODENY, J  
NOVEMBER 25, 2025**

**BETWEEN**

**JAMES OKELLO OKONJO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MICHAEL OKONJO - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF  
ECHAFAN MWARIRI KAMAU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOSEPH ODINGO AGOLA ..... 1<sup>ST</sup> DEFENDANT  
NAKURU LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT  
KENYA COMMERCIAL BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT  
LAND CONTROL BOARD ..... 4<sup>TH</sup> DEFENDANT  
LEGACY AUCTIONEERING SERVICES ..... 5<sup>TH</sup> DEFENDANT  
PETER MANONO MECHA ..... 6<sup>TH</sup> DEFENDANT  
MARION WAIRIMU MECHA ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 3<sup>rd</sup> March 2022, the Plaintiffs herein sued the Defendants seeking the following orders:
  - a. Declaratory orders that the registration of the 1<sup>st</sup> defendant 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant. As the absolute owner of 33 acres Rongai/Lengenet Block 2/12 Mawe Farm Plot No 10024 was Fraudulent, thus be divested and vest in the 1<sup>st</sup> plaintiff's name acres and in the 2<sup>nd</sup> plaintiff name his 5 acre. (sic)



- b. The 6<sup>th</sup> Defendant be evicted from the suit land 10 acres portion and perpetual injunction order do issued restraining the defendant from encroaching on the same 10 acres of 1<sup>st</sup> plaintiff Mr. James Okello Okonjo And 2<sup>Nd</sup> Plaintiff Mr. Echfan Mwariri Kamau. (sic)
- c. Court costs and or with any other costs incidental there to be borne by the defendants. Or with any other order that court deems fit and just to grant. (sic)

### **Plaintiffs' Case**

2. PW1 James Okello Okonjo, a legal administrator of his father's estate, adopted his witness statement dated 3<sup>rd</sup> March 2022, and stated that he is the co-plaintiff of Echafan Mwariri Kamau, who was staying with his parents in Rongai, and sold to him 5 acres. PW1 testified that the 1<sup>st</sup> defendant, Mr. Joseph Agola approached their family and informed them that he wanted to buy the whole parcel of land whereby they sold to him 23 acres, but he took the whole parcel of land which was 33 acres. PW1 testified that his father died before he took the title deed of the suit land.
3. PW1 further testified that Mr. Agola approached him and a letter was written stating that he had paid Kshs. 305,000/= for 23 acres, of which they agreed with his Mother that he should be given. PW1 stated that he was to get the title deed for the 33 acres and subdivide to give the co-plaintiff 5 acres and Mr. Agola 23 acres.
4. According to PW1, he did not know how Mr. Agola got the title deed for the 33 acres. He also stated that Mr. Agola deposited the title deed with the bank, took a loan and never paid leading to the sale of the 33 acres. It was his testimony that the title deed was stolen and therefore agreed as a family to sue Mr. Agola.
5. PW1 produced a list of documents as Pex Nos. 1 to 8 and urged the court to enter judgment as prayed in the Plaint with costs. It was PW1's testimony that his father was a member of Mawe Farm which allocated him 33 acres. He testified that he filed a list of documents with eight documents, which he produced as Pex. No. 1 to 8. PW1 prayed that judgment be entered as prayed in the plaint.
6. Upon cross-examination by Mr. Mogeni, PW1 stated that he could not remember whether the Bank auctioned the property in 2002. He confirmed that the co-plaintiff Mr. Kamau filed a case Nakuru CMCC No. 246 of 2003 against him and Mr. Agola together with the Bank which was dismissed. PW1 informed the court that he filed this suit in 2022, after 20 years from the time the case was dismissed. He further confirmed that Mr. Mecha bought the land from the Bank in an auction and his family did not sell 100 shares to Mr. Agola. PW1 also stated that they did not take any action when Mr. Agola took the title and charged it with the Bank.
7. Upon re-examination by Mr. Simiyu, PW1 testified that he cannot remember when the property was sold by the Bank vide an auction.
8. PW2, Echafan Mwariri Kamau, adopted his witness statement dated 3<sup>rd</sup> March 2022, and testified that he knows John Okeko, whose mother Christabel Okongo sold to him 5 acres in 1986. He stated that he had built a house on the suit land but it was demolished during the clashes.
9. According to PW2, he sued Joseph Odingo Agola because he got a letter in 1985 from the Chief that he was on his land, but he had only bought 23 acres not the whole 33 acres. It was his evidence that Joseph Agola did not give him his 5 acres which he had bought from Christabel Okongo. He urged the court to allow the prayers in the plaint plus costs.



10. Upon cross-examination by Mr. Mogeni, PW2 stated that he filed a suit in 2003, against James Okello, Joseph Agola and the Bank and the case was dismissed. PW2 stated that he filed an appeal which was also dismissed and that the Bank sold the suit land vide an auction and he raised an objection at the Land Control Board but his objection was overruled and Mr. Mecha was allowed to get the consent to transfer. PW2 confirmed that he filed this case in 2022, after 22 years.

### **6<sup>th</sup> & 7<sup>th</sup> Defendants' Case**

11. DW1, Peter Manono Mecha, adopted his witness statement dated 26<sup>th</sup> January 2024, and testified that he is the 6<sup>th</sup> defendant and the registered owner of the suit land but he transferred it to his wife the 7<sup>th</sup> defendant. DW1 produced a list of documents dated 26<sup>th</sup> January, 2024, as Dexh No. 1 to 11 and stated that he bought the suit property in a public auction that was conducted in Rongai. He testified that he was the highest bidder and paid the deposit and the full purchase price. It was DW1's testimony that this suit is time barred and there were other matters in respect of the same claim, hence it is res judicata and cannot be reopened. DW1 urged the court to dismiss the suit with costs.
12. Upon cross-examination by Mr. Simiyu, DW1 stated that he purchased the property in a public auction in 2003, and got a title deed after completion of payment of Kshs 1.1 Million after the auction. DW1 further stated that Mr. Kamau went to court, sued the Bank, Agola and Okongo which cases were dismissed. He stated that the land was vacant when he took possession and started cultivating, and that people used to lease the land from the previous owners.

### **Plaintiff's Submissions**

13. Mr. Simiyu, counsel for the Plaintiffs filed submissions dated 22<sup>nd</sup> October, 2025, and reiterated the plaintiffs' evidence and submitted that the 1<sup>st</sup> Defendant covered up his wrong doings by taking a loan with the 2<sup>nd</sup> Defendant and had the title in question used as security, refused and/or defaulted to pay the loan only to have the subject property auctioned. Counsel asked the court to grant the orders sought.

### **6<sup>th</sup> And 7<sup>th</sup> Defendants' Submissions**

14. Mr. Chacha, counsel for the 6<sup>th</sup> and 7<sup>th</sup> Defendants filed submissions dated 21<sup>st</sup> October, 2025 and identified the following issues for determination:
  - a. Whether the instant suit is res judicata?
  - b. Whether the instant suit is time- barred?
  - c. Whether the Plaintiffs are entitled to the reliefs sought?
15. On the first issue, counsel submitted that the subject of this suit (RONGA/LENGENET BLOCK 2/12 MAWE FARM PLOT NO 10024) was also the subject of CMCC Case No 246 of 2004, where on 4<sup>th</sup> April, 2003, the court rendered a ruling stating the claim by the 2<sup>nd</sup> Plaintiff herein was time barred. Counsel submitted that the 2<sup>nd</sup> Plaintiff moved to the High Court vide appeal No 64 of 2003 which was dismissed with costs and the court stated that the suit property herein had already been rightfully disposed by the 3<sup>rd</sup> Defendant.
16. Counsel submitted that the 2<sup>nd</sup> Plaintiff later moved the Court of Appeal vide Application No 124 of 2006 seeking to file a Notice of Appeal out of time and the same was dismissed on 28<sup>th</sup> September, 2007. It was counsel's further submission that the suit is res judicata and should be dismissed with costs and relied on Section 7 of the *Civil Procedure Act* and the case of Mumira vs Attorney General (Constitutional Petition E007 of 2020) [2022] KEHC 271 (KLR)



17. On the second issue, counsel submitted that the instant suit having been filed in 2022, being twenty years after the 6<sup>th</sup> Defendant purchased the suit property is time barred and relied on Section 7 of the [Limitation of Actions Act](#).
18. On the third issue, counsel urged the court to dismiss the suit as the Plaintiffs have failed to prove their claim and relied on Article 40 of [the Constitution](#) of Kenya, Section 26 of the [Land Registration Act](#) and the cases of Dina Management Limited vs County Government of Mombasa & 5 others [SC Petition No 8 (E010) of 2021 and Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009 [2013] eKLR.

### **Analysis And Determination**

19. The issue for determination is whether the Plaintiffs' case is res judicata, time barred and whether the Plaintiffs are entitled to the orders sought in the Plaintiff.
20. It would be prudent to deal with both issues whether this suit is time barred, or res judicata, simultaneously, and if the court answers in the affirmative, then that would be the end of this case. The two issues were subject of the 6<sup>th</sup> and 7<sup>th</sup> Defendants preliminary Objection dated 4<sup>th</sup> July 2022, on the following grounds:
  - a. The claim is filed out of time contrary to the express provision of the [Limitation of Actions Act](#).
  - b. The Plaintiffs claim is Res Judicata Nakuru High Court Civil Appeal No. 64 of 2003.
  - c. The Plaintiffs claim is Res Judicata Nakuru Court of Appeal Civil Application No. 124 of 2006.
  - d. No cause of action has been made against the 6<sup>th</sup> and 7<sup>th</sup> Defendants.
  - e. The 6<sup>th</sup> Defendant is an innocent purchaser for value without Notice.
21. The court heard the Preliminary objection and rendered a ruling on 19<sup>th</sup> June 2023 and dismissed the same as it lacked merit. On the issue whether limitation of time can be raised through a preliminary objection, the court relied on the case of Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi [2019] eKLR held as follows:

“

- “ 13. The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The court should formulate limitation as one of the issues for determination and decide it on evidence adduced at the trial.

On this see the case of Oruta & Another vs. Nyamato [1998] KLR 590, where the court held that limitation of action:-

“...could only be queried at the trial but not by...a preliminary objection...The appellant could raise the objection at the trial and the trial judge would have to deal with the matter on the evidence to be adduced at the trial”

14. See also the case of Divecon Ltd vs Shirinkhanu S. Samani Civil Appeal No. 142 Of 1997, where the court quoted with approval the words of Gachuhi, J.A., the leading judge in the Oruta case (ibid) that:



“It will be up to the judge presiding at the trial to decide the issue of limitation as one of the issues but not as a preliminary point. The raising of the preliminary issue that would cause the suit for the plaintiff to be struck out is not encouraged by the Limitation of Actions Act...”

22. That was the reason why the Preliminary objection was dismissed as issues of limitation of time can only be determined at the trial of the main suit and not at a preliminary stage. It was not that the suit was not time barred.
23. The Plaintiffs admitted that they filed this suit on 3<sup>rd</sup> March 2022, which was 22 years after the suit land was sold vide a public auction to the 6<sup>th</sup> Defendant. The suit property was advertised for sale on 7<sup>th</sup> October 2002, and the 6<sup>th</sup> Defendant purchased the land on 15<sup>th</sup> October 2002, at an auction conducted by the 3<sup>rd</sup> and 5<sup>th</sup> Defendants. Further the Plaintiff claimed that he bought the suit land in 1986.
24. Section 7 of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya provides:

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.
25. Litigants must be alert, as equity does not aid the indolent, or equity aids the vigilant not the indolent, as courts will not help people who sleep on protecting their rights.
26. In the case of *Monarch Insurance Co. Ltd v Parbat Siyani Construction Co. Ltd* [2016] eKLR where the court adopted with approval the decision of Lord Denning in the case of *Letang v Cooper* [1994] 2 ALL ER 929 (CA) (at page 936) stated:

“The Act is a Limitation Act; it relates only to procedure.

It does not divest any person of rights recognized by law; it limits the period within which a person can obtain a remedy from the courts for infringement of them. The mischief against which all Limitation Acts are directed is delay in commencing legal proceedings; for delay may lead to injustice, particularly where the ascertainment of the relevant facts depends on oral testimony. This mischief, the only mischief against which the section is directed is the same in all actions in which damages are claimed in respect of personal injuries.”
27. Similarly, in the case of *Benjoh Amalgated Limited & another v Kenya Commercial Bank Limited* [2014] eKLR, the court held as follows:

“63. In dealing with laches, Halsbury’s Laws of England, 4<sup>th</sup> ed. Vol. 16(2) at 910 has this to say;

“A claimant in equity is bound to prosecute his claim without undue delay. This is in pursuance of the principle which has underlain the statutes of limitation equity aids the vigilant, not the indolent’ or ‘delay defeats equities. A Court of equity, refuses its aid to stale demands where the claimant has slept upon his right and acquiesced for a great length of time. He is then said to be barred by his unconscionable delay (laches’). (Emphasis ours)”
28. The Plaintiffs slept on their rights hence, their case is time barred. It cannot be resuscitated, as it has been dead for a long time. Litigation must end.



29. On the issue as to whether this case is res judicata, this was also an issue that had been raised in the preliminary objection and the court relied on the case of Henry Wanyama Khaemba Vs Standard Chartered Bank Ltd & Another (2014) eKLR where it held as follows:

“That re-statement of the limited scope of a Preliminary Objection brings me to the point where I hold that the Preliminary Objection by the 1st Defendant is not a true Preliminary Objection in the sense of the law. The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of the jurisdiction on preliminary objection. Court of laws have always had a well-founded quarrel with parties who resort to raising preliminary objections improperly”.

30. The court also relied on the case of George Kamau Kimani & 4 others v County Government of Trans-Nzoia & another [2014] eKLR, where it was held as follows:

“I have considered the points raised by the first defendant. All those points can be argued in the normal manner. They do not qualify to be raised as Preliminary Points. One cannot raise a ground of res judicata by way of preliminary objection. The best way to raise a ground of res judicata is by way of notice of motion where pleadings are annexed to enable the court to determine whether the current suit is res judicata. Professor Sifuna did not raise the issue of res judicata by way of notice of motion. Professor Sifuna only annexed a ruling in respect of a case which was struck out. This is not a proper way of raising the issue of res judicata. The other points raised in the preliminary objection are issues which require ascertainment of facts by way of evidence. They cannot be brought by way of preliminary objection.”

31. That is the reason the Preliminary objection was dismissed, to be taken at the hearing of the suit. This case has a checkered history. On res judicata, the Supreme Court in the case of Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others [2014] eKLR expressed itself as follows on the issue of res judicata:

“(317) The concept of res judicata operates to prevent causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....

[319] There are conditions to the application of the doctrine of res judicata:

- (i) the issue in the first suit must have been decided by a competent Court;
- (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and
- (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title Karia and Another v. The Attorney General and Others, [2005] 1 EA 83, 89. (Emphasis supplied)



32. It is on record that the suit land was also subject to CMCC No. 246 of 2004, Echafan Mwariri Kamau vs Jame Tobias Okonjo, Joseph Odingo Agola and Kenya Commercial Bank where the 2<sup>nd</sup> Plaintiff herein sought an injunction against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants herein restraining them from transferring the suit land and on 4<sup>th</sup> April the court rendered a ruling that the suit was time barred.
33. The 2<sup>nd</sup> Plaintiff further moved to the High Court vide Civil Appeal No. 64 of 2003, which was dismissed vide a judgment dated 30<sup>th</sup> September 2003. Similarly the 2<sup>nd</sup> Plaintiff moved to the Court of Appeal vide Application No. 124 of 2006 seeking leave to file a Notice of Appeal out of time but the same was dismissed on 28<sup>th</sup> September 2007.
34. I find that this suit is res judicata and the same is dismissed with costs to the 6<sup>th</sup> and 7<sup>th</sup> Defendants.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025.**

**M. A. ODENY**

**JUDGE**

