



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Murai & another (Both Suiing as Administrators of the Estate of the Mwangi Kamau alias Mwangi Kamau Hiuka) v Estate of Francis Gaaki Kagunda & 9 others (Environment and Land Case E017 of 2025) [2025] KEELC 8415 (KLR) (2 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8415 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E017 OF 2025
JM ONYANGO, J
DECEMBER 2, 2025

BETWEEN

MARGARET MUTHONI MURAI 1ST PLAINTIFF

REGINA WANJIKU MWAURA 2ND PLAINTIFF

**BOTH SUIING AS ADMINISTRATORS OF THE ESTATE OF THE MWANGI
KAMAU ALIAS MWANGI KAMAU HIUKA**

AND

ESTATE OF FRANCIS GAAKI KAGUNDA 1ST DEFENDANT

JANET NYAMBURA GATHERU 2ND DEFENDANT

PETER MWENDWA GITHUI 3RD DEFENDANT

ELIZABETH WAMBUI NDUNGU 4TH DEFENDANT

HARRISON MURAKARU GATHERU 5TH DEFENDANT

SUSAN WAITHIRA 6TH DEFENDANT

SAMUEL NDERITU 7TH DEFENDANT

**DIRECTORATE OF LAND ADJUDICATION AND SETTLEMENT 8TH
DEFENDANT**

THE HON THE ATTORNEY GENERAL 9TH DEFENDANT

THIKA LAND REGISTRY 10TH DEFENDANT



RULING

1. By a Notice of Motion dated 3rd June 2025 the 1st – 7th Defendants/ Applicants filed an application seeking to strike out the suit for being statute barred, the cause of action having arisen before 2002.
2. The application is based on the grounds set out on the face of the Notice of Motion which are amplified in the supporting affidavit of Harrison Murakaru Gatheru, the 7th Defendant, sworn on his own behalf and on behalf of the 1st – 7th defendants on 3rd June 2025.
3. In the said affidavit he depones that it is clear from the pleadings filed by the plaintiffs that the dispute herein commenced over 20 years ago in 2002. This is discernible from the correspondence dated 23rd March 1999 addressed to the Director Land Adjudication and Settlement by the District Land Adjudication Thika/Kiambu and Muranga in relation to the suit property confirming that the suit land is registered under the name of Francis Gaaki Kagunda (1st Defendant herein) and that the family of the plaintiffs resides thereon. The District Land Adjudication officer proposed that the suit property be sub-divided between the two families.
4. Furthermore, the Plaintiffs have annexed correspondence from FIDA Kenya dating back to February 2000 on behalf of the plaintiffs touching on the suit property. In the said correspondence, it is clear that that the Plaintiffs were aware that the suit property was registered in the name of the 1st Defendant and they wanted him stop harassing them.
5. It is the 7th Defendant's contention that the correspondence clearly show that the cause of action arose way before 2002 which is beyond the statutory period for land cases and that suit ought to be dismissed with costs.
6. The application was opposed by the Respondents through the Replying Affidavit of Margaret Muthoni Murai, the 1st Plaintiff sworn on 27th October 2025 sworn on her behalf and on behalf of the 2nd Plaintiff. In the said affidavit she depones that the Applicants' application is premised on a mischaracterization of the claim as merely one for recovery of land yet it also based on the discovery of fraud perpetrated by the Respondents.
7. She adds that the said acts of fraud were discovered in 2023 when she obtained a certified copy of the green cards and mutation forms from Thika Lands Office.
8. She depones that after discovering the fraud, she reported the matter to the Director of Criminal Investigations and investigations were on-going and therefore time should be computed from the time the fraud was discovered.
9. It is her further deposition that her sister-in-law who had earlier on been following up on the matter had sought the intervention of FIDA-Kenya but unfortunately, she died in 2005 before the matter was resolved and they lost track of the case. In the meantime, the 1st Defendant took advantage of the situation and fraudulently had the suit property registered in his name in 2006.
10. The Respondents contend that since the matter involves fraud which is a deeply contentious issue, the case cannot be determined at a preliminary stage and it ought to go for full trial so that it is heard on its merits.
11. The application was canvassed by way of written submissions and both parties filed their submissions which I have carefully considered in arriving at my decision.



Analysis and Determination

12. Having considered the pleadings, Notice of Motion, Replying Affidavit and rival submissions as well as the applicable law, the singular issue for determination is whether the suit herein ought to be struck out for being statute -barred.
13. Section 7 of the *Limitation of Actions Act* provides as follows:

“An action may not be brought by a person to recover land after the end of 12 yeas from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims”
14. Additionally, section 26 of the *Limitation of Actions Act* provides that:

“Where the cause of action for which a period of limitation is prescribed either

 - a. The action is based upon fraud of the defendant or his agent; or
 - b. The right of action is concealed by fraud of nay such person as aforesaid;
 - c. The action is for relief from the consequence of a mistake, the period of limitation does not begin to run until the plaintiff discovers the fraud or the mistake or could with reasonable diligence have discovered it.
15. The Plaintiff’s claim is that the Defendants have fraudulently and illegally acquired title to the suit property and that they have sub-divided the suit property into two properties known as Kiambu Gatunyaga/2427 and 2424 which they are offering for sale to innocent members of the public, thus depriving the plaintiffs of their family property.
16. It is clear from the Plaint that the plaintiffs were chased away from the suit property in 1999 and since then they have tried to seek the intervention of various offices to no avail.
17. This is discernible from the correspondence in the Plaintiff’s list of documents which include a letter dated 22nd March 1999 addressed to the Director of Land Adjudication and Settlement and the various letters written by FIDA Kenya between 2000 and 2002 on behalf of Lucy Ruguru.
18. Although it has been submitted by the Applicants that the cause of action arose in or around 2002 years ago which is outside the limitation of period of 12 years, the Respondents have argued that the cause of action arose in 2023 when the alleged fraud by the Applicants was discovered by the Respondents.
19. A perusal of the Plaint shows that the Plaintiffs’ claim is for recovery of land on the grounds that the 1st Defendant fraudulently acquired his title to the suit property. The particulars of fraud are set out in paragraph 27 of the Plaint.
20. In the case of *Doshi v Chemutut & 7 Others* the Civil Appeal E 020 of 2023 (2025)KECA 776 (KLR) the court discussed the importance of the date of discovery in determining when the cause of action begins especially when the case involves concealment of facts. The court held that time did not start to run until the Plaintiffs discovered the trespass and subsequent fencing of their land.
21. Similarly in the case of *Lureti Obara v Koipeitai* (2014) eKLR the court declined to strike out a suit that was filed outside the limitation period of 12 years on the grounds that the suit was for recovery of land based on fraud and therefore section 26 of the *Limitation of Actions Act* came into play and that the time when the fraud against the defendant was discovered was a matter to be determined at the trial.



22. The principle in the above-mentioned authorities still holds sway and where like in the present case the cause of action is based on recovery of land that was acquired fraudulently, time only begins to run when such fraud is discovered. It is therefore my finding that since the alleged fraud was discovered in 2023 and the suit was filed in 2025, the suit is not time barred.

23. The upshot is that the application lacks merit and it is hereby dismissed with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 2ND DAY OF DECEMBER 2025.

.....

J. M ONYANGO

JUDGE

In the Presence of:

1. Mr Mwatime for Mr Kamonjo for the Respondents
2. Mr Kanyi for the Applicant
3. Ms Aisha for Mr Motari for the 8th – 11th Respondent

Court Assistant: Hinga

