

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
MISC APPLICATION NO. E010 OF 2025

IN THE MATTER OF:

SECTION 27 AND 28 OF THE LIMITATION OF ACTIONS ACT (CAP 22
LAWS OF KENYA)

AND

ORDER 37 RULE 6 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF: A CLAIM FOR RECOVERY OF LAND AND
RECTIFICATION OF TITLE

BETWEEN:

ALEX KEVERENGE LUVANDA.....PLAINTIFF /APPLICANT

VERSUS

RAMATHAN SENAGI KEVERENGE.....DEFENDANT/RESPONDENT

RULING

The Chamber Summons application dated 30th June 2025 was filed on behalf of the applicant and expressed to be brought pursuant to the provisions of sections 26, 27 and 28 of the Limitation of Actions Act and Order 37 Rule 6 of the Civil Procedure Rules. The application seeks for orders that; -

1. the honourable court be pleased to grant the applicant leave to file a suit out of time for the recovery of land and cancellation of title arising from fraud.
2. the annexed plaint be deemed as duly filed upon payment of the requisite court fees.
3. the costs of the application be in the cause.

The application was supported by the averments in the Supporting Affidavit of the applicant sworn on 30th June 2025 and the annexures thereto.

The application was opposed vide the averments in the Replying Affidavit sworn by the respondent on 19th September 2025 and the annexures thereto.

The substantive relief sought is for leave to file suit out of time. Section 26 of the Limitation of Actions Act pursuant to which the application is brought provides for extension of limitation period in case of fraud or mistake that;

“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 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...”

Section 27 provides for extension of limitation period in case of ignorance of material facts in actions for negligence and section 28 provides for the procedure for leave of court under section 27.

Order 37 Rule 6 provides for the procedure for approaching court when seeking relief under section 27 of the Limitation of Actions Act. It provides that:

“Application under Section 27 of the Limitation of Actions Act made before filing a suit shall be made ex parte by Originating Summons supported by Affidavit.”

The grounds upon which the present application is brought are that the cause of action relates to land fraudulently registered in the name of the respondent in circumstances contrary to an agreed sub-division by family orders. That the applicant was unable to file the suit within time due to lack of financial means and being the sole breadwinner of the family, that the applicant has a meritorious claim and stands to suffer irreparable loss and injustice if the matter is not heard on its merits, that the delay is not inordinate and is fully explained in the Supporting Affidavit.

The Respondent’s case is that the suit land was given to his mother and the mother of the applicant and that that is why it is registered in the joint names of the applicant and the respondent. That the applicant was the only child of his mother who was to benefit from the estate of the deceased as the applicant’s mother and her other children belong to a different family at Kigama where the applicant’s mother was buried.

I have considered the application. The cause of action arose in the year 2005 when the suit land was registered in the joint names of the parties herein. The applicant was aware of the registration. If indeed the reason why the applicant could not seek redress was low income, the law has provided a recourse of filing suit as a pauper inter alia under Order 33 of the Civil Procedure Rules. The applicant did not pursue this cause.

The application was brought pursuant to the provisions of section 26, 27 and 28 of the Limitation of actions Act. Section 26 covers an applicant in cases where the

fraud or mistake is not discovered until some later date so that the time for the limitation period does not start to run until discovery of the fraud. There is no such allegation herein because according to the applicant, he was aware of the fraud but was prevented from filing suit by impecuniosity.s

I agree with the holding in Nyagah vs Nyaga & 2 others [2022] KEELC 3203 (KLR) where the Judge stated that

“My interpretation of Section 26 of the Act is that it does not grant the court jurisdiction to enlarge time. All that the section does is to automatically extend the prescribed limitation period by prescribing the point at which the cause of action is deemed to have accrued. For a claim founded on fraud or mistake, Section 26 provides that the limitation period [time] does not begin to run until the plaintiff discovers the fraud or mistake or is reasonably deemed to have discovered the fraud or mistake.”

Section 27 is specific on what causes of action in respect of which the court has jurisdiction to extend time as was held in the Court of Appeal decision in the case of Mary Osundwa v Nzoia Sugar Co. Ltd [2002] eKLR that:

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and claims in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly *Osiemo J* had no jurisdiction to extend time as he purported to do on 28/5/1991. That the order was by consent can be neither here nor there, the parties could not confer jurisdiction on the judge by consent.”

And in the case of *Oadi Odhiambo v Gateway Insurance Co. Ltd Civil Appeal No. 37 of 2013 eKLR* that:

“Under Section 27 (1) of the Limitation of Actions Act, time to file a suit can only be extended where the action is founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages accorded should be in respect of personal injury to the plaintiff as a result of the tort.”

I find that the reasons given for the delay are not only plausible. I further find that the application is not supported by law. The application lacks merit and is hereby dismissed. Costs to the Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA AND DELIVERED VIRTUALLY
THIS 11TH DAY OF DECEMBER, 2025.

**E. ASATI,
JUDGE.**

In the Presence of; -

Patricia- Court Assistant

Odek for the applicant

Defendant present in person.

