



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
MILIMANI LAW COURTS

ELCL E 213 OF 2024

AGNETA MUENI MUNGE'I.....PLAINTIFF/APPLICANT

VERSUS

HURLINGAM SQUATTERS' DEVELOPMENT...1ST DEFENDANT/RESPONDENT

GEORGE OTIENO OGODO.....2ND DEFENDANT/RESPONDENT

ALFRED ODHIAMBO.....3RD DEFENDANT /RESPONDENT

FREDRICK ODONGO.....4TH DEFENDANT/RESPONDENT

RULING

1. The Applicant moves this Court by a Motion dated 9th May 2024 seeking leave to file a suit outside the statutory limitation period against the Respondents. The intended claim arises from a land sale transaction in which the Applicant asserts she paid the purchase price but ultimately lost the land after the Environment and Land Court determined that the property had been lawfully transferred to a third party. The Applicant contends that her advocates failed to file an appeal as instructed. Her application for leave to appeal out of time was dismissed in 2021. She now seeks, three years later, leave of this Court to file a fresh suit against the Respondents who she claims sold the property twice.
2. The application was not opposed as the Respondents who were served did not attend court. Although the Applicants application was unchallenged and

uncontroverted, the Applicant still has to discharge the burden of proof as envisaged by Sections 107 and 108 of the Evidence Act.

3. The sole issue for the courts determination is whether the Applicant has demonstrated material facts that warrant extension of limitation.
4. Extension of limitation is governed by Sections 27 and 28 of the Limitation of Actions Act, which apply narrowly to actions in tort for negligence, nuisance, or breach of duty where damages for personal injury are claimed. The Applicant's intended claim, whether framed as wrongful sale of land, contractual breach, or refund of purchase price is not a personal injury claim and therefore falls outside the categories for which limitation may be extended.
5. Faced with a similar case Justice Eboso in the case of **Wanjohi Versus Pharis (2025 KEELC (679) KLR** stated” *For decades, our Superior Courts have emphasized that if a claim does not meet the threshold in Section 27 of the Limitation of Actions Act , the court has no jurisdiction to enlarge time. In Mary Osundwa v Nzoia Sugar Company [2002] eKLR the Court of Appeal rendered itself on this section as follows: “This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are 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 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent. Though Tanui, J. dismissed the suit on a different basis, we think the suit was bound to be dismissed in any event on the issue of limitation which was specifically pleaded in the defence. This appeal accordingly fails and we order that it be and is hereby dismissed but we make no order as to costs.”

6. However even if the court were to consider the reasons cited for the delay, I find that they are not convincing as the Applicant states that the delay was occasioned by her counsel who delayed in filing the appeal. Given that the application seeking leave to appeal was dismissed in 2021, there is no satisfactory reason for the three years it took to file this application.
7. I therefore find that the application has no merit and is dismissed with no orders as to costs.

Ruling Signed dated and delivered via Microsoft teams this 11th day of December 2025

JUDY OMANGE

JUDGE

In the presence of

*Court Assistant Catherine
Mr. Mbulu for applicants*