



**Kariuki v Wako (Administrator of the Estate of Robert Stanely Matano) (Environment and Planning Civil Case E001 of 2025) [2026] KEELC 159 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 159 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2025**

**YM ANGIMA, J  
JANUARY 22, 2026**

**BETWEEN**

**DAVID KIRATU KARIUKI ..... PLAINTIFF**

**AND**

**ALICE WAKO (ADMINISTRATOR OF THE ESTATE OF ROBERT STANELY MATANO) ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 18.08.2025 filed pursuant to Order 2 Rule 15 (1) (d) of the Civil Procedure Rules, Sections 1A, 3A, 63 (e) of the *Civil Procedure Act* (the Act), and all other enabling provisions of the law, the defendant sought the striking out the plaintiff's suit.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Alice Dzame Wako on 18.08.2015. It was contended that the suit was time-barred by dint of Section 4 of the *Limitation of Actions Act* because it was anchored on a sale agreement dated 23.09.2005, and as such, the prayer for specific performance was way out of time. In addition, it was contended that at the time of the alleged sale the suit property was already registered in the name of the defendant and her husband, Mr. Charles Wako. It was further argued that Mr. Stanley Matano had no proprietary interest in the suit land at the time the alleged sale agreement was executed with the plaintiff.
3. The plaintiff opposed the application vide a replying affidavit sworn by David Kiratu Kariuki on 13.10.2025. It was contended that the Plot number 1846/V/MN Title CR 32007 was registered fraudulently on the plaintiff's deed plan No. 215379. It was further contended that the suit was not time-barred under Section 4 of the *Limitation of Actions Act*, since Section 26(1) of the Act clearly stipulated that fraud was an exception to the limitation period. It was argued that the defendant had committed acts of fraud by switching the plaintiff's deed plan and thus time limitation could not apply until the discovery of such fraud by the aggrieved party.



4. The defendant responded to the plaintiff's replying affidavit through a further affidavit sworn by Alice Dzame Wako. It was contended that the plaintiff was attempting to find a cause of action yet his suit lacked triable issues that would go on trial. It was maintained that the plaintiff had failed to produce the agreement of sale as required under Section 3 of the *Law of Contract Act* Cap 23, and had failed to establish any right accruing to him with respect to the subdivision. The deponent maintained that she had owned the suit property with her late husband since 1999 long before the plaintiff allegedly dealt with her late father, Mr. Stanely Matano.
5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The defendant filed submissions dated 4.12.2025 in support of her application, while the plaintiff had not filed any submissions at the time of writing this ruling.
6. The court has perused the application, the response thereto and the material on record as well as the submissions made by counsel. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the suit ought to be struck out.
  - b. Who shall bear the costs of the application.
7. The defendant has argued that the plaintiff's suit contravened Section 3 of the Contract Act which states that no suit shall be brought regarding an interest in land where there is no written contract attested by the parties and their witnesses. In addition, the plaintiff submitted that the suit was time-barred for having been brought 6 years after the cause of action accrued, which was on 23.09.2005 when the alleged agreement was executed. The defendant maintained that she together with her late husband, were already registered as the proprietors of the suit property hence it could not be available to Mr. Robert Stanley to deal with in 2005.
8. The court is of the view that the plaint discloses a cause of action as presented. Whether this cause of action shall succeed or not is not an issue for determination at this preliminary stage. There is still a trial stage that the parties will get to and prove their case through evidence and the court will have a chance to decide the case on merit. The parties shall also have an opportunity to amend their respective pleadings at any stage before trial.
9. The Court of Appeal in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another*[1980] eKLR held that:

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with any merits of the case for that 'is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested by cross-examination in the ordinary way". (Sellers, L.J. (supra)).As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.

If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action.



A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

10. The defendant claims that the plaintiff’s suit is time-barred and referred to Section 4 of the [Limitation of Actions Act](#) which provides that an action emanating from an agreement of sale could not be brought at the end of 6 years from the date of the agreement. However, the plaintiff maintained that his suit was not time barred and was protected by Section 26 (i) of the Act which provides:

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 of any person through whom he claims or his agent; or
- b. (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- c. (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:

11. The court is of the view that, though the plaintiff’s claim appears to be limited by time there are allegations of fraud which raise questions that cannot be determined in a summary way at this interlocutory stage. The effect of a pleading alleging fraud on the statutes of limitation was considered by the Court of Appeal in the case of *Yasmin Anwar Yusuf vs Samuel Gatugi Maina and 2 Others* [2021] eKLR as follows;

“It is important to note that this suit was filed against the Defendants based on fraud. In matters where fraud is alleged, time does not start running for purposes of limitation until the fraud is discovered. In the instant case, the Plaintiff discovered that the suit property had been fraudulently registered in the name of the 1st and 2nd Defendants in 2014 when she wanted to dispose of the suit property. She had gone to Ngong land registry where she was informed that the suit property no longer existed as the same had been sub-divided. It is therefore clear that this suit which was filed on 21st March 2014 is not statute barred. In the case of *Margaret Wairimu Magugu Vs Karura Investment Limited & 4 Others*, [2019] eKLR, the Court of Appeal while dealing with Section 26 of the [Limitation of Actions Act](#) stated as follows: -

“There is no doubt that under that provision, where the action is based on fraud, the period of limitation prescribed does not begin to run until the Plaintiff discovers the fraud. See for instance *Kenya Ports Authority Vs Timberland (K) ltd* [2017] eKLR”.

12. Not all issues of limitation can be determined through a preliminary objection or application. In this case, there is a need for oral and documentary evidence to be taken and tested before it can be determined. The court is therefore unable to concur with the defendant’s averments that the plaintiff’s suit is time-barred. The court is of the view that the allegations of fraud raised by the plaintiff need to be determined during the trial.



13. The court is not inclined to drive the plaintiff from the seat of justice by striking out his suit in a summary way. The case before the court does not appear to be so hopeless and beyond redemption. The court is of the view that the plaintiff is entitled to be heard and his case to be determined on merit. However, the court notes that the suit property is situated in Mazeras within Kwale County, which is served by this court sitting at Malindi Law Courts. The court is therefore inclined to transfer the suit to the said court for determination.
14. Regarding the issue of costs, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. Although the plaintiff is the successful party in the application the court is of the view that the costs of the application should be in the cause since the main dispute between the parties is yet to be heard.
15. The upshot of the foregoing is that the court finds and holds that the defendant's application dated 18.08.2025 is unmerited and is dismissed with costs. Accordingly, the court shall make the following orders for disposal thereof;
  - i. The defendant's application dated 18.08.2025 is hereby dismissed.
  - ii. The costs of the application shall be in the cause.
  - iii. The suit is hereby transferred to the Environment and Land Court at Kwale for trial and disposal.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Tindi for the plaintiff

Mr. Mwakisha for the defendant

