



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELC SUIT NO E242 OF 2025

REGINA MUENI KAVIVYA.....

PLAINTIFF/ADMINISTRATOR

-VERSUS-

DEAN KAVIVYA..... 1ST

DEFENDANT

LAND REGISTRAR ARDHI HOUSE NAIROBI..... 2ND

DEFNDANT

ATTORNEY GENERAL..... 3RD

DEFENDANT

METROCOSMO VALUERS LIMITED.....4TH

DEFENDANT

RULING

Introduction

1. The Plaintiff filed the instant suit and Application dated 14th May 2025 seeking for orders interalia a declaration that the plaintiff is the registered owner of Nairobi/Block 82/453 herein referred to as the suit property and permanent injunctive orders to restrain the defendants from dealing with the suit property.
2. The matter was to come for hearing of the application dated 14th May 2025 however the 4th defendant/Respondent filed a Notice of Preliminary objection dated 9th July 2025 on grounds that the suit was time barred according to section 4(1)(a) of the

limitations of Actions Act as it is seeking to rely on a contract entered in in the year 2001 and further that it contradicts section 7 of the Limitations of Actions Act

Plaintiff's response

3. The plaintiff in objecting to the notice of preliminary objection filed grounds of objection dated 20th August 2025 which grounds were anchored on the provision of section 26 of the limitation of actions Act raising a defence of fraud in regards to the transfer of the suit property and concealment of facts
4. That the court should extend time to the defendant to file a defence having established fraud on the part of the plaintiff. The plaintiff also filed a supplementary affidavit dated 21st August 2015 reiterating the contents in her supporting affidavit. The notice of preliminary objection was dispensed off by way of written submissions with the plaintiff and 4th defendant being the only parties filing their submissions.

Plaintiff's submissions

5. The plaintiff submitted that section 26 of the limitation of Action Act provided for an extension of the limitation period where fraud or mistake is proved. She further submitted that section 4(1) as invoked by the 4th defendant was not applicable in this case as there had been no contract as between the plaintiff and both the

1st and 4th defendants herein and the cause of action cannot arise in this case. Counsel relied on the case of **DT Dobbie & Company (Kenya Limited Vs Joseph Mberia Muchina & Another (1980) eKLR**

She deponed that neither of the parties will be prejudiced with the extension of time as the sale never happened since the defendants have not produced any documentary evidence to show that monies exchanged hands further proving that fraud was at the root of the allegedly transfers.

4th defendant's submissions

The 4th defendant in backing up his preliminary objection relied in the case **No 49 of 2018 Nyahururu Edward Moonge Lengusuranga Vs James Ianainyara and 2 others** pointing out to the fact that the court had no jurisdiction to entertain a claim that had been statute barred.

Analysis and determination

6. Having considered the Preliminary objection and the submissions herein the only issue for determination is whether the Notices of Preliminary Objection dated 9th July 2025 is merited .The threshold of a preliminary objection was set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** as follows: "...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of

pleadings, and which if argued as a preliminary objection may dispose of the suit. “The Court went further to note that:

–“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”

The preliminary objection in this matter is founded on the notion that the suit is time barred as per Section 4(1) and 7 of the Limitations of Actions Act which goes into the issue of jurisdiction of the court.

Section 4(1)(a) of the *Limitation of Actions Act*, Cap 22, provides that:

“Actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.”

Section 7 reads “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.”

7. It goes without saying that without the requisite jurisdiction a court of law down sits tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The

objection, therefore, attains the threshold of a pure preliminary point of law.

The applicant has submitted that section 4(1) of the Limitations of Actions Act does not apply as she was not party to the contract executed on 15th October 2001 and I agree hence will not rely on it.

8. From the record, the right of action accrued on 18th February 2003, when the 4th defendant was registered as proprietor as per the certificate of lease. On a strict computation, twelve years expired on 18th February 2015. The plaintiff's suit filed in May 2025 came twenty-two years after the accrual of the cause of action.
9. The purpose of the Law of Limitation was stated in the case of **Mehta v Shah [1965] E.A 321**, as follows; " The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case." Similarly, in **Gathoni -Vs- Kenya Co-operative Creameries Ltd [1982] KLR 104**, the Court of Appeal held as follows; " ...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the

intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest

10. The plaintiff however invokes section 26 of the statute of limitation Act that provides as follows '*Extension of limitation period in case of fraud or mistake. 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;
- b) The right of action is concealed by the fraud of any such person as aforesaid;
- 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. Contending that the cause of action is based on fraud and that time did not begin to run until she discovered the fraud in 2023. I have perused the Plaintiff in detail. The Plaintiff indeed pleads fraud in paragraphs 14, particularizing the alleged irregular sale and unlawful registration of title in the 4th Defendant's name. Despite this discovery, the Plaintiff filed the instant suit only on 11th May 2025 a delay of two years. Courts have consistently held that Section 26 does not suspend limitation indefinitely; it only defers the starting point until

discovery. In **Edward Moonge Lengusuranga -Vs- James Lanaiyara & Another [2019] eKLR**, the Court struck out a suit filed beyond three years after discovery of fraud, holding that “Section 26 defers, but does not indefinitely suspend, the running of time.” The Court of Appeal in **Benjoh Amalgamated Ltd & Another -Vs- Kenya Commercial Bank Ltd [2014] eKLR** reiterated that “equity aids the vigilant, not the indolent.”

12. The question of limitation is not a mere technicality but goes to the jurisdiction of the Court. As held in **Bosire Ongero -Vs- Royal Media Services [2015] eKLR**, limitation “touches on the jurisdiction of the court, which means that if a matter is statute-barred, the court would lack jurisdiction to entertain it.” The Court of Appeal in **Owners of the Motor Vessel “Lilian S” -Vs- Caltex Oil (Kenya) Ltd [1989] KLR 1** famously stated: “Jurisdiction is everything; without it, a court has no power to make one more step.”

13. Accordingly, whether time is reckoned from the date of registration of the 4th Defendant’s title in 2003 under Section 7, or from the date of discovery of fraud in 2023 under Section 26, the limitation period had long expired by May 2025. The suit is therefore statute-barred, and this Court lacks jurisdiction to entertain it.

Final disposition

14. The upshot of the above is that the Preliminary Objection dated 9th July 2025 is upheld. I therefore order that the Plaintiff's suit dated 14th May 2025 be struck out in its entirety for being time-barred under Section 7 of the Limitation of Actions Act, Cap 22 Laws of Kenya.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **25th** day of

March, 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Sausi..... for the Plaintiff

Mr. Omondi..... for the 1st Defendant

Mr. Mathenge..... for the 2nd and 3rd Defendants

Philomena W...... Court Assistant