

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC SUIT NO. E169 OF 2025

MOSES LEYIOO OLE LENKOKO

APPLICANT/PLAINTIFF

VERSUS

GEORGE NDULA MERITEI 1ST

RESPONDENT/DEFENDANT

COUNTY LAND REGISTRAR 2ND

RESPONDENT/DEFENDANT

RULING

(In respect of a preliminary objection dated January 30, 2026 seeking dismissal of the present suit in limine on the premises that it is barred by limitation)

Introduction

1. The matter before this Court concerns a Notice of Preliminary Objection dated January 30, 2026. The Objection is filed by Solonka & Solonka Advocates LLP on behalf of George Ndula Meritei, the 1st Defendant herein.
2. The 1st Defendant seeks the immediate dismissal of the entire suit initiated by the Plaintiff, Moses Leyioo Ole Lenkoko, on the grounds that the action is fundamentally defective and legally unsustainable. The 1st Defendant's challenge is predicated on a point of law regarding the statutory limitation of actions. The gravamen of the Objection, as set out in the Notice is that the suit is statutorily barred by virtue of Section 7 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya.
3. The 1st Defendant particularizes the grounds for the Objection as follows:
 - a. The transactions the Plaintiff seeks to impugn were concluded as early as March 1999.
 - b. The relevant land register was formally closed on April 21, 2004.

- c. Any right of action available to the Plaintiff accrued not later than April 21, 2004.
 - d. The present suit, having been filed in 2025, was commenced more than twenty (20) years after the accrual of the cause of action.
 - e. This delay exceeds the mandatory twelve-years limitation period prescribed by statute for actions relating to the recovery of land.
4. The 1st Defendant further contends that these defects are jurisdictional in nature and go to the very root of the Court's authority to hear the matter. It is argued that such a lapse in time cannot be cured by the Court's exercise of discretion under Article 159(2)(d) of the Constitution or the Overriding Objective enshrined in Sections 1A and 1B of the Civil Procedure Act.
5. In conclusion, the 1st Defendant asserts that allowing this matter to proceed would constitute a manifest abuse of the court process and would be highly prejudicial to the 1st Defendant's right to a fair hearing as guaranteed under Article 50 of the Constitution.

Directions

6. The application was canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this ruling.

Analysis and Determination

7. Having carefully considered the Notice of Preliminary Objection dated January 30, 2026, the rival written submissions by Counsel, the pleadings on record, and the applicable law, the Court identifies the following as the key issues for determination:

- a. Whether the Preliminary Objection raises a pure point of law as envisaged in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors (1969) EA 696; and*
- b. Whether the Plaintiff's suit is statute-barred under Section 7 of the Limitation of Actions Act, Cap 22.*

8. The law on Preliminary Objections is well settled. In *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors (1969) EA 696*, a Preliminary Objection was defined as one that raises a pure point of law and is argued on the assumption that all facts pleaded by the opposing party(s) are correct. It must not call for the ascertainment of facts or the exercise of judicial discretion.

9. The Plaintiff has argued that the present objection does not meet this threshold on the grounds that: i) The 1st Defendant has not filed a Statement of Defence; ii) The facts are contested, particularly regarding ownership and alleged fraud; and iii) Evidence is required to ascertain the truth.
10. For starters, this Court is not persuaded by the argument that failure to file a defence disentitles a party from raising a Preliminary Objection. A Preliminary Objection, by its nature, may be raised at any stage so long as it is based on a pure point of law apparent on the face of the pleadings before the court.
11. The objection herein is anchored on limitation of actions, specifically Section 7 of the Limitation of Actions Act. The issue of limitation is a jurisdictional question and is properly taken as a preliminary point of law where the relevant dates are not in dispute or can be discerned from the pleadings.
12. From the Plaint, it is evident that the impugned transactions are said to have occurred in 1999, with the land register being closed on April 21, 2004. The suit was filed in 2025. These facts are not seriously disputed as to timelines, though their legal implications are contested.

Accordingly, the Court finds that the Preliminary Objection raises a proper point of law.

13. Section 7 of the Limitation of Actions Act provides that actions to recover land may not be brought after the expiry of twelve (12) years from the date the cause of action accrued. From the material before the Court: a) The latest date when the cause of action could have accrued is April 21, 2004; b) The statutory limitation period lapsed on or about April 21, 2016; c) The present suit was filed in 2025, approximately nine (9) years outside the limitation period; d) Prima facie, therefore, the suit is time-barred.

14. The Plaintiff however contends that the suit is grounded on fraud and that the same was only discovered recently. Reliance is thus placed, implicitly, on Section 26 of the Limitation of Actions Act, which postpones limitation in cases of fraud or mistake. However, for Section 26 to apply, a plaintiff must demonstrate that the fraud was concealed by the defendant; and that the plaintiff could not, with reasonable diligence, have discovered the fraud earlier.

15. At this stage, the Court must be cautious not to delve into evidentiary matters. The Plaint contains detailed allegations of fraud,

collusion, and unlawful transfer of the suit property. Whether or not those allegations meet the threshold under Section 26 is a matter that ordinarily requires interrogation of evidence.

16. The 1st Defendant has argued that the transactions were matters of public record and therefore discoverable through due diligence. While that argument may ultimately succeed at trial, it raises factual questions regarding discovery, concealment, and diligence.

17. In line with the principles in *Oraro vs Mbaja (2005) KLR 141*, where determination of an issue requires the Court to ascertain facts or evaluate evidence, such a matter ceases to be a pure point of law and cannot be handled as a preliminary objection.

18. Limitation is indeed a jurisdictional issue and, where clear and uncontested, can dispose of a suit at the preliminary stage. However, where a party invokes Section 26 on account of fraud, and the timing of discovery is contested, the Court must exercise caution.

19. In the present case, the Plaintiff has expressly pleaded fraud and alleged lack of knowledge of the impugned transactions. Determining whether the claim is time-barred would require the Court to investigate when the Plaintiff discovered or ought to have discovered

the alleged fraud; and whether there was concealment by the Defendants.

20. These are evidentiary matters that cannot be conclusively determined without a full hearing.

21. In light of the foregoing, the Court finds that while, the Preliminary Objection raises a proper point of law on limitation, the fact that the Plaintiff has pleaded fraud the claim is brought within the ambit of Section 26 of the Limitation of Actions Act. The applicability of Section 26 cannot be determined without the benefit of evidence.

22. The court therefore makes the following orders:

- a) The Preliminary Objection dated January 30, 2026 is hereby **dismissed.**
- b) The matter shall proceed to hearing on merits.
- c) The costs of the Preliminary Objection shall be in the cause.

Orders accordingly.

Dated Signed and Delivered at Kajiado Virtually this 15th Day of April 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Pareno for the 1st Defendant/Objector

Ms. Mumbo h/b for Ms. Muriuki for the Plaintiff

N/A by the 2nd Defendant

Court Assistant: Alex

M.D. MWANGI
JUDGE

ORIGINAL FILE COPY