



Muriuki (Suing as Legal Representative of the Estate of Ileri) v Ileri (Suing as Legal Representative of the Estate of Kirumbi) (Environment and Land Appeal E018 of 2024) [2026] KEELC 1972 (KLR) (17 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1972 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E018 OF 2024
AK BOR, J
MARCH 17, 2026**

BETWEEN

DAVID MURIUKI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF ILERI) APPELLANT

AND

GOEFFREY NGUYU ILERI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF KIRUMBI) RESPONDENT

JUDGMENT

1. This appeal was lodged against the ruling of Hon. Njoki Kahara, Principal Magistrate (PM), delivered on 28/3/2024 at Siakago in LDT Case No. 2 of 2002. The Appellant contends that the Learned Magistrate lacked jurisdiction to determine the application dated 16/10/2023 and that the prayers sought in that application contravened Order 24 Rule 2 of the Civil Procedure Rules and Sections 4 (4) and 7 of the *Limitation of Actions Act*. The Appellant sought to have this court set aside the orders made by the trial court.
2. The appeal was canvassed through the written submissions. The Appellant submitted that Kirumbi Njurirwa sued the Appellant's father, Ileri Ngiri claiming parcel no. Mbeere/Kabere/3649. Kirumbi was registered as proprietor of Mbeere/Kiambere/49 with Samson Simba Ngiri.
3. The dispute was handled by the Land Disputes Tribunal and in the amended award adopted 23/11/2006, the district surveyor, Mbeere was directed to combine parcel numbers 49 and 3649 so that the land could revert to parcel no. 49, the original number. The surveyor was to pick the boundary as it existed on the ground in line with the decision of the elders. Further, that Ileri Ngiri was to retain parcel no. 3649 while parcel no. 49 was to be subdivided between Kirumbi Njurirwa and Cimba Ngiri according to the decision of the clan.



4. The Mbeere District Surveyor wrote to the court on 17/10/2006 indicating that it was not possible to implement the decree issued on 23/5/2006 because the surveyor could not register the parcels of land. The Appellant urged that this issue was not addressed in the amended award.
5. According to the Appellant, since Kirumbi Njurirwa died on 22/7/2008 before execution of the court order, he should have been substituted in the suit within a year as stipulated by Order 24 rule 3 of the Civil Procedure Rules. The Respondent filed the application dated 11/1/2022 seeking to execute the award of the elders adopted by the court on 23/11/2006. The court declined to grant the orders sought. The Respondent then filed the application dated 16/10/2023 seeking to reinstate the suit that abated following the death of Kirumbi Njurirwa, and to substitute Kirumbi Njuurirwa with Geoffrey Nguyu Ileri. He also sought to have the surveyor visit parcels numbers 49 and 3649 to pick the boundaries dividing the parcels into 3 portions as they exist on the ground in compliance with the orders issued on 28/11/2006.
6. The Appellant faulted the Learned Magistrate for allowing execution of a judgment after 17 years without considering Section 4 (4) of the Limitation of Actions Act, which bars the bringing of an action upon a judgment after the end of 12 years from the date when the judgment was delivered. He submitted that the time started running on 23/11/2006 when the court adopted the judgment. The Appellant maintained that the Respondent did not provide a satisfactory explanation for the delay.
7. The Appellant went on to argue that Section 7 of the Limitation of Actions Act stipulated that an action to recover land could not be brought after the end of 12 years from the date the right of action accrued. He urged that a new course of action arose with regard to the disputed property which could only have been dealt with in a new suit. The Appellant argued that the absence of opposition to the application dated 16/10/2023 did not absolve the Learned Magistrate from delivering a lawful ruling based on the applicable law and facts presented. It was submitted that the Learned Magistrate failed to do this.
8. The Appellant submitted that pursuant to the order dated 28/3/2024, the Respondent caused parcel no. 3649, which was still registered in the name of the Appellant's late father, to be combined with parcel no. 49. That after combining the two parcels to become parcel no. 49, on 29/10/2024 this was subdivided into 6 portions being Mbeere/Kiambere/5299 to 5306. The resultant subdivisions were registered in the Respondent's name. The Appellant relied on the surveyor's report addressed to the Principal Magistrate, Siakago Law courts, which referred to LDT Case No. 2 of 2002.
9. The Respondent submitted that the trial court had jurisdiction to hear the application and to grant the orders as it did. The Respondent pointed out that the Appellant did not oppose the application before the trial court and left it for determination by the court on merit.
10. It was the Respondent's contention that the trial court was guided by well-established precedents that court orders can be executed after twelve years if there is sufficient and good reason. Further, that the ground that the district surveyor charged exorbitant costs was sufficient and made sense as the trial court found. The Respondent urged the court to dismiss the appeal.
11. The issue for determination is whether the appeal has merit and should be allowed by the court. In the ruling dated 28/3/2024 the Learned Magistrate allowed the application for revival of the suit because the Appellant did not oppose it. The Learned Magistrate cited Section 4 (4) of the Limitation of Actions Act and *Maswai v Kosgei (2004) eKLR* where the Court of Appeal held that enforcement of decrees was subject to the statute of limitation. The learned magistrate observed that court orders should be executed within 12 years unless good reasons were given why they were not executed within the stipulated period. The court found that the explanation given by the plaintiff for failing to execute the



orders, that the District Surveyor was charging exorbitant fees and that he did not have enough funds made sense. The court allowed the application to have the court orders executed.

12. Section 4(4) of the *Limitation of Actions Act* stipulates that an action may not be brought upon a judgment after the end of 12 years from the date the judgment was delivered or where it directed that delivery of property be made at a certain date, the date of default of delivery. Part III of the Act allows for extension of the periods of limitation prescribed by the Act. The grounds include disability, where there is payment, fraud, mistake or ignorance.
13. The Respondent's explanation for failure to execute the judgment within 12 years of the date that it was delivered as required by law was that the surveyor's charges were exorbitant. The trial court erred in allowing the enforcement of the judgment delivered more than 12 years ago on a ground that falls outside the parameters set by the *Limitation of Actions Act*.
14. The orders made by the Principal Magistrate on 28/3/2024 in Siakago LDT 2 of 2002 are set aside. The Appellant is awarded the costs of the appeal.

DELIVERED VIRTUALLY AT BUNGOMA THIS 17TH DAY OF MARCH 2026.

K. BOR

JUDGE

In the presence of: -

Mr. Geoffrey Nguyu Ireri- Respondent

No appearance for the Appellant

Court Assistant- Diana Kemboi

