



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 26 OF 2015

**PAUL CHERUIYOT TERER (As Administrator To The Estate Of KIPTERER
ARAP KOSKE – Deceased)1ST PLAINTIFF
EIJAH ARAP LANGAT ALIAS KIPTONUI ARAP LANGAT...2ND PLAINTIFF
KIIMUTAI MWEI.....3RD PLAINTIFF**

VERSUS

KESSES KELCHIN FARM LTD.....DEFENDANT

AND

UASIN GISHU COUNTY GOVERNMENT.....INTERESTED PARTY

RULING

The application before the court is dated 22nd May, 2018 and seeks orders that the plaint dated 23rd January, 2005 be struck out with costs. The application is based on grounds thus that the entire suit is an abuse of the court process having been filed 50 years after the alleged rights of the plaintiffs being extinguished and is time barred. The suit is time barred by virtue of the Limitation of Actions Act.

APPLICANT/CO-DEFENDANT’S CASE’S CASE

The applicants/co-defendants filed their submissions on 29th October 2018. They submitted that the suit is an abuse of the court process as it is time barred because the cause of action arose 50 years ago evidenced by the applicant’s annexures JAK 2, 3, 4 and 5 being the receipts of payment of 1968 and 1969 and the letter giving the chronology of events since the purchase of the property. the suit land measures 2005 acres and was acquired in 1968 from a colonial settler and the purchase price was financed by Agricultural Finance Corporation and subdivided in 1973 according to the shares held by each member with the register being closed in 1968.

The plaintiffs are barred by section 7 of the Limitation of Actions Act from claiming the suit property.

The actions of the defendant are suspect as it is holding brief for the plaintiff and has been leaning towards the plaintiff in all issues raised by the co-defendants. It is out to defeat the interests of the co-defendants. The applicant is apprehensive that the defendants are colluding with the plaintiffs to circumvent judicial process.

1ST DEFENDANT’S CASE

The 1st defendant filed its submissions on 21st November 2018 and submitted that it was incorporated soon after independence to facilitate acquisition of land by its shareholders. After acquiring the land, the efforts to distribute the land was met with resistance from those who managed to move into the land ahead of the shareholders.

It is the desire of the company to distribute the land among the genuine members. The 1st defendant has acknowledged the plaintiff’s shareholding and wishes to have the land which is currently registered in its name as per its list of members. There is no claim against the co-defendants nor is it time-barred. The application ought to be dismissed.

PLAINTIFF/RESPONDENT'S CASE

The 1st plaintiff swore an affidavit in reply to the application on 1st October 2018. He deponed that the 1st defendant is the owner of the suit land and has always acknowledged its indebtedness evidenced by annexure PCT 1 and as such the claim is not time barred. The 2nd plaintiff swore an affidavit echoing the same sentiments.

One of the directors of the 1st defendant also swore an affidavit deponing that it obtained money to purchase land on behalf of its members and attached acknowledgment of indebtedness marked as annexure WKA 1,2 and 3.

ISSUES FOR DETERMINATION

a. Whether the claim is time-barred

WHETHER THE CLAIM IS TIME BARRED

Section 7 of the Limitation of Actions Act provides;

“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.”

The prayers sought in the application are premised on the fact that the cause of action arose more than 59 years ago. It is argued by the plaintiffs that the cause of action arose upon the admission of indebtedness of the 1st defendant to the plaintiff. In 2006, there was an acknowledgment of indebtedness of the 1st defendant to the plaintiff. The suit having been filed in 2015, was 9 years after the plaintiff's rights allegedly accrued by virtue of the admission of indebtedness. However, the plaintiff bases the cause of action on the shareholding and the plaintiff conveniently omits the dates when all the actions occurred. A perusal of the file indicates that the master roll that contains the shareholders was prepared in 2008 or thereabout.

It is my finding that the rights arose when the shares were purchased in 1968 and 1969. The land was sub-divided in 1973 according to the shares held by each of the members after the register was closed in 1968. However, given that the land is registered in the name of the 1st defendant, and not in the co-defendants' names it stands that the 1st defendant is still the registered owner of the suit land. If it were to be assessed under adverse possession, the co-defendant's position would be the correct position as they occupy the suit land and the claim could be considered as time-barred. They have however not advanced the claim of adverse possession. That notwithstanding, the claim would stand as time barred as it is based on an action that occurred over 50 years ago.

A strict interpretation of section 7 of the limitation of actions act would result in the claim being time-barred as the cause of action arose in 1973 when the sub-division was done. The respondents have not disputed that the land was divided based on shareholding and further, that the rights of the co-defendants to the suit land were obtained in 1973 after sub-division. The plaintiff relied on the admission of indebtedness as proof of their rights having been acknowledged which does not suffice. The application succeeds, the plaintiff dated 23rd January, 2005 is struck out with costs.

Dated and delivered at Eldoret this 18th day of July, 2019.

A. OMBWAYO

JUDGE