



**Charo (Suing as the Legal Representative of the Estate of the Late Charo Jambo) v Ngala & 2 others (Environment and Land Case E125 of 2025) [2026] KEELC 2301 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2301 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E125 OF 2025  
EK MAKORI, J  
APRIL 23, 2026**

**BETWEEN**

**DZOMBO CHARO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE CHARO JAMBO) ..... PLAINTIFF**

**AND**

**KARISA KAINGU NGALA ..... 1<sup>ST</sup> DEFENDANT**

**KATANA KAINGU NGALA ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR KILIFI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before this Court is a notice of preliminary objection (PO) dated October 13, 2025, in which the 1st and 2nd defendants seek to strike out the plaintiff's entire suit on the following grounds:
  - a. The entire suit is time-barred under section 4(1)(a) of the *Limitation of Actions Act* because it is based on a contract purportedly entered into between 1991 and 1993.
  - b. The suit herein is time-barred by virtue of Section 7 of the *Limitation of Actions Act*, having been instituted 32 years after the date of the cause of action, which is alleged to have arisen.
  - c. The suit herein is bad in law because it offends the provisions of Order 37 Rule 7 of the Civil Procedure Rules.
  - d. The entire suit is incompetent, a sham, vexatious, malicious, and an abuse of the due process of this Court.
  - e. Therefore, the 1st and 2nd defendants will be seeking the striking out of the whole suit, together with the plaint dated 11th September 2025.



2. The Court directed the parties to file written submissions. I acknowledge with appreciation the submissions from counsel for the parties, as they went a long way toward aiding the Court in reaching a verdict on the issues raised herein.
3. Based on the materials and submissions from the parties, the issues I frame for this Court's decision are whether the PO meets the threshold in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 and whether the Suit is Statute-Barred.
4. The defendants assert that the plaintiff alleges that they registered the suit property, the subject matter of this case, in 1993. Since 1993, more than 32 years have passed without the plaintiff taking any legal action against the defendants. Furthermore, the plaintiff did not seek leave of the Court to file the suit outside the time frame provided by the law.
5. Conversely, regarding whether the PO meets the threshold of the Mukisa Biscuits Case (*supra*), the plaintiff submits that the PO before this Court plainly falls outside that threshold. First, the defendants anchor their objection on the assertion that the suit is founded on a contract allegedly entered into in or about 1993. Respectfully, this is a fundamental mischaracterization of the plaintiff's pleadings. The plaintiff has not pleaded the existence of any contract, nor does he seek to enforce one. To the contrary, the plaintiff's case is that any purported sale was legally impossible, the alleged transferor having long been deceased. Whether such a contract existed at all is therefore a contested question of fact, incapable of determination at a preliminary stage. Secondly, the defendants invite this Court to conclude that the cause of action accrued in 1993. Yet the plaintiff's claim is grounded on fraud and continuing trespass, not contract. The plaintiff clearly avers that the fraudulent registration was discovered only upon an official search conducted in March 2025. By virtue of Section 26 of the [\*Limitation of Actions Act\*](#), the question of when fraud was discovered is evidentiary in nature and can only be resolved at trial. Determining it now would require this Court to interrogate facts, thereby violating the Mukisa principle. More critically, the plaintiff has pleaded that the defendants remain in unlawful occupation of the suit property. Such occupation constitutes continuing trespass, giving rise to a fresh cause of action each day the trespass persists. It follows, therefore, that the cause of action cannot be artificially fixed in 1993 while the wrongful possession is ongoing. Whether the defendants' occupation is lawful is itself a matter requiring evidence and cannot properly be determined in limine.
6. In the Mukisa Biscuits Case (*supra*), the Court held that a PO must raise a pure point of law, must be argued on the assumption that all facts pleaded by the opposing party are correct, and must not require the Court to ascertain facts or exercise discretion.
7. This position was reinforced by the Court of Appeal in *Oraro v Mbaja* [2005] eKLR, where the Court held:

“..... A “Preliminary Objection” correctly understood is now well defined as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection. Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
8. The facts of this matter, as can be discerned from the pleadings, particularly paragraphs 3–9 of the plaint, are that the land belonged to the late Charo Jambo, the father of the plaintiff, who died intestate



sometime in the year 1978; that the land was fraudulently transferred to the defendants in 1993; and that the fraud was discovered in March 2025.

9. In paragraph 7 of the plaint, the plaintiff has particularized the alleged fraud, alleging that the defendants presented falsified documents to the 3rd defendant for the registration based on a purported sale of land that never existed and that, over 3 decades, have concealed this fraud, hence this claim.
10. In paragraph 8 of the plaint, the plaintiff alleges that another suit was struck out and never heard on the merits, hence this suit.
11. It is alleged in this matter that the father of the plaintiff died in 1978. From that period to 2025, when this suit was filed, it is 47 years. The plaint alleges that the transfer of the land was made in 1993, which is 32 years since the alleged registration.
12. From the plaint, the plaintiff's suit is anchored on an alleged sale agreement with an unspecified date, entered into between the defendant and the deceased father. It is this agreement that forms the basis of the alleged fraud, as particularized in paragraph 7 of the plaint, and the transfer must have occurred sometime in the year 1993.
13. The plaintiff's claim, therefore, is based on the recovery of land. Under Section 7 of the Limitations of Actions Act, Cap. 22, the time limit for bringing actions to recover land is set. It provides that such actions cannot be brought more than 12 years after the date the right of action accrued, or, if it accrued to someone through whom the claimant claims, from that date. The import of Section 7 of the Limitations of Actions Act is that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. The clock thus starts ticking on the date the right of action "accrued," meaning the date when the rightful owner could have taken legal action.
14. Where the land involves a deceased person, Section 9(2) of the [Limitation of Actions Act](#) addresses Succession Interests as follows:
  - “(2) Where a person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to have the land, the right of action accrues on the date of death.”
15. Essentially, this law states that a person claiming ownership of the deceased's land must do so within 12 years of the owner's death. The right to sue for the property begins 12 years after the previous estate or interest concluded. However, there is a condition: the deceased must have had the land at the time of death.
16. As stated, the deceased in this matter, the father of the plaintiff, is said to have died in the year 1978. A grant of letters of administration ad litem was issued immediately after the registration was discovered in March 2025, 47 years later, ostensibly to enable the institution of this suit. The plaint is quiet as to whether the deceased was in occupation of the land at the time of death.
17. Significantly, too, the defendants are said to have been registered in the year 1993, and as stated, 32 years before the current suit was filed.



18. The prevailing question is whether the law will permit a suit of this nature to proceed, irrespective of whether fraud is alleged, given other elements such as laches and delay. In my opinion, it will not. Section 16 of the *Limitation of Actions Act* states as follows:

“For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.”

19. This legal provision closes gaps in the limitation period, ensuring the land recovery clock runs uninterrupted, even if the property is part of a deceased person's estate. For land recovery actions under the Act, an administrator of a deceased estate is deemed to have claimed the land as if there were no delay between the deceased's death and the issuance of the letters of administration. Letters of administration were issued to the plaintiff in 2025. The deceased died in 1978, 47 years before filing suit, and the defendants' registration as owners of the suit property is said to have occurred in 1993, 32 years before filing suit. This means that, with the plaintiff appointed as an administrator in 2025, the suit to recover the land would be time-barred in 1990 and 2005 under the two scenarios, respectively.

20. A further question lingers. What has the plaintiff been waiting for, from 1978 to March 2025, to sue for the recovery of land? Even if the clock of equity were to be called to tick in his favor, 47 years after his father's death and 32 years after the land was registered in the names of the defendants, it would be an excessively long period to initiate a suit. The maxim 'delay defeats equity' and 'equity aids the vigilant, not those who sleep on their rights' applies here.

21. The plaintiffs' suit suffers from laches and delay; the Statute of Limitations bars it. The PO dated October 13, 2025, succeeds. Consequently, the entire suit is hereby struck out with costs to the 1st and 2nd defendants.

**DATED, SIGNED, AND DELIVERED VIRTUALLY IN NYERI ON THIS 23RD DAY OF APRIL, 2026.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Tsuma for the Plaintiff

Dennis: Court Assistant

In the absence of:

Mr. Ragira for the 1st and 2nd Defendants.

