



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CIVIL CASE NO. E189 OF 2025

HANNAH NYAMBURA KUNGU.....
.....PLAINTIFF

(Suing as the Administrator of the Estate of the late JOHN KUNGU)

VERSUS

MARY WAMBUI GITAU.....1ST
DEFENDANT

SAMUEL NGIGI GITAU.....2ND
DEFENDANT

(Sued as the Administrators of the Estate of the late Peter Patrick Gitau)

RULING

- 1) The 1st and 2nd Defendants herein have moved the Court to strike out the suit on the primary grounds that:
 - (1) The suit constitutes an affront to the integrity of the judicial system, being an abuse of the process of Court that is both unprocedurally instituted and entirely devoid of legal merit.
 - (2) The suit is fundamentally defective for offending and contravening the mandatory provisions of

Sections 4, 4(4), and 7(d) of the Limitation of Actions Act (Cap. 22) of the Laws of Kenya.

- (3) That the cause of action is time-barred and has exceeded the statutory twelve-year limitation period prescribed for the enforcement of Judgments or the recovery of property, noting that no action may be brought upon a Judgment after twelve years from the date of delivery or default, nor can interest be recovered after six years.
- (4) The claim for recovery of land is effectively extinguished as it was not brought within twelve years from the date the cause of action accrued.
- (5) The suit be dismissed with costs to be borne by the Plaintiff.

- 2) When the parties attended Court on 03/12/2025, **Mr Kinyua** Counsel for the Plaintiff informed the Court that they were not going to file any response to the Preliminary Objection (herein **PO**) but that they would file their written submissions upon being served with the written submissions of the Applicants.
- 3) The Court directed that the Respondents who had filed the PO to file written submissions within 7 days and serve the Respondents in this case the Plaintiff to have 14 days within which to file their written submissions in response. A Ruling date was reserved for 29/04/2026.

- 4) At the time of writing this Ruling, only the 1st and 2nd Respondents had filed their submissions dated 10/12/2025 and filed in Court on 07/01/2026. A perusal of the CTS showed that the Plaintiff had not filed their submissions.
- 5) In their submissions the 1st and 2nd Defendants in support of their Preliminary Objection, moved the Court to find that the Plaintiff's suit, instituted via a Plaint dated 19/09/2025, is fundamentally incompetent and incurably defective. The Defendants aver that the primary issues for this Honorable Court's determination are whether the suit is statute-barred under the **Limitation of Actions Act, Chapter 22 of the Laws of Kenya**, and consequently, whether the suit ought to be struck out at this preliminary stage with costs. It is the Defendants' case that according to the Plaintiff's own pleadings at paragraphs 4 and 14, the cause of action first arose in 1970 and further crystallized in 2003 following a purported determination by the Limuru Land Dispute Tribunal. The Defendants submit that even if such an award existed, the Plaintiffs are strictly prohibited from seeking any relief beyond the statutory timelines, as the equitable maxims dictate that equity aids the vigilant and not the indolent, and further that delay defeats justice.
- 6) The Defendants further contend that the suit, filed in 2025, comes a staggering twenty-two years after the cause of action accrued in 2003, during which time the Plaintiffs failed

to take any legal steps despite having actual knowledge of the matter.

- 7) Citing the Court of Appeal decision in the case of **Titus Kigoro Munyi v Peter Mburu Kimani [2014] eKLR**, they submitted that the Court of Appeal held that the computation of time begins from the moment there is actual or constructive knowledge; here, the Plaintiffs have sat on their rights for over two decades. The suit directly offends Section 4(1)(c) of the Limitation of Actions Act, which provides that actions to enforce an award may not be brought after six years, as well as Section 4(4), which stipulates that no action may be brought upon a judgment after twelve years from the date of delivery.
- 8) Further they submit the issue of time of limitation was also fortified in the case of **Sebastian Nyamu v Gilbert Kabeere M'Mbijiwe [2003] eKLR**, where the Court of Appeal held that all post-judgment proceedings for execution are statute-barred after twelve years, a principle echoed in **Willis Onditi Odhiambo v Gateway Insurance Co Ltd [2014] eKLR**.
- 9) Regarding the prayer for a declaration over parcel **NDEIYA/MAKUTANO/875**, the Defendants submit that Section 7 of the Limitation of Actions Act explicitly bars any action to recover land after the end of twelve years from the date the right of action accrued. As the right accrued at the

latest in 2003, the limitation period lapsed in 2015, rendering the 2025 filing a nullity in law.

- 10) The Defendants emphasize that the Plaintiffs did not seek the leave of this Court to file out of time, nor did they adhere to the correct procedure of extracting a Decree or serving a Notice to Show Cause to satisfy the requirements of a fair hearing under Article 50 of the Constitution of Kenya. Ultimately, the Defendants maintain that this Court is a Court of law and not a Court of mercy; having allowed sleeping dogs to lie for twenty-two years, the Plaintiffs' suit is an abuse of the Court process and must be dismissed with costs to the Defendants.
- 11) The Plaintiff did not file their written submissions as stated meaning the Preliminary Objection is unopposed. This notwithstanding even where an application is unopposed, the Court is still duty-bound to examine the application on its merits to satisfy itself that the orders sought are merited and that the legal threshold for such an application has been met.

Analysis and Determination

- 12) The matter before this Court is a Preliminary Objection dated 24/10/2025, raised by the 1st and 2nd Defendants, seeking to terminal the suit *in limine*. Despite being granted leave to file a response and subsequent written submissions, the Plaintiff has remained remarkably passive, neither

traversing the grounds of the objection nor offering any legal justification for the delay in instituting this suit.

13) Notwithstanding that the Preliminary Objection is unopposed; this Court is not merely a rubber stamp for the Defendants' prayers. It is a settled principle of our jurisprudence that the absence of a Replying Affidavit or Grounds of Opposition does not automatically entitle an Applicant to the orders sought; the burden remains on the moving party to demonstrate that their application meets the requisite legal threshold. The Court must, therefore, independent of the Plaintiff's silence, transcend the lack of contestation and satisfy its conscience that the objection is well-grounded in both law and fact.

14) As the Court of Appeal held in **City Chemist (Nairobi) & Another v Oriental Commercial Bank Ltd [2014] eKLR**;

"The Court should not jump into the conclusion that because an application is unopposed, then the orders sought must be granted. The Court must be satisfied that the application is well-grounded in law."

15) This position is further fortified by the decision in **Kenya Commercial Bank Limited v Nicholas Anthony Abidha t/a Modern World & Another [2015] eKLR**, where the Court observed that:

"An unopposed application is not a 'open sesame' to the orders sought. The Court must still evaluate the merits of the application and satisfy itself that the legal requirements for the grant of such orders have been met."

- 16) Consequently, this Court shall proceed to interrogate the substance of the Defendants' contention that the suit is statute-barred, bearing in mind that, a Preliminary Objection is characterized as a point of law which, if successfully canvassed, serves as a threshold bar that terminates a suit *in limine* and this may prematurely terminate a party's right to be heard on the merits of their case.
- 17) From the pleadings and the uncontroverted submissions of the Defendants, the singular, dispositive issue for determination is: *Whether the Plaintiff's suit is statute-barred by operation of the Limitation of Actions Act (Cap. 22) and therefore constitutes an abuse of the process of this Court.*
- 18) The Defendants' objection is anchored on the Limitation of Actions Act. The Plaintiff's claim seeks declarations of trust and recovery of land based on a cause of action that, by their own admission in the Plaint, accrued as far back as 1970 and was further crystallized by a Tribunal award in 2003. This Court notes that Section 7 of the Limitation of Actions Act is couched in mandatory, prohibitive terms, stating that:

"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."

19) The Plaintiff's attempt to revive a 2003 award in the year 2025 some twenty-two years later fails in the face of Section 4(4) of the Act. The Court of Appeal in **Sebastian Nyamu v Gilbert Kabeere M'Mbijiwe [supra]** was emphatic on this point, stating:

"All post-judgment proceedings, including originating proceedings and interlocutory proceedings for execution of judgment, are statute-barred after 12 years."

20) Furthermore, the Plaintiff seeks to enforce what they term an award or Ruling from 2003. Section 4(1)(c) of the Act limits the enforcement of awards to a period of six years. By filing this suit in 2025, the Plaintiff is effectively asking this Court to ignore the law. Furthermore, the Supreme Court has frequently reiterated this position, particularly in cases addressing the abuse of Court processes through delayed filings, emphasizing that statutory timelines are not mere technicalities.

21) This issue was discussed extensively in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 6 Others (2013) eKLR** case, in which the Supreme Court stated that rules and timelines ensure certainty and finality, time limits set by statutes are

not mere technicalities but are substantive law intended to ensure certainty and finality in litigation.

- 22) **Halsbury's Laws of England (4th Edition, Volume 28)** elucidates the philosophy behind limitation periods, noting that they are designed to protect Defendants from stale claims where evidence may have been lost or memories faded. In Kenyan jurisprudence, this is often expressed through the maxim *Vigilantibus non dormientibus jura subveniunt* meaning the law assists the vigilant, not those who sleep on their rights. In **Willis Onditi Odhiambo v Gateway Insurance Co Ltd [2014] eKLR**, the Court of Appeal poignantly remarked:

"The law of limitation is intended to prevent a party from being a perpetual threat to another... it is intended to bring peace and quiet to the community."

- 23) By failing to file a response or submissions, the Plaintiff has not demonstrated any disability or fraud that would, under Section 22 of the Act, toll the limitation period. **Black's Law Dictionary (11th Edition)** defines an Abuse of Process as the improper use of a legal procedure for a purpose for which it was not intended. Bringing a suit that is patently dead-on arrival due to the passage of two decades is a textbook example of such an abuse. This Court cannot allow its precious judicial time to be consumed by such a suit that the law has already interred.

24) The suit herein is not merely devoid of merit; it is incurably defective and dead-on arrival by operation of the law of limitation. The Defendants have properly moved this Court to exercise its inherent power to strike out the suit *in limine*, as it would be an exercise in futility and a waste of precious judicial time to proceed to a full trial on a claim where the statutory right of action was extinguished by effluxion of time in the year 2015. Consequently, the suit is statute-barred, and the Court's jurisdiction to entertain the same is effectively ousted.

Final Orders

25) Accordingly, for the reasons aforementioned, this Court issues the following Orders:

- i) The Preliminary Objection dated 24/10/2025, raised by the 1st and 2nd Defendants, be and is hereby sustained.***
- ii) The Plaintiff's suit, instituted via the Plaint dated 19/09/2025, is hereby struck out in limine for being statute-barred and an abuse of the Court process.***
- iii) The costs of this suit and the Preliminary Objection are awarded to the 1st and 2nd Defendants, to be paid by the Plaintiff.***

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH
MICROSOFT TEAMS ON THIS 29TH DAY OF APRIL 2026.**

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**MOGENI J
JUDGE**

In the virtual presence of:

Ms. Mwikali holding brief for Mr. Kinyua for Plaintiff/Respondent
Mr. Mwaura for 1st & 2nd Defendants/ Applicants
Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**