



**Mbuge & another v Ole Sakuda (Environment and Land Appeal
E028 of 2021) [2026] KEELC 2632 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E028 OF 2021**

MD MWANGI, J

APRIL 30, 2026

BETWEEN

JACKSON M MBUGE 1ST APPELLANT

LISTER N NCHORE 2ND APPELLANT

AND

JOSPHAT SUPARE OLE SAKUDA RESPONDENT

(Being an appeal from the Ruling of the Senior Principal Magistrate Hon. P. Achieng delivered on 19th August 2021 at Ngong CMCC NO. E017 OF 2021)

JUDGMENT

Introduction and Background

1. This is an appeal against the Ruling and Order of the Senior Principal Magistrate's Court at Ngong (Hon. P. Achieng, SPM) delivered on the 19th day of August 2021 in Ngong CMCC No. E017 of 2021.
2. In the impugned decision, the learned trial magistrate partially upheld a Preliminary Objection raised by the Respondent, finding that a significant portion of the Appellants' claim, specifically prayers for specific performance and completion of land transfer, was time-barred under Section 4(1)(a) of the *Limitation of Actions Act* (Cap 22). Dissatisfied with the decision, the Appellants moved this Court via a Memorandum of Appeal dated 16th May 2022, seeking to set aside the entirety of the lower court's ruling.
3. The genesis of this dispute traces back to the year 2004, involving the parcel of land known as Title No. Kajiado/Ntashart/3379 (hereinafter "the suit property"). The Appellants contend that they entered into an oral agreement with the Respondent for the purchase of the suit property at a consideration of Kshs 300,000.



4. It is the Appellants' case that they paid a sum of Kshs 280,000, leaving a balance of Kshs 20,000 which was to be settled upon the formal transfer of the title. Following this payment, the Respondent allegedly surrendered the original title deed to the Appellants and placed them in physical possession of the land. The Appellants have remained in occupation of the suit property for approximately sixteen (16) years, during which time they have made extensive developments.
5. The Appellants further state that the Respondent subsequently became elusive, frustrating all efforts to pay the balance and finalize the transfer. The peaceable occupation of the property was allegedly interrupted on 22nd March 2021, when the Respondent, through his agents, entered the suit property, commenced fencing, and burned structures and crops belonging to the Appellants.
6. This act of dispossession prompted the Appellants to file Ngong CMCC No. E017 of 2021, seeking the following primary reliefs:
 - (a) An order compelling the Respondent to receive the balance of Kshs 20,000;
 - (b) An order directing the Respondent to complete the transfer process;
 - (c) In default of (b), an order for the Executive Officer of the Court to sign the transfer documents;
 - (d) A permanent injunction restraining the Respondent from interfering with the suit property;
 - (e) Special damages for the destruction of crops and fencing (Kshs 150,000);
 - (f) General damages for trespass.
3. The Respondent filed a Notice of Preliminary Objection dated 21st April 2021, asserting that the suit was statutorily time-barred. He argued that since the cause of action was founded on a contract entered into in 2004, the 6-year limitation period under Section 4(1)(a) of the *Limitation of Actions Act* had long since expired.
4. In her Ruling, the learned trial magistrate agreed with the Respondent regarding the contractual nature of the first three prayers. She held that the cause of action for the transfer arose in 2004 and was thus barred by 2010. Consequently, prayers (a), (b), and (c) were struck out, while the claims for trespass and damages, arising from the 2021 incident, were allowed to proceed. This finding is the focal point of the present appeal.
9. The Appellants' appeal is premised on the following seven (7) grounds as set out in the Memorandum of Appeal, which are:
 - I. The learned trial magistrate erred in law and fact by finding that the cause of action arose from the year 2004 and not 2020 when the Respondent began trespassing on the subject parcel of land.
 - II. The learned trial magistrate erred in law and fact by finding that the cause of action arose from the contract when the main issues between the parties was for recovery of land.
 - III. The learned trial magistrate erred in law and fact by disregarding the issue of ownership of the suit property for trial and considering only the issue for damages for trespass, when the issue of ownership should be determined hand in hand with the issue for trespass.
 - IV. The learned trial magistrate erred in law and fact by disregarding and failing to put into consideration the evidence and documents on record more so that the Respondent's suit had been dismissed hence he cannot claim ownership of the land.



- V. The learned trial magistrate erred in law and fact by denying the appellants a chance to be heard on merit by partially striking out their suit in the interim, matters which could only be determined at a full hearing.
- VI. The learned trial magistrate misconducted herself and abrogated *the constitution* by denying the appellants the right to the benefit of the law, the right to fair hearing protected by articles 25, 27(1), 47(1), 48 and 50(1) of *the Constitution*.
- VII. The ruling in the circumstances of the case was such that a manifest travesty of justice occurred therein.
10. The appellants pray that;
- a. The appellants' appeal be allowed;
 - b. The whole of the ruling delivered on 19th of August 2021 be set aside;
 - c. A declaration be made that the appellants are the owners of the suit property;
 - d. An order be issued to the Registrar of Lands Ngong to effect the transfer to the Appellants;
 - e. Such other relief this Honourable Court may deem just to grant; and
 - f. Costs of the appeal to be borne by the Respondent.
10. The court directed that the appeal be canvassed by way of written submissions which the court has had occasion to peruse and consider in writing this judgement.

Analysis of Submissions

Appellants' Submissions

10. The Appellants' submissions, filed on 16th May 2022, center on the contention that the trial court misapprehended the nature of the suit by treating it purely as a contractual dispute rather than an action for the recovery of land.
11. The Appellants challenge the trial magistrate's reliance on Section 4(1)(a) of the *Limitation of Actions Act*, which imposes a six-year limitation on actions founded on contract. They submit that while the relationship between the parties originated from a sale agreement in 2004, the primary relief sought is the recovery of land and the protection of their quiet possession.
12. It is submitted that the cause of action did not accrue in 2004, but rather in March 2021 when the Respondent allegedly interrupted the Appellants' sixteen-year possession by fencing the property and destroying crops. Reliance is placed on Section 9(1) of the *Limitation of Actions Act*, which provides:
- “Where the person bringing an action to recover land... has while entitled to the land been dispossessed or discontinued his possession, the right of action accrues on the date of the dispossession.”
13. Consequently, the Appellants argue that the 12-year limitation period for the recovery of land under Section 7 of the Act should apply, and even then, the clock only began to run upon the actual act of dispossession in 2021.
14. The Appellants further contend that their physical possession of the suit property for over 12 years created an overriding interest that the trial court failed to recognize. They cite Section 28 of the *Land*



- Registration Act, which lists the rights of a person in possession or occupation of land as an interest that does not require registration to be recognized and protected.
15. To support this position, the Appellants rely on the case of *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR, where the Court of Appeal held that the possession of land by purchasers constitutes an overriding interest in their favor. They submit that having been put in possession by the Respondent himself with the intention to transfer title, their rights cannot be defeated by a narrow application of limitation periods.
 16. A central pillar of the Appellants' submissions is the invocation of equitable doctrines. They argue that a constructive trust was created when they paid the substantial portion of the purchase price (Kshs 280,000) and were granted possession.
 17. Citing the House of Lords decision in *Lloyds Bank Plc v Rosset* [1991] 1 AC 107, the Appellants submit that a constructive trust arises based on a "common intention" agreement acted upon by the claimant to their detriment. They further refer to *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, asserting that equity—now a national value under Article 10(2)(b) of the Constitution—binds the court to look past technicalities like the lack of Land Control Board consent to prevent the Respondent from using a statute (the Land Control Act) as an instrument of fraud.
 18. It is their submission that the Respondent has not come to equity with "clean hands," having allegedly processed a fraudulent title deed while aware that the original was in the Appellants' possession.
 19. Finally, the Appellants argue that the summary striking out of their primary prayers was a "manifest travesty of justice" and a violation of Article 50(1) of the Constitution (Right to a Fair Hearing) and Article 48 (Access to Justice).
 20. They place reliance on *Kenya Bus Services Limited & Another v Minister for Transport & 2 Others* [2012] eKLR, emphasizing that the court's duty under Article 159(2)(e) is to ensure that justice is administered without undue regard to procedural technicalities. They urge this court to exercise its mandate of re-evaluation, as established in *Selle v Associated Motor Boat Company Ltd* [1968] E.A. 123, to scrutinize the history of the case and the evidence on record.

Respondent's Submissions

21. In response, the Respondent filed his Written Submissions dated 24th June 2022 and supplementary submissions, which collectively seek to uphold the decision of the trial court. The Respondent's arguments are anchored on the strict application of statutory limitation periods and the mandatory requirements of the Land Control Act.
22. The Respondent defends the trial magistrate's decision to determine the suit through a Preliminary Objection. He submits that the question of whether a suit is time-barred is a "pure point of law" which, if successfully argued, disposes of the suit. Reliance is placed on the locus classicus, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where the court held that a Preliminary Objection consists of a point of law which is pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.
23. The Respondent's primary contention is that the Appellants' claim is founded strictly on an oral contract for the sale of land entered into in 2004. He argues that the prayers for specific performance, compelling the receipt of the balance of the purchase price and the completion of the transfer, are contractual remedies governed by Section 4(1)(a) of the Limitation of Actions Act.



24. It is the Respondent's submission that the cause of action accrued in 2004 when the alleged contract was made and the Respondent allegedly became "elusive." By the time the suit was filed in 2021, seventeen (17) years had lapsed. The Respondent maintains that the Appellants "slept on their rights" and that the statutory six-year window for contractual claims closed in 2010. He cites *Public Service Commission v Jotham Alubila & 3 Others* [2014] eKLR to emphasize that limitation periods are not mere technicalities but are intended to ensure that litigation is brought to an end.
25. A significant portion of the Respondent's submissions is dedicated to the impact of Section 6 of the [Land Control Act](#). He asserts that the suit property is agricultural land and, as such, any sale or transfer required the consent of the local Land Control Board within six (6) months of the agreement.
26. The Respondent argues that because no such consent was ever obtained, the transaction is void for all purposes by virtue of Section 6(1) of the Act. He places reliance on *M'Ithinji M'Mwirichia v M'Aburi M'Ethangatta* [1984] KLR 286, submitting that where Land Control Board consent is missing, the court cannot grant specific performance or recognize the existence of a valid interest in land. He further contends that equity cannot be used to bypass a clear statutory prohibition, and therefore, no constructive trust or proprietary estoppel can arise from a transaction that is declared void by law.
27. Regarding the Appellants' claim of overriding interests under Section 28 of the [Land Registration Act](#), the Respondent submits that such interests cannot override the mandatory provisions of the [Land Control Act](#). He argues that possession alone, following an illegal or void transaction, does not create an enforceable right to a title.
28. The Respondent further asserts that the Appellants cannot claim the protection of Article 50 or Article 48 of [the Constitution](#) to validate a claim that is clearly barred by statute. He submits that "access to justice" does not mean the court should entertain stale or legally untenable claims.
29. In conclusion, the Respondent urges this court to find that the trial magistrate was correct in her findings. He submits that the Appellants' primary prayers were an attempt to enforce a dead contract and that the partial striking out of the suit was a proper exercise of judicial discretion to prevent the abuse of the court process. He prays that the appeal be dismissed with costs.

Appellants' Supplementary Submissions

30. In further support of the appeal, the Appellants filed Supplementary Submissions on 16th May 2022. These submissions serve as a targeted rebuttal to the legal reasoning adopted by the trial magistrate and focus on the interplay between the [Limitation of Actions Act](#), the [Land Control Act](#), and the overarching principles of Equity.
31. The Appellants reiterate that the trial court fundamentally erred by characterizing the suit as a "contractual claim" under Section 4 of the [Limitation of Actions Act](#). They submit that the prayer for the Respondent to receive the balance of the purchase price is merely ancillary to the primary objective of the suit: the recovery of land and the protection of an overriding interest.
32. The Appellants argue that because they have been in continuous, uninterrupted possession since 2004, the cause of action only crystallized on 22nd March 2021 when the Respondent physically interfered with that possession. They contend that under Section 7 and Section 9 of the [Limitation of Actions Act](#), they had a twelve (12) year window from the date of dispossession to bring the action. By striking out the prayers based on a six-year contractual limit, the Appellants submit that the trial court effectively "locked the doors of justice" before the merits of the land dispute could be ventilated.



33. A pivotal argument in the supplementary submissions concerns the *Land Control Act* (Cap 302). While the Respondent argues the transaction is void for lack of Land Control Board consent, the Appellants submit that this statutory requirement cannot be used to facilitate fraud or unjust enrichment.
34. They place heavy reliance on the Court of Appeal decision in *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, which established that:

“The lack of Land Control Board consent does not bar the court from finding that a constructive trust exists... Equity will not allow a statute to be used as an instrument of fraud.”
35. The Appellants argue that a constructive trust arose by operation of law the moment the Respondent accepted the bulk of the purchase price and surrendered possession. They further cite *Yaxley v Gotts* [2000] Ch 162 and *Lloyds Bank Plc v Rosset* [1991] 1 AC 107 to support the position that where there is a common intention (to sell land) and a party acts to their detriment (paying money and developing the land), the court must enforce the resulting equitable interest regardless of procedural lapses.
36. The Appellants remind this court of its dual mandate as a first appellate court. Citing the celebrated case of *Selle v Associated Motor Boat Company Ltd* [1968] E.A. 123, they submit that this court is duty-bound to re-evaluate the evidence tendered in the lower court and reach its own independent conclusions.
37. They argue that the trial magistrate failed to take into account the fact that the Respondent had previously filed a suit (MCELC No. 43 of 2020) which was dismissed—a fact they claim proves the Respondent is a “litigious meddler” attempting to relitigate settled matters. They submit that the trial court’s failure to consider the Respondent’s conduct and the Appellants’ long-term occupation resulted in a ruling that is “perverse and unsupported by the weight of the law.”
38. Finally, the Appellants emphasize that Article 159(2)(d) of *the Constitution* commands that justice be administered without undue regard to procedural technicalities. They argue that “limitation of actions” is a procedural shield that should not be converted into a “sword of injustice” to dispossess bona fide purchasers who have occupied land for nearly two decades. They urge this court to set aside the ruling of 19th August 2021 and allow the matter to proceed to a full trial on its merits.

Respondent’s Supplementary Submissions

37. The Respondent filed Supplementary Written Submissions on 24th February 2026, further reinforcing the position that the Appellants’ suit is incompetent on jurisdictional and substantive grounds. These submissions frame the appeal as turning on a fundamental jurisdictional question: whether the claim was statute-barred at the time of filing.
38. The Respondent maintains that the substance of the Appellants’ claim is rooted in a 2004 agreement for sale. He argues that the reliefs sought—specifically compelling the receipt of the balance of the purchase price and the transfer of land; are remedies of specific performance, which are equitable remedies grounded strictly in contract.
39. Consequently, the Respondent submits that the governing statute is Section 4(1)(a) of the *Limitation of Actions Act*, which imposes a six-year limit on contractual actions. Since the agreement was executed in 2004, the cause of action for specific performance accrued upon breach or expiry of the completion period in or about 2004–2005. With the suit being filed approximately seventeen (17) years later, the Respondent contends it is “hopelessly statute-barred,” thereby depriving the court of jurisdiction to grant the requested reliefs.



40. The Respondent further asserts that Section 7 of the *Limitation of Actions Act* (the 12-year period for recovery of land) is inapplicable. He argues that this is not an action for the recovery of land, as the Appellants admit the Respondent is the registered proprietor and are merely seeking a transfer pursuant to a contract. Even if it were characterized as a land recovery action, the Respondent notes that more than 12 years have already passed since the alleged accrual.
41. A central plank of the Respondent's supplementary arguments is that the suit land is agricultural land in Kajiado, making the transaction subject to the *Land Control Act*. Under Section 6(1) of the Act, any transaction involving such land is void for all purposes unless Land Control Board consent is obtained within six months.
42. In the absence of evidence of consent, extension of time, or exemption, the Respondent argues the agreement became a nullity that cannot be specifically enforced. Furthermore, he points to the doctrine of exhaustion, noting that the *Land Control Act* establishes its own appellate hierarchy culminating in a "final and conclusive" decision by the Central Land Control Appeals Board, which cannot be questioned in any court per Section 13(2).
43. Regarding the remaining claims, the Respondent submits that once the contractual prayers are extinguished, no independent proprietary cause survives. He argues that a trespass claim cannot lie against a registered proprietor, whose title is prima facie evidence of absolute ownership under Section 26(1) of the *Land Registration Act*, unless the Appellants can prove a superior title.
44. Finally, the Respondent dismisses any potential claim for adverse possession, noting it was never pleaded via Originating Summons. He emphasizes that possession under a sale agreement is permissive rather than hostile, and the Appellants cannot simultaneously affirm a contract while claiming adverse possession. The Respondent concludes that the appeal is an attempt to revive an extinguished cause of action and is legally untenable.

Issues for determination

37. Having considered the grounds of appeal and the rival submissions herein, this Court finds that the following four (4) issues fall for determination:
 - I. Whether the learned trial magistrate erred in law and fact by characterizing the Appellants' suit as a claim founded on contract under Section 4(1)(a) of the *Limitation of Actions Act* as opposed to an action for the recovery of land under Section 7 of the same Act.
 - II. Whether the Appellants' long-term possession of the suit property created an overriding interest and/or a constructive trust that exempted the suit from the 6-year limitation period.
 - III. Whether the cause of action accrued in 2004 (at the inception of the agreement) or in 2021 (at the time of the alleged physical dispossession)
 - IV. Whether the Appellants are entitled to the orders sought in the Memorandum of Appeal.

Analysis and Determination

37. This being a first appeal, this Court is guided by the settled principle in *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123 where it was held that:

“An appeal to this Court from a trial by the High Court is by way of retrial... the Court must reconsider the evidence, evaluate it itself and draw its own conclusions...”



Accordingly, this Court has carefully reconsidered the pleadings, the impugned ruling, and the rival submissions.

37. The first question is whether the learned trial magistrate erred in characterizing the Appellants' claim as one founded on contract rather than an action for recovery of land. The answer must begin with the nature of the reliefs sought before the subordinate court. The Appellants sought, inter alia, orders compelling the Respondent to receive the balance of the purchase price, to complete the transfer, and in default for the Executive Officer to execute the transfer instruments. These are, in their very essence, remedies of specific performance. Specific performance is a remedy grounded in contract and presupposes the existence of a valid and enforceable agreement.

38. The statutory framework governing such claims is Section 4(1)(a) of the *Limitation of Actions Act* which provides:

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued— (a) actions founded on contract...”

37. The Court of Appeal in *Divecon Ltd v Samani* [1995–1998] 1 EA 48 underscored the mandatory nature of limitation statutes in the following terms:

“No one shall have the right or power to bring an action after the end of six years from the date on which the cause of action accrued...”

37. The Appellants attempted to reframe their claim as one for recovery of land so as to invoke Section 7 of the Act. However, a claim for recovery of land presupposes an already existing proprietary right, whereas the Appellants herein were seeking to acquire title through enforcement of an agreement. Their own pleadings acknowledge the Respondent as the registered proprietor and seek transfer from him.

38. In *Wamwea v Catholic Diocese of Murang'a Registered Trustees* [2003] eKLR, the Court held that a claim for specific performance is subject to Section 4(1)(a) of the *Limitation of Actions Act*. In the circumstances, the learned trial magistrate cannot be faulted for treating the first three prayers as contractual and subject to the six-year limitation period.

39. The second issue concerns whether the Appellants' long occupation created an overriding interest or constructive trust capable of defeating limitation. The Appellants relied on Section 28 of the *Land Registration Act* which recognizes, inter alia, trusts and rights of persons in actual occupation as overriding interests. They also invoked equitable doctrines as affirmed in *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, where the Court of Appeal stated that:

“The lack of consent of the Land Control Board does not preclude the court from giving effect to equitable doctrines such as constructive trust or proprietary estoppel.”

37. This Court accepts that equity may, in appropriate cases, intervene to prevent injustice. However, equity does not operate in a vacuum and does not displace clear statutory provisions on limitation. In *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104, the Court stated:

“The law of limitation is intended to protect defendants against unreasonable delay...”



37. Even assuming that a constructive trust arose upon payment of a substantial portion of the purchase price and the grant of possession, the right to enforce that trust remains subject to limitation. Moreover, Section 6(1) of the *Land Control Act* provides:

“ Each of the following transactions... is void for all purposes unless the Land Control Board... has given its consent...”

37. Although jurisprudence has evolved to allow equitable reliefs notwithstanding lack of consent, such intervention is not automatic and cannot be invoked after inordinate delay. The Appellants remained inactive for approximately seventeen years before seeking to enforce their alleged rights. Equity aids the vigilant and not those who slumber on their rights. In the circumstances, the invocation of constructive trust is not available to the Appellants.

38. The third issue is when the cause of action accrued. The Appellants contend that it accrued in 2021 upon alleged dispossession, while the Respondent maintains that it accrued in 2004 when the agreement was made and allegedly breached. The general principle is that time begins to run when the cause of action accrues, that is, when there is a breach. The Appellants’ own case is that the Respondent failed to complete the transaction shortly after the agreement. That failure constituted the breach and triggered the running of time.

39. The Appellants sought to rely on Section 9(1) of the *Limitation of Actions Act* which provides:

“Where the person bringing an action to recover land... has been dispossessed... the right of action accrues on the date of the dispossession.”

37. However, that provision applies to actions for recovery of land and not to claims for enforcement of contracts. The events of March 2021 may have given rise to a fresh cause of action in trespass, which the trial court properly preserved, but they did not revive a contractual claim that had long become statute-barred.

38. In *Rawal v Rawal* [1990] KLR 275, it was held that limitation bars the remedy even though the underlying right may subsist. By the year 2010, the Appellants’ remedy for specific performance had already been extinguished.

39. The final issue is whether the Appellants are entitled to the orders sought in the Memorandum of Appeal.

40. This Court has carefully considered the impugned ruling and finds that the learned trial magistrate adopted a correct and balanced approach. She did not strike out the entire suit but only those prayers that were clearly statute-barred, while allowing the claims for trespass and damages arising from the 2021 incident to proceed to trial. This approach is consistent with the principle articulated in *DT Dobie & Company (Kenya) Ltd v Muchina* [1982] KLR 1 that courts should sustain suits where possible but strike out plainly unsustainable claims.

41. Further, limitation goes to jurisdiction. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, it was held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step.”

37. Once the trial court correctly found that the contractual claims were statute-barred, it had no jurisdiction to entertain them. There is therefore no legal or factual basis upon which this Court can interfere with that finding or exercise of discretion.



38. In the final analysis, this Court is satisfied that the learned trial magistrate properly directed herself on both the facts and the law. The characterization of the claim, the application of the Limitation of Actions Act, and the partial striking out of the suit were all sound. The Appellants have not demonstrated any error warranting appellate interference. The appeal therefore fails and is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Okach h/b for Mr. Ngira for the Appellants

N/A by the Respondent

Court Assistant: Alex

M.D. MWANGI

JUDGE

