

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELCL MISCELLANEOUS CASE NO. E012 OF 2025

BENEDITAR WAMBUI KARIUKI..... APPLICANT
VERSUS

GEORGE KAMAU KIROBI.....1ST

RESPONDENT

JOHN MBUGUA KIROBI.....2ND

RESPONDENT

NJUGUNA KIROBI.....3RD

RESPONDENT

JOSEPH KARIUKI KIROBI.....4TH

RESPONDENT

PETER MUNGAI KIROBI.....5TH

RESPONDENT

LAND REGISTRAR NAIVASHA.....6TH

RESPONDENT

RULING

1. Coming up for determination is Ex-Parte Originating Summons dated 19th August 2025 brought pursuant to the provisions of Article 159(2)(a), (b), (d) and (e), Sections 26, 27 and 28 of the Limitation of Actions Act, Order 37 of the Civil Procedure Rules, Section 1A, 1B, 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law wherein the Applicant has sought that the Honourable Court be pleased to grant her leave to file suit against the Respondents after the limitation period.
2. The Application is premised on the ground, as appears on its face, and on the Supporting Affidavit dated 22nd August 2025, sworn by Beneditar Wambui Kariuki, who deposed that between 22nd August 1984 and 28th July 1985, she bought land parcel No. Kijabe/Kijabe Block 1/3146,

measuring 5 acres (suit land) from Stephen Kirobi Mworio, at a purchase price of Ksh. 33,000/=. That upon completing payment of the said purchase price on 30th July, 1985, she took possession of the land, commenced farming, and continued working thereon until the year 2008, when she became ill and could no longer work.

3. From the time she completed the purchase of the land in 1985 up to 3rd September 2001, Stephen Kirobi Mworio had repeatedly told her that he would transfer the suit land to her, and all the Respondents knew that he had purchased the suit land. Unfortunately, Stephen Kirobi Mworio died before he transferred the suit land to her.
4. That, however, without his knowledge, the five Respondents and their father, Stephen Kirobi Mworio, conspired in 1995 to fraudulently cause the suit land to be registered in the name of the 5th Respondent, who obtained a title deed in his name. That all the Respondents further colluded with the 6th Respondent and unlawfully and fraudulently caused the suit land to be registered in the name of the 5th Respondent herein, thereby defrauding the Applicant of his right to the land.
5. That thereafter, in the year 2017, without the Applicant's knowledge, the 5th Respondent unlawfully and fraudulently caused the land parcel Kijabe/Kijabe Block 1/3146 (suit land) to be subdivided into various parcels, inter alia, Kijabe/Kijabe Block 1/25004 to 25009, which were registered in the names of the 1st to the 5th Respondents. That, unfortunately, his efforts at the Naivasha Land Registry to obtain records in respect of the land parcel Kijabe/Kijabe Block 1/3146 to ascertain how the same had changed hands have consistently returned with the remark "No records", whereas efforts to obtain records in respect of land parcel Nos. Kijabe/Kijabe Block 1/25005, 25008 and 25009 have been unsuccessful.
6. She explained that Land parcel Nos. Kijabe/Kijabe Block 1/25004, 25006, and 25007 had been registered in the names of John Mbugua Kirobi, Peter Mungai Kirobi, and Joseph Kariuki Kirobi, the 2nd, 5th, and 4th Respondents

in the instant Application. She is aware that the 1st to 5th Respondents were selling and/or alienating the subdivisions to third parties by sale, and that if the lands are alienated to other third parties, it would be difficult to pursue them.

7. That she had reported the fraudulent registration of the land parcel Kijabe/Kijabe Block 1/3146 to the office of the D.C.I Naivasha, and that the said office was still pursuing the case. That he had also reported the said fraud to Chief Maai-Mahiu location and to the Office of the Deputy County Commissioner Naivasha. That she had further made a report at Maai-Mahiu Police Station vide OB No. 16 of 19/6/25.
8. She stated that in the year 2008, she got sick and ended up suffering a stroke, which had immobilised her, affecting her physically and mentally, thus she could not follow up on her land case. That the said sickness had involved long periods of admission in hospital and prolonged bedrest and outpatient treatment, which she was still undertaking. Although she could now walk, she had not fully recovered from the sickness.
9. That she had come to learn of the fraudulent transfer of land parcel No. Kijabe/Kijabe Block 1/3146 and the subsequent subdivisions, upon obtaining the Certificate of Official Search for land parcel Nos. Kijabe/Kijabe Block 1/25004, 25006 and 25007.
10. In response to and in opposition to the Applicant's Application, the 1st to 5th Respondents filed their Replying Affidavit, dated 3rd February, 2026, sworn by all of them, deponing that the Applicant's Application was vexatious, lacked merit, and was an abuse of the court's process. They further deponed that the Applicant's allegations of having bought the land parcel, title No. Kijabe/Kijabe Block 1/3146, in the year 1985, from their late father, Kirobi Mworira, were untrue and remain mere allegations.
11. They explained that the suit land herein had been legally transferred in 1994 by their late father to Peter Mungai Kirobi, the 5th Respondent herein, to hold in trust for all the siblings, the Respondents herein.

Accordingly, on 25th May, 1995, the 5th Respondent was issued with title deed No. Kijabe/Kijabe Block 1/3146 as the owner.

12. They argued that before his demise, their late father had not sold the suit land to the Applicant, who had no evidence to show that she had purchased the suit land. The title she produced was obtained by the 5th Respondent during their meeting with the area chief on 11th March 2023. They contended that Title No. Kijabe/Kijabe Block 1/3146 had always been in the possession of the 5th Respondent for 22 years, who had been in occupation since the title was transferred to him.
13. That subsequently, the 5th Respondent subdivided the title No. Kijabe/Kijabe Block 1/3146 and gave his siblings their share as had been instructed by the late Kirobi Mworira before his demise. That the issued title deeds after the subdivisions are title numbers Kijabe/Kijabe Block 1/25004 to 25009. The titles numbered Kijabe/Kijabe Block 1/25004, 25005, 25006, and 25008 had already changed ownership to third parties who lawfully purchased them and have fully developed their acquired properties.
14. That the Applicant, who has cited sickness as the cause of delay, has provided treatment notes that do not clearly document her sickness, rather than a detailed and authentic medical report and/or “treatment chits” to substantiate the claim of incapacitating illness. That, in any event, the alleged treatment notes do not cover the entire period of the delay.
15. Further, under the Limitation of Actions Act (Cap 22, Laws of Kenya), the provisions of Section 22, which define “disability” for the purpose of extending limitation periods, are strictly limited to being a minor or of unsound mind. Indeed, the last treatment notes date back to the year 2022, meaning that for two and a half years the Applicant still chose not to move the court appropriately.
16. They argued that the reason given by the Applicant for the alleged delay is inordinate and insufficient to override the statutory limitation

period. They noted that it was surprising that, from 1985 to 2008, that is, 23 years, the Applicant had never come forward to claim the suit land. They further noted that even after the demise of the late Kirobi Mworia in 2001, which she acknowledged, the Applicant, who was well and healthy at the time, still chose to remain silent, yet the law was clear that equity aids the vigilant, not the indolent. They concluded that for 23 years, the Applicant had clearly slept on her right to claim the suit property.

17. That since the instant suit is time-barred, the court should not grant the relief sought in the Application, which was a waste of the court's time. That the application was misconceived, incompetent and ill-advised, and could not be sustained in law. That, on the other hand, granting the instant Application would cause grave prejudice to the Respondents, since four (4) of the properties had already changed ownership, and the remaining 2 had been developed. That it was thus in the interest of justice that the instant Application be dismissed with costs.
18. The 6th Respondent did not participate in the Applicant's Application.
19. The Application was disposed of by way of written submissions herein, as summarised.

Applicant's Submissions.

20. In her Submissions dated 9th March, 2026, the Applicant summarised the factual background of the matter, reiterating the contents of her Supporting Affidavit and the Respondent's Replying Affidavit verbatim, and submitted that she had demonstrated that she had entered into a sale agreement with the Respondents' father, as set out in her annexed agreement and its interpretations. She further submitted that it was thus not true that there was/is no evidence to establish that there had been a sale between her and the Respondents' father.
21. That she had also annexed search certificates and a letter from the Area Chief Maai-Mahiu, which documents, particularly the official searches, had clearly and without any doubt demonstrated that she had come to learn that some subdivisions of land parcel No. Kijabe/Kijabe

Block 1/25004, 25005 and 25007 had already been registered in the names of the Respondents on 19th December 2023. She maintained that land parcel No. Kijabe/Kijabe Block 1/3146 had been transferred to the 5th Respondent by the Respondents' father, Stephen Kirobi Mworira, without her knowledge and with the intention to defraud her. It was the said searches that had revealed that the suit land the Applicant had purchased was no longer in the names of the Respondents' father, Stephen Kirobi Mworira, but in the names of the Respondents.

22. She argued that, in relation to a claim of land where fraud was detected, time begins to run from the moment the fraud was detected. In the instant case, the fraud was detected on 19th December, 2023, when the searches confirmed that the land the Applicant claims to have bought was not in the name of the Respondents' father, Stephen Kirobi Mworira. She further argued that the change of hands of land parcel No. Kijabe/Kijabe Block 1/3146 from the Respondents' father, Stephen Kirobi Mworira, to the 5th Respondent had been concealed, and that it was not a matter she could have easily detected, even after applying all due diligence on her part.
23. That after the fraud had been detected, the period to claim the land had not lapsed. Reliance was placed on the decision in **Arthi Highway Developers Limited vs West End Butchery Limited & 6 others [2015] KLR**, where the Court of Appeal held that while Limitation Periods were meant to provide finality, they must not be used as "a cloak for fraud." That pursuant to the provisions of Article 159 (2)(d) of the Constitution, the Court must prioritise substantive justice over technical procedural barriers, such as a lapsed timeline, especially where fraud was prima facie.
24. That the cause of the delay in filing suit was that she had been sick for quite some time, and her illness had escalated to the point where she had suffered a mild stroke, which had affected her mobility and mental health, and that she was still under treatment.

25. It was her submission that the instant Application is merited. That, as this is a land matter, the Court had the discretion to grant the prayers sought, since the land that the Applicant is claiming had not changed hands and was still in the names of the Respondents. That she had no intention of wasting the Honourable Court's time, as she has a genuine claim, and hence should be given an opportunity to canvass the same by being allowed to file the suit.

The 1st to 5th Respondents' Submission

26. In their Submissions dated 17th March, 2026, the Respondents framed three (3) issues for determination as follows; -

- i. Whether the Applicant has met the legal threshold for leave to file suit out of time.
- ii. Whether the Applicant has provided sufficient evidence to support her claim.
- iii. Whether the delay in bringing the claim is inordinate and inexcusable.

27. On the first issue, namely whether the Applicant has met the legal threshold for leave to file suit out of time, the Applicant relied on the provisions of Section 7 of the Limitation of Actions Act to assert that claims for recovery of land must be instituted within twelve (12) years of accrual of the cause of action. The Applicant has alleged that she purchased the suit land parcel, Kijabe/Kijabe Block 1/3146, between 1984 and 1985. Even if such a purchase were assumed, her right of action had accrued at that time. Subsequently, by operation of Section 7, the limitation period had expired in or about the year 1997.

28. That the Applicant's attempt to revive her claim in 2025 is therefore hopelessly out of time. That indeed, Courts have consistently held that limitation in land matters is strict and cannot be extended outside the statutory framework, as is the principle in **Divecon Ltd v Samani (1995-1998) 1EA 48**, which remains good law and has been consistently

reaffirmed. To buttress their position, they relied on the decided case of **Dickson Ngige Ngugi v Consolidated Bank Limited (Formerly Jimba Credit Corporation Limited) and another [2020] eKLR**, where the Court had held that under Section 7 of the Limitation of Actions Act, an action to recover land cannot be brought after the expiry of 12 years.

29. That whereas the Applicant had admitted that she had remained in possession of the suit land until the year 2008, she had taken no step to assert her alleged rights even after the death of the Respondents' father in the year 2001. That her silence for over two decades demonstrated inordinate delay, yet equity aids the vigilant, not the indolent. That the law does not permit stale claims to be resurrected at the expense of registered proprietors and innocent third parties. They relied on the decision in the case of **Kuria & 27 others v Mott & 12 others [2024] KEELC 4220**, where the Court struck out a claim as time-barred, holding that limitation in land recovery was jurisdictional and could not be extended by equitable considerations.

30. Accordingly, the provisions of Section 7 of the Limitation of Actions Act squarely bar the Applicant's claim, as the limitation period had expired long before the instant Application was filed. Thus, the Court lacks jurisdiction to grant leave to file suit out of time in respect of the recovery of land. Whereas the provisions of Section 22 of the Act provide that where a person is under a disability at the time the cause of action accrues, the limitation period shall not run until the disability ceases, the Act defines "disability" strictly as minority or unsoundness of mind. It was their contention that illness, physical incapacity, or advanced age do not qualify as disability within the meaning of the statute.

31. That whilst the Applicant has sought to rely on sickness and a mild stroke to justify her delay, such circumstances do not fall within the statutory definition of disability, since she was an adult of sound mind throughout the relevant period from 1985 to 2008. That, in any event, her medical notes are scant, unsigned, and do not cover the decades of delay.

In support of their argument, they relied on the decided case of **Rawal v Rawal [1990] KLR 275**, where it was held that equity would not assist a party guilty of inordinate delay.

32. Accordingly, the provisions of Section 22 do not aid the Applicant. The limitation period had run uninterrupted from the date of completion of the alleged sale in 1985 and expired in 1997, during which period the Applicant had been well, as confirmed in her Supporting Affidavit. They thus submitted that the Applicant's reliance on illness is misconceived and could not revive a claim that is already statute-barred.
33. On the second issue, namely whether the Applicant had provided sufficient evidence to support her claim, they submitted in the negative and contended that the Applicant's claim was unsupported by any credible documentary evidence. That, in fact, the Applicant had not produced the mother title or any official search to prove ownership or interest in land parcel Kijabe/Kijabe Block 1/3146. That the alleged Agreements of Sale were unsigned and hence inadmissible. That, in fact, no consideration receipts or Land Control Board consents had been exhibited.
34. That, in contrast, the Respondents had exhibited valid documents, being the Land Control Board consent, the title deed issued to Peter Mungai Kirobi on 25th May 1995, and subsequent subdivision titles that had lawfully been registered in the names of the Respondents. That, subsequently, the Applicant's reliance on unsigned, unauthenticated documents could not displace the registered title as provided for under Section 26 of the Land Registration Act, which accords indefeasibility of title to the registered proprietor unless fraud or misrepresentation was proved.
35. Fraud must be pleaded and strictly proved to a standard higher than a balance of probabilities but lower than beyond reasonable doubt, as held in the case of **Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] KECA 223 (KLR)**. In the instant case, the Applicant had

not demonstrated particulars of fraud attributable to the Respondents. Mere allegations, without cogent evidence, could not sustain a stale claim by alleging 'discovery of fraud" decades later. They thus submitted that, in the absence of credible evidence of fraud, the Respondents' titles remain protected by law and the Applicant's claim collapses on both evidentiary and legal grounds.

36. On the third issue, namely whether the delay in bringing the claim was inordinate and inexcusable, they reiterated that four of the subdivided parcels had already changed hands to bona fide purchasers for value, who had lawfully developed their properties. They further submitted that reopening such settled transactions decades later would destabilize registered titles and undermine the principle of indefeasibility under Section 26 of the Land Registration Act. They cited the case of **Mehta v Shah [1965] EA 321**, where the court recognised that prejudice to innocent third parties was a relevant consideration in refusing equitable relief, and submitted that allowing the Applicant's stale claim would expose the Respondents and third parties to unnecessary litigation and uncertainty.
37. That the delay was further compounded by procedural deficiencies, as the Applicant had not filed any Further Affidavit to rebut the Respondents' Replying Affidavit, thereby leaving the Respondents' evidence unchallenged. That whereas the treatment notes relied upon by the Applicants were dated in the year 2022, there were no treatment notes covering the period between the years 2008 and 2021. That further, no medical report has been produced to interpret the said treatment notes or to confirm that the Applicant had indeed suffered a stroke.
38. In conclusion, they submitted that the Applicant had failed to satisfy the legal requirements for an extension of time under the Limitation of Actions Act, as she had offered no credible explanation for the inordinate delay of over two decades, had not produced any admissible evidence of ownership, and had left the Respondents' Affidavit evidence wholly

unrebutted. They further submitted that the present Application was therefore fatally defective, incompetent in law, and incapable of sustaining a cause of action and should be dismissed with costs.

Determination.

39. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited, and the applicable law, the Applicant brings this application seeking leave to file a suit against the Respondents despite the statutory limitation period having expired.
40. Her claim is that she had purchased 5 acres of land from the 1st to 5th Respondents' father, one Stephen Kirobi Mworira (deceased), between 1984 and 1985 for Ksh. 33,000/=, wherein she had taken possession and farmed the land until 2008 when she fell ill. The vendor, Stephen Kirobi Mworira, died on 3rd September 2001 before transferring the land to her.
41. The Applicant alleges that in 1995, the deceased and the Respondents conspired to fraudulently register the land in the name of the 5th Respondent. In 2017, the land was further subdivided, resulting in parcels 25004 to 25009, which were distributed among Stephen Kirobi Mworira's children, the 1st to 5th Respondents herein.
42. The Applicant cited two primary reasons for the delay in seeking legal redress: the 1st being that in 2008, she suffered a stroke that caused physical and mental immobilization, leading to a long recovery period and secondly that the fraudulent activities and subdivisions were done without her knowledge, whereby her attempts to get records from the Land Registry were repeatedly frustrated.
43. That she only came to discover the fraud on 19th December, 2023 through searches that had confirmed the suit land parcel No. Kijabe/Kijabe Block 1/3146 had been transferred from Stephen Kirobi Mworira and registered to the 5th Respondent. She deponed that the current status was that she had reported the matter to the D.C.I. and local authorities, claiming the Respondents are now selling the land to third parties.

44. The 1st to 5th Respondents' case in opposition to the application was that it was meritless, vexatious, and an abuse of the court process. They denied that their late father had ever sold the land to the Applicant, contending that there was no evidence of any such transaction. They asserted that the 5th Respondent had held the title and lived on the land for over 22 years.
45. They argued that the land was legally transferred to the 5th Respondent in 1994 to hold in trust for his siblings. The 2017 subdivisions were merely the fulfilment of their late father's wishes to distribute the land among his children. That the Applicant's medical claims did not meet the strict definition of "disability" under Section 22 of the Limitation of Actions Act, which typically covers minors or persons of unsound mind.
46. They noted a 2^{1/2}-year gap between the last medical note in 2022 and the filing of the suit, stating that the Applicant slept on her rights by failing to take action for 23 years from 1985 to 2008 before she fell ill. They emphasised the legal maxim that equity aids the vigilant, not the indolent stating that granting the application would cause grave prejudice, as four of the subdivided parcels had already been sold to third parties who have developed them.
47. I find the issues arising for my determination to be;
- i. Whether the Applicant's illness and the alleged concealed fraud constitute sufficient grounds to override the Limitation of Actions Act.
 - ii. Whether the Respondents' rights to the property and the rights of third-party buyers should be protected due to the Applicant's inordinate delay.
48. Before I make my determination, I must point out that Sections 27 and 28 of the Limitation of Actions Act, which provisions of the law the Applicant has relied on to bring her application, are specifically designed for actions claiming damages for negligence, nuisance, or breach of duty

where the damages claimed consist of or include damages for personal injuries. The Applicant's Claim is a dispute over land recovery and fraudulent title registration, and so the power to extend time under Section 27 is strictly gate-kept and cannot be imported into land disputes governed by Section 7.

49. Section 28 of the same Act outlines the procedure for seeking the court's leave. Even if the court were to consider these sections applicable to land, an application for leave under Section 28 must be made within 12 months rule which is a judicial standard used to test whether an applicant has acted with reasonable diligence once they discovered the facts they claim were hidden. Since the Applicant claims to have discovered the fraud in December 2023 and filed the summons in August 2025, she had already exceeded the 12-month promptness window, even if the section were applicable to land. The Scope of Section 27 and 28 of the Limitation of Actions Act is therefore not applicable in the present case.

50. Having said this, Section 26 of the Limitation of Actions Act provides as follows;

“Where, in the case of an action for which a period of limitation is prescribed, either—

(a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake,

The period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:”

51. Section 22 of the Limitation of Actions Act, on the other hand, provides as follows;

“If, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of six years from the date when the person ceases to be under a disability or dies, whichever event first occurs, notwithstanding that the prescribed period of limitation has expired:

Provided that—

- (i) this section does not affect any case where the right of action first accrues to a person who is not under a disability and through whom the person under a disability claims;*
- (ii) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under disability, no further extension of time is allowed by reason of the disability of the second person;*
- (iii) an action to recover land or to recover money secured on a mortgage of land may not be brought by a person by virtue of this section after the end of thirty years from the date on which the right of action accrued to that person or to some person through whom he claims;*

52. Whereas the Applicant argues that the stroke she suffered in 2008 incapacitated her, preventing legal action, yet Section 22, for the purpose of extending limitation periods, is strictly limited to being a minor or of unsound mind. The Applicant’s last treatment notes date back to 2022, meaning that for two and a half years the Applicant was well, but still chose not to move the court appropriately. I find that the Applicant was indolent for 23 years from 1985 to 2008 before the illness even began. Courts usually apply the principle that Equity aids the vigilant, not the indolent. The Applicant, having failed to explain the delay before the

stroke, is in serious jeopardy. Further, it is trite that physical illness, no matter how severe, does not constitute a disability under the Act and therefore, to stop the limitation clock, the Applicant ought to have provided evidence that the stroke rendered her mentally incompetent to manage her affairs. The medical notes provided do not substantiate a claim of mental unsoundness.

53. In **Gathoni v Kenya Co-operative Creameries Ltd [1982] KECA 10 (KLR)**, Potter J dealing with the issue of disability under the provisions of Section 22 of the Limitation of Actions Act had observed as follows:

“The applicant’s case before the learned judge was based on two grounds, the first being that the applicant was under a disability to which Section 22 of the Act applied, throughout the three-year period, and was entitled (without leave of the court) to bring the action within a period of three years from the date of the cessation of that disability (see Section 22 (v)). That date was not revealed to this court. However, that may be, the disability relied upon by the applicant is a physical disability, the nature and extent of which in time is not revealed. The learned judge dismissed this ground, in my view quite rightly, because disability in this statutory context does not include physical disability. Section 2(2) (b) of the Act clearly limits the meaning of disability. It provides:

“(2) For the purposes of this Act ...

(b) a person is under a disability while he is a minor or of unsound mind; ...”

Of course, if the applicant were under a relevant disability, she would not need the leave of the court to commence her action...”

54. Indeed, the cause of action accrued in 1985. The 12-year limitation period under Section 7 expired in 1997. The Applicant’s stroke occurred in 2008 which was eleven years after the claim had already become statute-barred. A disability that arises after the limitation period has already lapsed cannot resurrect a dead claim.

55. On the plea of concealed fraud, under Section 26 of the Limitation of Actions Act, the clock is paused only where the right of action was concealed by the fraud of the Respondents. However, the law imposes a duty of reasonable diligence on the Applicant.
56. The Applicant argues that the 12-year limitation period only began to run on 19th December 2023. Section 26 of the Limitation of Actions Act applies where the suit is based on fraud or where the right of action is concealed by fraud. The Applicant alleges a conspiracy between the deceased and the Respondents to register the land in the 5th Respondent's name in 1995.
57. The law states that time does not begin to run until the claimant discovers the fraud. The Applicant maintains that because the transfer and subsequent subdivisions in 2017 were done secretly, she remained in the dark until she obtained official searches in 2023.
58. Equity dictates that a statute, in this case, the Limitation of Actions Act, should not be used as a cloak for fraud. If the Respondent's title is indeed a product of fraud, the Applicant argues that they should not be allowed to benefit from a timeline they secretly manipulated.
59. However, the law does not protect those who remain ignorant through their own neglect. Section 26 specifies that the time starts when the fraud was discovered *or could reasonably have been discovered*.
60. Registration of land is a public act. Title deeds and registry entries are public records. The 5th Respondent was registered as the owner in 1995. The Applicant, despite claiming possession, failed to conduct a search for 28 years from 1995 to 2023. A simple search of the Land Registry at any time between 1995 and 2008 would have revealed that the land was no longer in the deceased's name.
61. Equity aids the vigilant. The Applicant claims to have been in possession of the land until 2008. I find that her failure to formalize the transfer for 23 years, from 1985 to 2008, while she was healthy, lacked reasonable diligence and constituted laches.

62. Fraud is not concealed if it could have been discovered by a simple search at the Lands Registry. The Applicant's failure to verify the title for over two decades suggests a lack of due diligence rather than a sophisticated concealment by the Respondents.
63. While the Respondents argue that the cause of action was the failure to transfer the land upon final payment in 1985, the limitation for a breach of contract is 6 years, while for the land recovery is 12 years and even if the 1995 registration was fraudulent, the Applicant's right to sue for the transfer had already been accruing for 10 years wherein the subsequent fraud although serious, could not revive a claim that the Applicant was already slow to pursue. Therefore, the plea of fraud, while serious, cannot be used to revive a claim where the Applicant was willfully blind to the public record.
64. The Court of Appeal in **Margaret Wairimu Magugu vs Kenya Investments Limited & 4 Others [2019] eKLR**, whilst dealing with an issue similar to the one at hand, held that:

*"There is no doubt that under that provision, where the action is based on fraud the period of limitation prescribed does not begin to run until the Plaintiff discovers the fraud. (see for instance **Kenya Ports Authority vs Timberland(K) Ltd [2017] eKLR**). However, having regard to the proviso to Section 26 of the Act as highlighted above, it is inconceivable that for 19 years, in the case of the deceased, and 24 years in the case of the appellant, they would have failed to discover, with the exercise of due diligence, the alleged fraud and to act if indeed the acquisition of the property by the 1st Respondent was fraudulent.*

*Due diligence entails the exercise of care required from a given person in a given situation. It entails proactivity and absence of carelessness or idleness. In the English case of **Paragon Finance vs D B Thackerar & Co [1999] 1 All ER 400** at 418B-D, Millett LJ of the Supreme Court of England opined that:*

“The question is not whether the Plaintiffs should have discovered the fraud sooner; but whether they could with reasonable diligence have done so. The burden of proof is on them. They must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take.”

65. In the **Margaret Wairimu Magugu** case (supra), the court reaffirmed that the 12-year limitation period for the recovery of land under Section 7 of the Limitation of Actions Act is a statute of repose and once the 12-year period has lapsed, the right to recover land is not just barred, but the title of the original owner is effectively extinguished by operation of the law. The court emphasised that limitation is not merely a procedural technicality that can be overlooked under Article 159 of the Constitution. Instead, it is a jurisdictional issue. If a suit is filed outside the statutory period, the court lacks the jurisdiction to entertain the merits of the case, and the suit must be struck out.
66. One of the most significant parts of the holding involved the Applicant’s attempt to use Section 26 to extend time, and the court held that Fraud does not automatically stop the limitation clock indefinitely, but the clock starts ticking the moment the fraud is discovered or could have been discovered with reasonable diligence. Since the land transactions were registered at the Lands Registry, they were a matter of public record. The claimant could have discovered the alleged fraud decades earlier by conducting a simple search. Therefore, the plea of concealed fraud failed because the claimant was not diligent.
67. The Court of Appeal in **Thuranira Karauri v Agnes Ncheche [1997] eKLR** had held that:

“We do not understand how the Judge could proceed with the trial without finally determining such an important point of jurisdiction and it is pointed out that as a general rule, a point or issue of limitation of time goes to the root of

jurisdiction which this Court should determine at the first instance. Subsequently, that where a suit is time barred, the same is incompetent and consequently a court has no jurisdiction to entertain such suit”.

68. As can be seen, Courts have thus emphasized that jurisdiction to enlarge the limitation period is donated by the Constitution, statute or subsidiary legislation; wherein if a matter is statute-barred, the court has no jurisdiction to entertain the same or to enlarge that limitation period.
69. I find that the Applicant’s claim is time-barred under Sections 7 and 26 of the Limitation of Actions Act and since limitation goes to the jurisdiction of the court, I am obliged by the holding in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** for which I will have to down my tools and take no further step. The Application 19th August 2025 is dismissed with costs.

Dated and delivered via Microsoft Teams at Naivasha this 7th day of May 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE