

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**ELCL APPEAL NO. E014 OF 2025**

**VIETA WAKERE KIENGE.....1<sup>ST</sup>**  
**APPELLANT**

**NAOMI MUCUGO KIENGE.....2<sup>ND</sup>**  
**APPELLANT**

**DANIEL** **KITHUMBI**  
**KIENGE.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**MWANIKI** **KOREA.....**  
**RESPONDENT**

*(Being an appeal from the Judgement of Hon. S.K. Ngii (PM) delivered on 20/02/2025 in Siakago MCL&E Case No. E011 of 2021 Mwaniki Korea v Vieta Wakere Kienge & others)*

**JUDGMENT**

1. The Respondent herein was the Plaintiff before the trial court wherein he had sued the Appellants vide a Plaint dated 21/01/2021 seeking interalia; a declaration that he was entitled to one acre of the portion he occupies on land parcel No. Nthawa/Riandu/4354 and 4355, and that the Land Registrar Siakago be ordered to revoke the two titles and issue a title for one acre directly to the Respondent and the balance in the names of the Appellants jointly.

2. The Respondent's case was that the 1<sup>st</sup> Appellant is the administrator of the estate of the late Isaac Kienge Kiarigi (hereinafter referred to as the Deceased) and is sued in that capacity, as well as in her capacity as a joint registered proprietor together with the 2<sup>nd</sup> Appellant of land parcel No. Nthawa/Riandu/4355 measuring 0.75 Ha. The 3<sup>rd</sup> Appellant is the registered proprietor of land parcel No. Nthawa/Riandu/4354, both parcels being resultant subdivisions of land parcel No. Nthawa/Riandu/2887.
3. The Respondent averred that on or about 2004, he entered into a land sale agreement with the Deceased for the purchase of one (1) acre out of land parcel No. 2887 for a consideration of Kshs. 50,000/= . He further averred that the said agreement was later confirmed through an acknowledgement of final payment of Kshs. 10,000/= on 19/09/2006, and that the 1<sup>st</sup> Appellant undertook to transfer the said portion to him upon conclusion of the succession cause in respect of the estate of the Deceased. He stated that the 1<sup>st</sup> Appellant filed succession proceedings which were concluded on or about 11/06/2009. However, the 1<sup>st</sup> Appellant failed to transfer the agreed portion to the Respondent, thereby necessitating the filing of this suit.
4. The Respondent further averred that, with the consent of the Deceased and with full knowledge of the Appellants, he entered into the suit land on or about 2004, has since carried out extensive developments thereon amounting to millions of Kenya Shillings, and has continuously resided thereon.

5. The Appellants filed a defence and counterclaim dated 15/03/2022 and denied the existence of any sale agreement for the sale of the suit portion of land to the Respondent. They averred that the Respondent had trespassed and was illegally occupying a portion of land parcel No. 4355. They further stated that even if there was a sale agreement entered into, it became void for lack of consent from the Land Control Board upon expiry of six months from the date of the agreement.
6. They sought inter alia, a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants are the joint and lawful proprietors of land parcel 4355 while the 3<sup>rd</sup> Appellant is the lawful proprietor of land parcel 4354; that the Respondent and anybody claiming through him be evicted from land parcel 4355 and a restraining order be issued restraining him and anyone claiming through him from entering upon, occupying, utilizing or in any manner interfering with the 1<sup>st</sup> and 2<sup>nd</sup> Appellants use, occupation and exercise of their proprietary rights over land parcel 4355.
7. The Respondent filed a reply to the defence and counterclaim dated 19/09/2022 and maintained that he is occupying a portion of one acre out of land parcel No. 2887 legally as its owner having purchased it from the deceased. He denied the allegations of trespass.
8. When the former suit came up for directions, the parties agreed to proceed with the hearing by way of viva voce evidence.

9. PW1, Mwaniki Korea adopted his written statement dated 20/06/2022 as his evidence in chief. He produced in evidence various agreements and acknowledgements and their translation, a ruling in Siakago Succession Cause No. 186 of 2017, a valuation report, official searches for land parcels 4354 and 4355, and a letter dated 09/10/2020. He testified that he purchased the suit land from Isaac Kienge Kiarigi who is now deceased in 2004 and that the 1<sup>st</sup> Appellant was his wife and the 2<sup>nd</sup> Appellant his daughter. He testified that he purchased the land for Kshs. 30,000 and that upon the demise of the deceased he paid the balance of Kshs. 10,000/= to his wife. He stated that it was the deceased who allowed him into the suit land. He further stated that if the Appellants want him evicted him form the suit land, he should be compensated in terms of the valuation report he produced in evidence.
10. On cross examination, he stated that sale agreement was entered into in 2004 whereas the agreement he produced was dated 2005. He stated that in 2004, they had not yet drawn the agreement. He stated that the parcel No. is not mentioned in the agreement dated 2005. He denied that the land he was sold was different from the suit land. He stated that the seller died in the year 2005 and that the transfer process collapsed at the board because board members were on strike and they did not go back. The seller was said to have died thereafter. He further stated that the Appellants attempted to resolve the issue by giving him

another portion of land but he declined because the portion he was being shown was rocky.

11. On re-examination, he stated that he entered the suit land in April 2004 whereas the sale agreement was made in 2005. He stated that he did not enter the land by force.
12. DW1, Daniel Kithumbi Kienge adopted his written statement dated 15/03/2022 as his evidence in chief. He produced in evidence, a copy of a demand letter dated 02/05/2012, a certified copy of the official searches for land parcels 4354 and 4355, a copy of the grant of letters of administration, a copy of the certificate of confirmation of grant dated 11/06/2009 in the estate of the deceased, summons dated 18/10/2016, a copy of a notice to vacate land parcel No. 4355 and a copy of the ruling in SPMC Succession Cause No. 186 of 2017 at Siakago.
13. He testified that in the sale agreement produced by the Respondent written in Kimbeere, the land parcel no. is not indicated. He stated that the Respondent did not purchase the suit land but another parcel No. 2891 which they showed to him but he declined. He stated that the Respondent entered the land he is occupying by force and therefore they are seeking his eviction from the land.
14. On cross examination, he stated that the Respondent entered the suit land in the year 2005 by force but that they had never sued him before for forced entry. He stated that the land the Respondent is occupying is has about 2,000 miraa stems, a house including a lodging and a kitchen and some trees growing thereon. That the developments were

made by the Respondent. He stated that they signed the agreement that was produced by the Respondent and that the purchase price indicated in the agreement was paid in full.

15. On re-examination, he stated that the Respondent did not occupy the suit land with their consent and that he purchased land parcel 2891 and not the land he's currently occupying.
16. Upon analyzing the suit, the trial Court found that the Respondent had indeed entered into a land sale agreement with the Deceased for the sale of his parcel of land as was supported by the sale agreement dated 14/05/2005 and subsequent acknowledgements of payment. The court found that although there was a discrepancy regarding the specific parcel number in the agreement, the court accepted the Respondent's evidence that the land purchased formed part of L.R. Nos. Nthawa/Riandu/4354 and 4355, being subdivisions of parcel No. 2887. That the Appellants did not rebut this evidence and had acknowledged receipt of the full purchase price.
17. The trial Court further found that the Respondent was put into possession of the land by the Deceased and that there was no evidence of force or unlawful entry. That the Appellants did not controvert this position and had allowed the Respondent to remain on and develop the land. The court held that the Respondent's occupation was lawful and dismissed the Defendants' counterclaim.

18. The trial Court further held that although the Appellants were the registered proprietors of the suit properties, having acquired title through succession, the Respondent had not proved fraud, illegality, or procedural impropriety to warrant cancellation of the titles under Sections 24 and 26 of the Land Registration Act. The court found that the Appellants' failure to transfer the suit portion of land amounted to a breach of the sale agreement rather than fraud. Consequently, the Court declined to cancel the titles but held that the Respondent was entitled to specific performance of the agreement and recognition of his interest in the land. The Respondents suit was allowed as prayed.
19. The Appellants were aggrieved with the impugned decision and preferred the present Appeal on the following grounds;
1. That the Learned Magistrate erred in law and fact in not finding that the Respondent had no claim in parcels 4354 and 4355 and that he was unlawfully interfering with the Appellants legal rights to the suit lands.
  2. That the Learned Magistrate erred in law and fact in not finding that the Respondent trespassed and unlawfully occupied a portion of land parcel No. 4355 which is not the land that the Respondent bought.
  3. That the Learned Magistrate erred in law and fact in not finding that the Respondent had no cause of action against the Appellants and that the Respondent's suit was fatally defective, time barred, a non-starter, lacked merit and ought to have been dismissed.

4. That the Learned Magistrate erred in law and fact in filling gaps in the Respondent's case and in not finding that the Respondent had failed to prove his case on a balance of probabilities.
  5. That the Learned Magistrate erred in law and fact in not finding that the Appellants Counterclaim had merit and that the Respondent ought to have been evicted from the suit lands which he was unlawfully occupying.
  6. That the Learned Magistrate erred in law and fact in not finding that the purported sale agreement between the Respondent and the deceased was ambiguous as it did not state the parcel number of the land that was being sold to the Respondent, and therefore it could not be relied on to award the Respondent a portion of the suit land.
  7. That the Learned Magistrate erred in law and fact in not finding that even if there was a sale agreement between the Respondent and the deceased, the same became void for lack of consent from the Land Control Board upon expiry of six months from the date of the Agreement.
  8. That the Learned Magistrate erred in law and fact in re-writing the sale agreement which was illegal and improper.
20. The Appellants sought to have the appeal allowed, the judgement of the trial Court quashed and set aside, and the judgement be substituted with orders dismissing the

Respondents suit and allowing the counterclaim as well as costs of the lower court case and the appeal.

21. When the appeal came up for directions, the parties agreed to canvass the appeal by way of written submissions. The Appellants filed submissions dated 09/02/2026 through the firm of Duncan Muyodi & Company Advocates. They submitted that the Respondent's claim was fatally defective, time-barred, and unsupported by law. They argued that the alleged sale agreement of 2004 was ambiguous, failed to specify the parcel number, and became void for lack of Land Control Board consent within six months as required under Section 6 of the Land Control Act. They contended that the Respondent's suit, filed in 2021, was time barred under Sections 4(1) and 7 of the Limitation of Actions Act, as both the contractual claim for specific performance and the claim to recover land were brought outside the statutory periods. The Appellants further submitted that as registered proprietors of parcels Nthawa/Riandu/4354 and 4355, their titles are indefeasible under Sections 24, 25 and 26 of the Land Registration Act, absent proof of fraud or illegality. They argued that the trial court erred in granting specific performance of a void and time-barred contract and effectively rewriting the agreement for the parties.
22. The main issue for determination is whether the appeal has merit.
23. It is not in dispute that the Respondent's claim is founded on an alleged sale agreement entered into between himself and the late Isaac Kienge Kiarigi in or about the year 2005 for

the purchase of one (1) acre out of land parcel No. Nthawa/Riandu/2887. It is further not in dispute that the suit parcels No. Nthawa/Riandu/4354 and 4355 are resultant subdivisions of the said parcel No. 2887 and that the Appellants are the registered proprietors thereof. The Appellants have challenged the validity and enforceability of the said agreement on several fronts, namely: that it did not specify the parcel number of the land sold; that it became void for lack of consent of the Land Control Board; and that the Respondent's claim is statute-barred.

24. With regard to the validity of the agreement, The Respondent produced a sale agreement dated 14/05/2005 together with several acknowledgements of payment. However, a perusal of the said agreement reveals that it does not identify the parcel number of the land being sold. However, the trial court accepted the Respondent's explanation that the land purchased formed part of parcel No. 2887 and subsequently parcels No. 4354 and 4355. That finding was largely premised on the surrounding circumstances, including the acknowledgements of payment and the Appellants' admission that they received the purchase price. In this Courts view, the trial court, in accepting the Respondent's explanation and linking the transaction to parcels No. 4354 and 4355, effectively filled gaps in the Respondent's case without sufficient evidence which amounts to a misdirection.

25. Again, in terms of Section 4(1) of the Limitation of Actions Act, a claim founded on contract ought to be brought within six (6) years. Similarly, any claim to recover land is subject to a

limitation period of twelve (12) years under Section 7 of the Act. The present suit having been instituted in the year 26/01/2021, it is prima facie statute-barred. There is no evidence that the Respondent sought leave to file the suit out of time. The claim was therefore statute-barred and ought not to have been entertained by the trial court.

26. The upshot of the above is that the appeal is merited. The judgment of the trial court is hereby set aside and substituted with an order dismissing the Respondent's suit in its entirety.

27. The Court finds that the Appellants having demonstrated that they are the registered proprietors of the suit property, and the Respondent having failed to establish any lawful interest in the suit land, his continued occupation of the land is therefore unlawful and amounts to trespass.

28. Consequently, the Appellants' counterclaim is hereby allowed.

29. The Respondent shall bear the costs of the suit in the lower court as well as the costs of this appeal.

DATED, DELIVERED AND SIGNED AT EMBU THIS 14<sup>TH</sup> DAY OF MAY, 2026

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HON. E.C CHERONO  
ELC JUDE, EMBU

In the presence of;

1. M/S Kimathi H/B for Mr. Okwaro for the Appellant

2. Respondent/Advocate-absent

3. M/S Ruth C/A