



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 24 OF 2019**

**DENNIS KOIKAI NAISHO.....PLAINTIFF**

**-VERSUS-**

**ERIC TIPIS.....1<sup>ST</sup> DEFENDANT**

**SARAH TIPIS.....2<sup>ND</sup> DEFENDANT**

**MICHAEL TIPIS.....3<sup>RD</sup> DEFENDANT**

**BENARD TIPIS.....4<sup>TH</sup> DEFENDANT**

**RULING**

The Defendants had by a Notice of Preliminary Objection dated 7<sup>th</sup> February, 2018 contended that the entire suit is misconceived as it is not sustainable since the claim is founded on a purported sale agreement dated 30<sup>th</sup> March, 2004 which is barred by virtue of the provisions of Section 4 (1) (a) of the Limitation of Actions Act.

The Respondents contended that the sale agreement which is the basis of the suit offends the provisions of Section 19 of the stamp duty act and that the same be expunged from the court record.

The Defendants/Respondents averred that the plaintiff's claim is borne as outlined in the plaint is based on the sale agreement made on diverse dates which is subject to the provisions of Section 4 of the Law of Contract Act.

I have considered the Preliminary Objection before me and the submissions filed by the Defendants. It is now established what constitutes a Preliminary Objection on points of law as those matters of view which a court determines at the pecuniary stage will ultimately decide the issues between the parties.

In the instant matter the Defendants contend that the Plaintiff's suit is premised on a sale agreement made on diverse dates between 2002 and 2004. It is trite law that any sale of land must be based on a contract of sale. However, the sale agreement which were purported to have been made falls outside the requisite period within which a contract based on sale can be instituted.

Section 4(1) of Law of Limitations Act provides that no actions may be brought upon the expiry of a period of 6 years. If the sale agreements were made between 2002 and 2004 the time had lapsed by 2010.

In view of the above I find that the Plaintiff's suit has been caught with time and in the circumstances, I upheld the Preliminary Objection by the Defendants and I dismiss the suit with costs to the Defendants.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 11<sup>TH</sup> day of December, 2019**

**Mohammed Kullow**

**Judge**

**11/12/19**

In the presence of: -

CA:Chuma/Kimiriny

Mr Eric Tipis-1<sup>st</sup> defendant

N/A for the plaintiff

N/A for the interested party

**Mohammed Kullo**

**Judge**

**11/12/19**