



**Ng'ang'a v Joreth Limited & 3 others (Environment and Land Case E061 of 2025) [2025] KEELC 5403 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5403 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E061 OF 2025**

**JG KEMEI, J**

**JULY 16, 2025**

**BETWEEN**

**FRANCIS KABUE NG'ANG'A ..... PLAINTIFF**

**AND**

**JORETH LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET WAMBUI NGUGI ..... 2<sup>ND</sup> DEFENDANT**

**THOME FARMERS' NO 5 LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff commenced this suit vide the Complaint dated 5/02/2025 amended on 25/03/2025. The Plaintiff seeks among other orders; that he be declared the lawful proprietor of all that property known as LR No. 13XX0/2X2(Nairobi/Block 2X5/1X5) ("the suit property") and that the 2<sup>nd</sup> Defendant fraudulently obtained the title to the suit property hence null and void. The Plaintiff also seeks a revocation and cancellation of the entries on the land entries, transfers and Certificate of Lease issued to the 2<sup>nd</sup> Defendant.
2. In summary, the Plaintiff's case is that the late Beatrice Ng'ang'a was at all material times during her lifetime the beneficial owner of the suit property. He avers that she acquired it vide Share Certificate No. 431 and 565 dated 21/06/2002 issued by the 3<sup>rd</sup> Defendant following a transfer of shares by the Plaintiff's late father, John Ng'ang'a Kabue on 14/06/ 2002. The Plaintiff avers that their late father acquired the suit property sometime back in 1973 through purchase of shares in the 3<sup>rd</sup> Defendant and subsequent transfer of shares by Waturu Chege who owned an adjacent plot that was amalgamated to form the suit property herein. He asserts that as an administrator of the Estate of Beatrice Wambui Ng'ang'a who died on 8/8/2008, he continued to follow up on the issuance of the title to the suit property.



3. He argues that sometime between 2007 and 2010, the 1<sup>st</sup> Defendant invited all members of the 3<sup>rd</sup> Defendant and asked them to pay. Pursuant to the said invitation, he avers that he paid a total sum of Kshs. 230,000/= . He asserts that he effected a payment of Kshs. 250,000/= on 22/02/2018 to the 1<sup>st</sup> Defendant's Advocate. That contrary to his expectations, he discovered in 2024 that the 1<sup>st</sup> Defendant had fraudulently caused the suit property to be transferred to the 2<sup>nd</sup> Defendant in the year 2013 despite knowing that the suit property had been allocated to the deceased. He accuses the 3<sup>rd</sup> Defendant for breach of duty of care to secure the issuance of the title of the suit property to the Plaintiff. It is on that basis that he seeks the prayers stated above.
4. In response to the Plaint, the 1<sup>st</sup> Defendant raised a Preliminary Objection which is subject of this Ruling. The 1<sup>st</sup> Defendant prays that the Plaint be dismissed with costs on the grounds that;
  - a. The suit is vexatious, frivolous and a waste of the Court's time.
  - b. The suit is an action for recovery of land, is barred under Section 7 of the [Limitation of Actions Act](#) for having been filed more than 12 years after 21/06/ 2002, when the Plaintiff alleges that his mother, the late Beatrice Wambui Nga'ng'a acquired the title to the said land.
  - c. The suit being an action for recovery of land belonging to a deceased person is barred by Section 7 and 9 (2) of the [Limitation of Actions Act](#), having been filed more than 12 years since the death of the deceased which occurred in the year 2008.
  - d. The suit as against the 1<sup>st</sup> Defendant is barred by the statute of limitations. The Plaintiff claims to have purchased the suit land from the 1<sup>st</sup> Defendants between 2007 and 2010. This claim, being based on contract, is statute-barred under Section 4 of the [Limitation of Actions Act](#) (Cap. 22) for having been brought long after the expiry of the six (6) year period allowed by law.
  - e. The suit is therefore fatally defective, misconceived, unfounded, lacking in merit and constitutes abuse of this Honourable Court.
5. In opposing the Objection, the Plaintiff filed Grounds of Opposition dated 14/04/2025. The Plaintiff prays that the Preliminary Objection be dismissed with costs on the grounds that;
  - a. The Plaintiff denies that the suit is statute- barred.
  - b. Any period of limitation barring this suit under the [Limitation of Actions Act](#) is subject to Section 3, Section 26 and Section 23 of the [Limitation of Actions Act](#).
  - c. The Plaintiff discovered the fraud perpetrated by the 1<sup>st</sup> Defendant on or about 24/05/2024 upon hearing that the title to the suit property had been issued in favour of Joreth Limited.
  - d. The Plaintiff discovered the fraudulent transfer perpetrated by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on/ or about 15/12/2024 when an official search was issued by a land registrar within the office of the 4<sup>th</sup> Defendant.
  - e. The statutory periods of limitation under sections 7, 9 (2) and 4 of the [Limitation of Actions Act](#) commenced on or about 25/05/2024 by virtue of the extension of the periods of limitation under section 26 of the [Limitation of Actions Act](#).
  - f. By dint of the Amended Plaint dated 25/03/2025 at paragraph 18, the 1<sup>st</sup> Defendant through its advocates, Peter Gachuhi & Co. Advocates collected money from the Plaintiff on 22/02/2018 for purposes of processing the title to the property. As such the pleadings speak for themselves in revealing that the 1<sup>st</sup> Defendant has been concealing its fraud.



- g. By dint of accepting the last payment on 22/02/2018, the right of action to recover the land accrued on 22/02/2018 by dint of Section 23 of the [Limitation of Actions Act](#).
  - h. The Plaintiff has enjoyed quiet and uninterrupted possession and occupation of the suit property at all material times prior to this suit hence the cause of action has not been extinguished by any means.
  - i. By virtue of the transfer dated 18/02/2013 from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant, it is the 2<sup>nd</sup> Defendant who has lost their cause of action by failing to claim/recover the property within 12 years of acquiring the title, whose period ended on or about 19/09/2024.
6. The Court directed that the Preliminary Objection be dispensed with by way of written submissions. The 2<sup>nd</sup> Defendant filed submissions dated 3/07/2025 in support of the Preliminary Objection. The Plaintiff filed submissions dated 27/6/2025. The 1<sup>st</sup> Defendant who is the objector did not file any submissions.
  7. The 2<sup>nd</sup> Defendant submits that the Plaintiff having acknowledged that the suit property was owned by his mother who died in the year 2008, the suit is therefore time barred. The 2<sup>nd</sup> Defendant cites the provisions of Section 9 (2) of the [Limitation of Actions Act](#) as well as the case of Theresa Wanjiro (Suing as the administrator of the Estate of Joseph Gichuki Riunge –vs- Andrew Kimata Gachanga & Another; George Mwai Mburu (3rd Party) (2021) KEELC 2362 (KLR) and aver that the suit ought to have been filed within 12 years.
  8. She further submits that the Plaintiff having admitted that he bought the suit property between 2007 and 2010 and that the suit property was fraudulently transferred to the 2<sup>nd</sup> Defendant in 2013; then by virtue of Section 7 of the Limitation of Actions, the Plaintiff's suit is time barred having been filed after 12 years after the cause of action arose. She therefore urges the Court to strike out the suit with costs.
  9. The Plaintiff submits that the only issue for determination is whether the Preliminary Objection is merited. The Plaintiff submits that claim that a suit is time barred ought to be anchored on evidence. Therefore, the Preliminary Objection herein falls outside the ambit of a Preliminary Objection. He cites the Supreme Court decision in John Florence Maritime Services Limited & Another –vs- Cabinet Secretary Transport & Infrastructure & 3 Others (2021) KESC 39(KLR).
  10. The Plaintiff further cites the provisions of Section 26 (c) of the [Limitation of Actions Act](#) and the Court of Appeal case of Mtana Lewa –vs- Kahindi Ngala Mwangandi (2015) KECA 532 (KLR) and submits that where the cause of action is fraud or mistake, the period of Limitation will not begin to run until fraud or mistake has been discovered. He argues that he discovered the fraudulent transfer of the suit property to the 2<sup>nd</sup> Defendant on 24/05/2024. That the suit having been filed in less than a year upon discovery of the fraud, the same is properly before Court.
  11. It is further submitted that the Plaintiff and his predecessor in title, his deceased mother, made continued payments in respect to the suit property to the 1<sup>st</sup> Defendant in pursuit of the title. The Plaintiff argues that the last payment having been made and accepted on 22/02/2018, the cause of action to recover the land accrued on the said date by virtue of Section 23 of the [Limitation of Actions Act](#). He cites the Court of Appeal case of Masambaga & 7 others v Malindi Holdings and Estate Limited (Civil Appeal 165 of 2019) [2022] KECA 782 (KLR) (10 June 2022) (Judgment) where it was held that the legal effect of such a payment means time starts to run afresh and the 12 years' period limitation under Section 7 of the Limitation of Actions starts to run from the date on which the right of action accrued to him.



### **Analysis and Determination.**

12. I have considered the preliminary objection raised and the submissions filed together with the authorities relied on. The main issues for determination are;
  - a. Whether the Preliminary Objection raises pure points of law
  - b. Whether the suit is time barred; and
  - c. Whether the objection is merited

### **Whether the Preliminary Objection Raises Pure Points of Law.**

13. The starting point is to define what a preliminary objection is. On what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -vs- Suleiman Said Shabal & 2 Others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukisa Biscuit Manufacturers Ltd –vs- West End Distributors Ltd (1969) E.A where the Court of Appeal said that:

“...a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact need to be ascertained or if what is sought is the exercise of judicial discretion.”

14. The issue of jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. It will not matter whether the facts of the Plaintiff's case as outlined are true not because without Jurisdiction this Court will not have any powers to determine the case. This is because in any litigation, jurisdiction is central. A Court of law cannot validly take any step without jurisdiction. The moment a party in a suit successfully challenges the jurisdiction of the Court, the said Court must down its tools. See the celebrated case of Owners of the Motor Vessel “Lilian S” – vs- Caltex Oil (Kenya) Ltd [1989] KLR 1 as well as the Supreme Court decision in the case of Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Ltd & 2 Others (2012) e KLR.
15. The issue of limitations goes to the jurisdiction of the Court as was held in the case of Sohanladurgadass Rajput and another vs Divisions Integrated Development Programmes Co Ltd (2021) eKLR where the Court held;

“The question of limitation is a question that goes to the jurisdiction of this Court. It is a clear point of law, which if argued as Preliminary Objection point may dispose of the suit.”

16. See also the case of Bosire Ongero –vs- Royal Media Services [2015] eKLR, the Court stated that;

“The question of limitation touches on the jurisdiction of the Court, which means that if a matter is statute barred, the Court would lack jurisdiction to entertain it. I therefore find and hold that the preliminary objection raised in the instant case is on a point of law, and the same is validly and properly taken.”

17. Going by the above decisions, it is my view that the objection raised is well taken since it raises the question of jurisdiction and a plea of limitation.



### Whether the Suit is Time Barred.

18. The 1<sup>st</sup> Defendant's objection, which objection is supported by the 2<sup>nd</sup> Defendant through her submissions, is premised on the grounds that the suit is an action for recovery of land, is barred pursuant to Section 7 of the *Limitation of Actions Act* for having been filed more than 12 years after 21/06/ 2002, when the Plaintiff's deceased mother acquired the title to the said land. Further that the suit being an action for recovery of land belonging to a deceased person is barred under Section 9 (2) of the *Limitation of Actions Act*, having been filed more than 12 years after the death of the deceased which occurred in the year 2008.
19. The purpose of limitation of actions is to bar stale suits and protect Defendants from unreasonable claims. See the case of *Alba Petroleum Limited v Total Marketing Kenya Limited (2019) e KLR*, where the Court held;

“The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
20. The Court of Appeal in *Mukuru Munge –vs- Florence Shingi Mwawana & 2 Others [2016] eKLR* held that:

“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to Court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”
21. Section 7 of the *Limitation of Actions Act* provides as follows;

“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 to him or, if it first accrued to some person through whom he claims, to that person.”
22. The provisions of Section 9(2) of the *Limitation of Actions Act* stipulate as follows;

“Where a person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to be in possession of the land, the right of action accrues on the date of death.”
23. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant argue that the Plaintiff's claim is for recovery of land. They argue that the suit having been filed more than 12 years the same is time barred on the basis that; the Plaintiff has asserted that he bought the land between 2007 and 2010, secondly that the Plaintiff's mother, whom the Plaintiff has filed the suit as her legal representative, died on 8/8/2008 and finally that the suit property was fraudulently transferred to the 2<sup>nd</sup> Defendant in 2013.



24. The Plaintiff on the other hand argues that his cause of action is fraud. The Plaintiff therefore pleaded protection of Section 26 of the [Limitation of Actions Act](#) that allows extension of the limitation period where fraud is pleaded. He argues that having discovered the fraudulent transfer of the suit property to the 2<sup>nd</sup> Defendant on 24/05/2024, the suit is therefore not statute barred.
25. To determine if the suit is caught by limitation of action, the Court has to determine the cause of action herein. The Court of Appeal in the case of Pius Kimaiyo Langat -vs- Co-operative Bank of Kenya Limited (Civil Appeal 48 of 2015) [2017] KECA 152 (KLR) defined a cause of action as:
- “a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person”
26. Further, in the case of Edward Moonge Lenguuranga –vs- James Lanaiyara & Another (2019) e KLR, defined a cause of action as a set of facts sufficient to justify a right to sue to obtain property or enforcement of a right against a party. For a cause of action herein to be determined, it is important to look at the averments and the prayers sought in the Plaint.
27. Quite clearly the Plaintiff’s claim as stated in the Amended Plaint is the fraudulent transfer of the suit property to the 2<sup>nd</sup> Defendant. Section 26 of the [Limitation of Actions Act](#) provide 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.
28. The Plaintiff has argued that he discovered the fraud in the year 2024, the Preliminary Objection being determined on the basis that the averments in the Amended Plaint are true and correct, the suit is therefore not time barred.
29. The Objector has also argued that the suit property belongs to the Plaintiff’s deceased mother hence barred pursuant to Section 9 (2). The said provisions is to the effect that where the deceased was on the date of his/her death in possession of the land, and was the last person entitled to the land to be in possession of the land, the right of action accrues on the date of death.
30. From the Amended Plaint, the Plaintiff avers that the suit property was a sub-division of the larger Thome Farmers No.5., which at the time of acquisition by the deceased was yet to be subdivided or titles issued to the shareholders of the 3<sup>rd</sup> Defendant. He therefore argues that the 1<sup>st</sup> Defendant was all along holding the title to the suit property in trust of the estate of the deceased.
31. Section 20 (1) and (2) of the [Limitation of Actions Act](#) provides: -
20. Actions concerning trust property
- (1) None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action—
    - (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or



- (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
- (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued:

Provided that the right of action does not accrue to a beneficiary entitled to a future interest in the trust property, until the interest falls into possession.

32. Section 20 (1) and (2) of the *Limitation of Actions Act* precludes the applicability of the period of Limitation as prescribed in the Limitation of Action Act to actions by a beneficiary under a trust which is an action to recover from the trustee property or proceeds thereof converted by the trustee for his own use. On that basis the 12-year limitation is not applicable.
33. The other ground is premised on the provisions of Section 4 of the *Limitation of Actions Act*. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant argues that the claim being based on a contract for purchase of property, it ought to have been filed within 6 years.
34. Section 4(1) (a), of the Limitation of Action Act, provides as follows;
- “ (1) 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.”
35. On this ground, the Plaintiff argued that he made a payment on 22/02/2018 to the 1<sup>st</sup> Defendant. The effect as correctly submitted by the Plaintiff, the limitation under Section 7 starts to run afresh once the late payment is accepted.
36. Section 23(3) of the *Limitation of Actions Act* states as follows:
- “ Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to moveable property of a deceased person, and the person liable or accountable therefor acknowledges this claim or makes payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment.”
37. Acceptance of the payment in 2018 constituted an acknowledgment on the part of the 1<sup>st</sup> Defendant. Therefore, the 1<sup>st</sup> Defendant extended the accrual of the right of action.
38. Having carefully analyzed the Notice of Preliminary Objection herein and the rival written submissions, together with the cited authorities and relevant provisions of law, the Court finds it not merited. The suit herein should proceed for hearing and be decided on merit.
39. The upshot of the foregoing is that the Court finds and holds that the Notice of Preliminary Objection dated 28/03/2025, is not merited and the said objection is hereby dismissed entirely with costs the Plaintiff herein.
40. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JULY 2025 VIA MICROSOFT TEAMS.**



**J. G. KEMEI**

**JUDGE**

Delivered Online in the Presence of:

**Mr. Kingori for the Plaintiff**

**Mr. Waya Ndegwa HB for Ms. Njiraini for the 1<sup>st</sup> Defendant**

**Ms. Muluvi HB for Mr. Mutua SC for the 2<sup>nd</sup> Defendant**

**N/A for the 3<sup>rd</sup> Defendant**

**Ms. Kubai for the 4<sup>th</sup> Defendant.**

CA – Ms. Yvette Njoroge

