



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

E.L.C. CASE NO. 443 OF 2014

FRANCIS KAMAU MURAI &

GIDEON MBUGUA MURAI Suing as Executors of the

Estate of Wilfred Murai Gacheru [Deceased].....PLAINTIFFS

VERSUS

GATUNDU & MANGU CO. LTD.....1ST DEFENDANT

CHARLES WAINAINA MUNGAI.....2ND DEFENDANT

RULING

The Plaintiffs filed the application dated 26/9/2016 seeking to have the orders Lady Justice Gacheru made on 5/11/2015 reviewed or set aside and their suit reinstated. They also seek an order to stay the taxation of the Defendants bill of costs dated 3/6/2016 that flowed from the ruling of 5/11/2015.

The Plaintiffs' application is based on the following grounds: that there are mistakes or errors apparent on the face of the record; discovery of new and important evidence; and that there are sufficient reasons to justify the review of the ruling dated 5/11/2015.

The Plaintiffs are the executors of the estate of the late Wilfred Murai. They had filed an application dated 10/12/2014 seeking to restrain the Defendants from dealing with the land known as L.R. No. 8569/5 situated in Kahawa West ("the Suit Property"). The 2nd Defendant raised a preliminary objection to the suit on the basis that it was statute barred and further, that the Suit Property did not form part of the assets of the estate of the late Wilfred Murai who died in 1995. The grant of probate of the written will was made on 26/2/1996 and confirmed in 1998.

The court upheld the preliminary objection after finding that this suit was filed out of time without leave of the court and that the Suit Property did not form part of the estate of the late Wilfred Murai to be distributed amongst his beneficiaries. The court noted further that there was a sale agreement showing that the late Wilfred Murai had sold part of his share in the 1st Defendant to the 2nd Defendant.

Being aggrieved by that decision, the Plaintiffs now seek review of that order. I heard the application for review since Lady Justice Gacheru whose orders are sought to be reviewed was transferred to another Court.

The court agrees with the 2nd Defendant that the Plaintiffs delayed and filed this application almost a year after the court delivered its ruling. No explanation was given for the delay in filing this application.

The Plaintiffs argue that time for purposes of limitation did not start running because the Suit Property had not been subdivided.

Under Section 7 of the Limitation of Actions Act, 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. Time started running from the date the right of action accrued to the late Wilfred Murai. The Plaintiffs are suing as executors of his will.

The Plaintiffs also argue that the court's ruling dismissing their suit was harsh, arbitrary, oppressive, meant to deny, violate, infringe and threaten their constitutional right to a fair hearing and right to protection of property. They took issue with the manner in which the Defendants filed their Defences in court. In the court's view, these do not amount to errors apparent on the face of the record.

The court has looked at the supporting affidavit sworn by both Plaintiffs but cannot find any new evidence that was discovered by the Plaintiffs after the Judge delivered her ruling. No sufficient reasons have been proffered by the Plaintiffs to justify a review of the orders made on 5/11/2015.

The application dated 26/9/2016 is dismissed with costs to the Defendants.

Dated and delivered at Nairobi this 6th day of February 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Achungo holding brief for Mr. Nabutete for the Plaintiff

Mr. Kariuki for the 1st Defendant

No appearance for the 2nd Defendant

Mr. V. Owuor- Court Assistant