



REPUBLIC OF KENYA

IN THE ENIRONMENT AND LANDS COURT AT NAROK

ELC CAUSE NO. 163 OF 2017

FORMERLY NAKURU ELC 154 OF 2016

KIRAINA KOILA.....PLAINTIFF

-VERSUS-

PIRIAS ENOLE KISHOYIAN.....1ST DEFENDANT

COUNTY LAND REGISTRAR NAROK.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Respondent in this matter filed a Notice of Preliminary Objection on points of law dated 4th April, 2017 raising jurisdictional objections to the hearing and determination of the entire suit. The respondents contend that the court lacks the jurisdiction to try the suit pursuant to the provisions of section 4 (1) of the Limitations of Actions Act Chapter 10 Laws of Kenya and the court cant grant the orders sought.

The respondent objections are based on the grounds that the claim of the suit property arises from a contractual agreement between the plaintiff and a third party now deceased and that the same thus offends the provisions of section 4 (1) of the Limitation of Actions Act which provides that

“No action found on contract can be brought upon expiry of a period of 6 months and Section 7 of the Limitation of Actions Act which provide that no action to recover land may be brought after the need of a period of 12 years.

The Respondent contends that the Applicant have not been diligent and they are indolent and should not expect to get the help of the court.

When the hearing of the application was fixed the parties consented that the preliminary objection shall be disposed of by way of written submissions and the respondent filed their submission and the applicant did not.

I have looked at the submissions by counsel for the Applicant and his preliminary objection is premised on the Limitation of Actions Act Chapter 10 of the Laws of Kenya. In so far the suit herein offends the provisions of section 4 and 7 of the aforesaid Act, as the suit relates to recovery land that was acquired by way of sale and recovery of the same.

From the plaint that was filed the plaintiff contends that he purchased about 5 acres of the land from

Labuny Ole Kishoyian who is deceased who died before he could transfer the land in his name and subsequently the 1st defendant in collusion with the 2nd Defendant caused the title to the land to be issued in the name of the 1st defendant.

Having considered the pleadings before me and the submissions made by the 1st respondent I find that the suit herein undoubtedly relates to recovery of land, however the Plaintiff raises serious issues of fraud and misrepresentation and lack of integrity on the part of all the defendants. Fraud is a serious issue that its proof I may not be able to find at this interlocutory stage and in view of the above I will order that the issues raised can only be determined at a full hearing where evidence shall be taken as the claim herein is against a third party who was not privy to the contractual relationship between the plaintiff and respondents.

In view of the above I will disallow the preliminary objection and direct that the suit herein do proceed for full hearing.

Dated, Signed and Delivered in open court at **NAROK** on this **11th** day of **April, 2018**.

Mohammed Noor Kullow

Judge

11/4/18

In the presence of:-

CA: Chuma

Ms Cheptoo for the plaintiff

N/A for the respondent

Mohamed Kullow

Judge

11/4/18