



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC MISC. APPL. NO. 22 OF 2017

BENJAMIN WAMUGI WAWERU.....PLAINTIFF/APPLICANT

-VERSUS-

SIMON NGUNYI MUTAHI.....1ST DEFENDANT/RESPONDENT

REUBEN GITAHI WANGOMBE.....2ND DEFENDANT/RESPONDENT

PILSILA NYOKABI MACHARIA.....RD DEFENDANT/RESPONDENT

GEORGE MUTURI WANGOMBE.....4TH DEFENDANT/RESPONDENT

RULING

1. The application is dated **28th September, 2017** seeking orders that the applicant be allowed to file his intended land matter out of time.
2. The application (without grounds) is supported by the undated affidavit sworn by Benjamin Wamugi Waweru. He deposes that he purchased 2 plots of land at Matanya in 1986 but was unable to utilize and/or develop them as he was financially constrained; that he later discovered through his caretaker, that his land had been sold to other persons; that he never filed a suit within the stipulated time because he was busy following up the issue with Matanya land company officials whom he believed would solve his problem but this proved futile.
3. The application is not opposed.
4. Through an affidavit of service sworn by David N. Ndungu, an authorized process server on **4th April 2018**, it is deposed in paragraphs 3, 4 and 5 that the intended defendants were served in the presence of the Senior Chief, Tigithi location on **30th March, 2018**.
5. I have considered the application, the grounds on its face and the supporting affidavit. My considered view on the application is as follows: **Section 7** of the Limitation of Actions Act, Cap 22 Laws of Kenya provides:-

“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.”

6. From the supporting affidavit, the applicant’s claim is for recovery of land which he purchased at Matanya in 1986. **Section 7** of the Limitation of Actions Act is couched in mandatory terms. In a civil suit (which is the suit the applicant has elected to file), I find my hands are tied on the issue of time and I dismiss the application dated **28th September, 2017**.

Dated, signed and delivered in open court at Nyeri this 3rd day of May, 2018.

L N WAITHAKA

JUDGE

Coram:

Benjamin Wamugi Waweru – plaintiff/applicant

N/A for the respondents

Court assistant - Esther