

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 273 OF 2015

JOSEPH RUNANA KABUI.....PLAINTIFF

VERSUS

NJIHIA KURIA.....1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, NAIVASHA....2ND DEFENDANT

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

RULING

1. This ruling is in respect of Originating Summons (OS) dated 2nd October 2015 wherein the following orders are sought:

1. That this honourable court be pleased to grant leave to the plaintiff herein to file, prosecute and maintain a suit against the defendants seeking recovery of title to land parcel known as Kijabe/Kijabe Block 1/3085 despite the period of 12 (twelve) years having elapsed.

2. That the costs hereof be in the cause of the suit to be filed.

2. The Originating Summons is brought ex parte under the provisions of **Section 7 and 27 of the Limitations of Actions Act and Order 37 of the Civil Procedure Rules, 2010**. It is supported by an affidavit sworn by the applicant. It is deposed in the affidavit that the applicant bought shares in the year 1970 in Maai Mahiu Kijabe Longonot Company Limited pursuant to which upon balloting, he was allocated a parcel of land known as **Kijabe/Kijabe Block 1/3085** (the suit property).

3. The applicant was not able to take title immediately due to poor health but has used the land since allocation up to now. When he went to the land registry to process title, he discovered that title to the suit property was issued to the proposed 1st defendant on 17th July 1985. The applicant has used the land for the last 40 years but only became aware that the title had been taken on 22nd October 2014. It was not until 31st July 2015 that he established who exactly obtained title to the suit property.

4. I have considered the application and the supporting affidavit. I note that the present application was filed on 2nd October 2015. It is apparent that the applicant only became aware of the fact that the proposed 1st defendant had obtained title to the suit property on 31st July 2015. In the circumstances, I am persuaded that the requirements of Section 27 of the Limitation of Actions Act have been met.

5. Accordingly, I grant leave to the plaintiff/applicant herein to file and prosecute a suit against the defendants named herein seeking recovery of title to parcel of land known as **Kijabe/Kijabe Block 1/3085** despite the period of 12 years having lapsed. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 29th day of June 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for plaintiff/applicant.

No appearance for the defendants

Court Assistants: Gichaba & Lotkomoi