



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 112 OF 2017**

**FORMERLY NAKURU ELC NO. 44 OF 2015**

**SHABANA MOHAMED DIM.....PLAINTIFF**

**-VERSUS-**

**UOMGOI OLE MWANIK.....1<sup>ST</sup> PLAINTIFF**

**LAND REGISTRAR.....2<sup>ND</sup> PLAINTIFF**

**ATTORNEY GENERAL.....3<sup>RD</sup> PLAINTIFF**

**RULING**

The Plaintiff in the matter herein had commenced the suit by way of a plaint dated 19<sup>th</sup> February, 2015 seeking an order of specific performance directing the Land Registrar Narok to transfer the portion of land measuring approximately 5 acres hived from the parcel of land known as Cis Mara/Ilmashariani/332 to his names. In the alternative, he prayed for an order of refund of the purchase price and order for mesne profits.

The Defendant raised a preliminary objection on points of law in the grounds that the suit is a statutorily time barred and should be struck out under the Limitation of Actions Act Chapter 22 of the Laws of Kenya. He further argued that the transaction is for a specific performance is null and void under section 6 (3) of the Land Control Act Chapter 302 of the Laws of Kenya.

When the Preliminary Objection was set down for hearing the parties agreed that the same shall be disposed of by way of written submissions and both parties filed their submissions on the objections raised.

The Defendant in his submission stated that under section 4 (1) (a) of the Limitation of Actions Act actions founded on a contract may not be brought to court after the end of 6 years when the cause of action accrued. He stated that the plaintiff purchased the parcel of land on 12<sup>th</sup> May, 2000 and the Defendant defaulted and he claimed specific performance. It is his argument that the Plaintiff claim is on a contract and hence barred.

The Defendant further stated that since the claim involved land any claim brought after the lapse of 12 years is prohibited under the provisions of section 7 of the Limitation of Actions Act.

It is the Defendant's objection that since the plaintiff did not obtain the necessary consent of the Land Control Board as provided under section 6 of the Land Control Act within the six months following the date of the transaction.

The Plaintiff in his submission stated that the transaction involved agricultural land and the consent was to be obtained by the purchaser. He further contends that the vendor was to attend the Land Control Board meeting which they facilitated and his failure was intentional.

On whether the suit was statutory time barred under the Limitations of Actions Act he contends that the Plaintiff realized time had run out owing to the mistake of the Defendant.

On the verifying affidavit that was annexed to the plaint that was filed it is the plaintiff concern that the unsigned of the said affidavit does not invalidate the plaint and that the mistake is curable under the provisions of Article 159 of the Constitution of Kenya.

I have read the Preliminary Objection raised by the Defendants and the submissions made thereof by the respective parties and the issue for determination before the court are:-

(i) Whether the claim is statutorily time barred.

(ii) Whether the consent of Land Control Board was obtained.

(iii) Whether the lack of signature on a verifying affidavit will render the plaint to be struck out.

Section 7 of the limitations of Actions Act provides:-

**“An action may not be brought by any person to recover land after the end of 12 years from the date in which the right of action accrued.....**

In the instant case the contract for the sale of land was entered into on 12<sup>th</sup> May, 2000 and the suit was filed in court on 12<sup>th</sup> February, 2015 from the above it is evident that the suit was thus filed out of time and I therefore find the suit herein offends the provision of the Limitations of Actions Act. On whether the consent of the Land Control Board was obtained the plaintiff admits that the consent was not obtained within the requisite period and the lack of the same renders the transaction null and void. On whether the verifying affidavit was signed even though the same effect of unsigned affidavit is fatal I find the verifying affidavit which is part of the court is duly signed and I therefore will not make any finding on the same as the unsigned copies there were served it could be inadvertent.

The upshot of the above is that I sustain the preliminary objection and find that the suit is statutorily time barred and therefore incompetent and I dismiss the same with costs to the Defendant.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 13<sup>th</sup> day of July, 2018**

**Mohammed Noor Kullow**

**Judge**

**13/7/18**

In the presence of:-

Mr. Lel holding brief for Karanja for the defendant

Mr Mongere for the plaintiff

Attorney General for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant