



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO. 443 OF 2012

MAYA INVESTMENTS LIMITED.....PLAINTIFF

=VERSUS=

MUTUYA HOLDINGS LIMITED & 3 OTHERS.....DEFENDANTS

RULING

Background

1. Mutuya Holdings Limited (Mutuya Holdings) was given a grant in respect of LR No.9042/305 in 1993. In 1996, Maya Investments Limited (Maya Investments) was also given a grant over the same property but under LR No.9042/605. When the erroneous grant to Maya Investments was discovered, the Commissioner of Lands through letter dated 5th August 1996 informed Maya Investments that the grant it held was erroneously given and that the same was a nullity as the property in question was a private property and no other grant could be given.

2. In the year 2010, Maya Investments filed a suit against Mutuya Holdings in Nairobi HCCC No. 483 of 2010. Maya Investments Limited filed an application seeking to restrain Mutuya Holdings from interfering with the suit property. The application for injunction was dismissed by Justice Okwengu as she then was. An application for review of the ruling of justice Okwengu was also dismissed. Maya Investments thereafter withdrew the suit before filing the current one in the year 2012 in which it sought eviction orders against Mutuya Holdings.

3. Mutuya Holdings Limited filed a counter claim in which it sought orders of permanent injunction against Maya Investments among other orders.

Application by Mutuya Holdings.

4. On 31st January 2018 Mutuya Holdings filed an application dated 29th January 2018 in which it sought striking out of the suit by Maya Investments on the ground that it is statute barred. Mutuya Investments contends that the cause of action in favour of Maya Investments arose on 15th August 1996 when the Commissioner of Lands informed Maya Investments that the grant it held was erroneously given and that the same was a nullity. Mutuya Holdings therefore argues that as Maya Investments is seeking to recover the suit property from Mutuya Holdings, the suit by Maya Investments is statute barred.

5. Mutuya Holdings argues that under section 7 of the Limitation of Actions Act Cap 22 laws of Kenya, a claim for recovery of land must be brought before the expiry of 12 years. Mutuya Holdings therefore argues that as the cause of action in favour of Maya Investments arose on 15th August 1996, no claim to recover land can be entertained after 15th August 2008 when the twelve year period elapsed.

Opposition to the application by Mutuya Holdings

6. Maya Investments opposed Mutuya Holdings' application based on a replying affidavit sworn on 6th April 2018 and filed in Court on 12th April 2018. Maya Investments contends that the Commissioner of Lands was wrong in revoking the title held by it without affording it an opportunity to be heard; that its suit should not be struck out on a technicality and that its suit should be heard so that the validity of the title it holds can be ascertained.

7. Maya Investments further contend that the cause of action in its favour arose when Mutuya Holdings trespassed into the suit property. Maya Investments argues that the cause of action in its favour arose in February 2010 when Mutuya Holdings started to fence the suit property.

Analysis.

8. The parties herein agreed to put in written submissions in respect of Mutuya Holdings 'application. Maya Investments filed their submissions on 13th September 2018. Mutuya Holdings filed theirs on 27th June 2018 and further replying submissions on 1st October 2018. The attorney General on behalf of the Chief Land Registrar and Commissioner of Lands filed their submissions on 21st September 2018.

9. I have considered the application by Mutuya Holdings as well as the opposition to the same by Maya Investments Limited. I have also considered the submissions by all the parties to this suit. The only issue for determination in this application is whether the suit by Maya Investments Limited is statute barred or not. Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya provides as follows:-

“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”.

10. In the documents filed by Maya Investments, the company admits receiving the letter dated 15th August 1996 which informed them that the grant they held was a nullity as there was already an existing grant in favour of Mutuya Holdings which was given in 1993. If Maya Investments wished to file a case for recovery of the suit property they had 12 years within which to do so. They did not do so. The first attempt for recovery was in 2010. By this time twelve years had elapsed. This suit was filed in 2012 after expiry of the twelve year period granted.

11. Maya Investments are submitting that their claim should not be struck out on a technicality. The Limitation of Actions Act is a substantive Act which has provided for time when certain actions ought to be brought. When an application is brought on ground that the suit is statute barred, this cannot be taken as a technical ground. Maya Investments was aware that its title had been questioned way back in 1996. It cannot therefore argue that the cause of action in its favour arose in 2010 when Mutuya Investments moved to fence the suit property.

12. Maya Investments have argued that as the application was made before amendments to the suit were effected, then the same has been overtaken by events in that as the application did not refer to the amended suit the application is therefore misplaced. In this regard Maya Investments relied on the decision of justice Ringera as he then was in **Regina Kavenya Mutuku & 3 others Vs United Insurance Co.Ltd (2002) eKLR** where the Judge held as follows:-

“In my opinion where a pleading has been amended and the same has been struck out for whatever reason, the party affected has simply no valid pleadings left on record. The effect of an amended defence, in my judgement is to supersede and replace the original defence with the amended one for purposes of determining what facts are admitted or traversed, as the case may be, and therefore what issues are joined for trial”.

13. In the **Regina Mutuku case (supra) justice Rigera** as he then was, was addressing the issue of whether once an amended pleading has been struck out a party can rely on the original pleading. This is not the case in this case. Mutuya Holdings had made an application seeking to strike out Maya Investments' suit. Thereafter, there was a consent in which the suit sought to be struck out was amended. This did not change the ground Mutuya Holdings was raising namely that Maya Investments' suit was statute barred. Amendment of pleadings did not constitute a fresh accrual of cause of action and the fact that the application had targeted a suit which was later amended does not affect the issue of same being statute barred.

CONCLUSION

14. It is clear that Maya Investments' suit is statute barred. I proceed to strike it out with costs to Mutuya Holdings, and the Chief Land Registrar.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 26th day of **November 2018**.

E.O.OBAGA

JUDGE

In the presence of:

Mr Kabaiku for 1st Defendant

Mr Mueke for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE