



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 1051 OF 2014 (FORMERLY NAIROBI HCC NO. 129 OF 2007)

FRANCIS MUCHANGI.....PLAINTIFF

VERSUS

LUCKY SUMMER ESTATE LIMITED.....1ST DEFENDANT

MARY NYAKIO.....2ND DEFENDANT

RULING

The Plaintiff filed suit on 8/2/2007 seeking a declaration that he is the lawful owner of plot no. 84 in Embakasi now known as L.R. No. Nairobi/Block 113/229 (“the Suit Property”) having bought this from the 1st Defendant when he bought shares in that company and was issued with a share certificate. The Plaintiff claims to have bought the shares from the 1st Defendant on 9/11/1984. He pleads fraud against both Defendants and that the 1st Defendant fraudulently purported to allot the suit property to the 2nd Defendant knowing very well that it had already sold it to the Plaintiff.

The 1st Defendant contends at paragraph 5 of the defence that the suit is statute barred since a claim for land ought to be filed within 12 years of the date the cause of action arose. This was taken up as a preliminary point before the case could proceed for hearing.

Parties filed written submissions.

Section 7 of the Limitation of Actions Act stipulates that a suit to recover land ought to be filed within 12 years from the date the cause of action arose. The proviso to section 26 of the Limitation of Actions Act provides that where an action is based on fraud, time starts running when the Plaintiff discovers the fraud or when he could have diligently discovered it.

The court has considered the submissions made by counsels. A preliminary objection should raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained. (See **Mukisa Biscuits Manufacturing Company Ltd V. West End Distributors Ltd** (1969) EA 696)

The court has looked at the Plaintiffs bundle of documents and notes that there is a letter dated 21/7/2003 which informed the Plaintiff that he was required to accept the conditions of the grant from the Commissioner of Lands and to pay the requisite fees to facilitate issuance of a grant over the Suit Property to him.

The court is not satisfied that the preliminary objection is merited. Parties need to lead evidence at the hearing on when the Plaintiff learnt of the fraud he alleges in the allocation of the Suit Property so that the

court can establish when time started running for purposes of computing time under the Limitation of Actions Act.

The preliminary objection is dismissed with costs to the Plaintiff.

This is an old suit filed in 2007 which ought to be heard and determined without further delay. The Plaintiff is directed to fix the case for hearing forthwith.

Dated and delivered at Nairobi this 19th day of September 2017

K. BOR

JUDGE

In the presence of: -

Mr. Asimwe for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant