



REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 1564 OF 2016

STEPHEN MOTARI ISABOKE.....PLAINTIFF/APPLICANT

VERSUS

PARIKEN MOKO PARASTUN.....DEFENDANT

RULING

1. What is before the court for determination is the plaintiff's Notice of Motion application dated 7th December 2016 in which the plaintiff is seeking leave to file suit out of time. The notice of motion is expressed as brought under the provisions of **Order 37 rule 3 of the Civil Procedure Rules** and **Section 53 (3) of the Land Registration Act, 2012**. The application is supported by the plaintiff's affidavit sworn on 7th December 2016. The plaintiff's case is that on 11th August 2003, he purchased 10 Acres of land known as **KAJIADO/KITENGELA/6606** at a price of KShs.600,000/-. The purchased property was curved out of Kajiado/Kitengela/1937. The plaintiff avers that the defendant subsequently reneged on the sale and has to date not transferred the suit property to him.

2. The plaintiff contends that delay in filing suit was not deliberate and that it was occasioned by the defendant who showed him an alternative land known as **Kajiado/Kitengela/30235**. He further contends that upon conducting a search, he discovered that the parcel was transferred to other persons. The plaintiff states that he stands to suffer irreparable loss and grave injustice if leave is not granted. Lastly, the plaintiff contends that the defendant will not suffer any prejudice or injustice if leave is granted.

3. The single issue to be determined in this application is whether this court has jurisdiction to extend time for filing suit to recover land or to enforce a land sale contract.

4. The legal framework on limitation for causes of action relating to recovery of land and land sale contracts is contained in **Section 4 (1) and Section 7 of the Limitation of Actions Act** which provide as follows:

***“Section 4. (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—***

***(a) actions founded on contract;***

***(b) actions to enforce a recognizance;***

***(c) actions to enforce an award;***

*(d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;*

*(e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”*

*“Section 7. 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.”*

5. The legal framework on extension of time within which to bring action in relation to certain causes of action is spelt out in *Sections 26 and 27 of the Limitations of Actions Act* which provide as follows:

*“26. Extension of limitation period in case of fraud or mistake:*

*Where, in the case of an action for which a period of limitation is prescribed, either—*

*(a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or*

*(b) the right of action is concealed by the fraud of any such person as aforesaid; or*

*(c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:*

*Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—*

*i. in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or*

*ii. in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.*

*27. Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.*

*(1) Section 4(2) does not afford a defence to an action founded on tort where—*

*(a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and*

*(b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and*

*(c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and*

*(d) the requirements of subsection (2) are fulfilled in relation to the cause of action.*

***(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—***

***(a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and***

***(b) in either case, was a date not earlier than one year before the date on which the action was brought.***

***(3) This section does not exclude or otherwise affect—***

***(a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or***

***(b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.”***

6. My understanding of the above legal framework is that the court is empowered to extend limitation period in cases of fraud or bonafide mistake. Secondly, the court has jurisdiction to extend limitation period under **Section 27** if the cause of action relates to negligence, nuisance or breach of duty resulting to personal injury of a person. A party moving the court to exercise jurisdiction under the above sections must satisfy the criteria set out within the framework.

7. In the present application, the plaintiff seeks leave to file suit out of time. The intended suit is for recovery of some 10 acres of land which the applicant allegedly purchased from the respondent in August 2003.

8. The jurisdiction to extend limitation period is limited to certain causes of action and circumstances. That jurisdiction is not available to the court in every cause of action. The applicant's cause of action does not fall within the purview covered by the legal framework on extension of limitation period. Consequently, I hold that this court lacks jurisdiction to extend limitation period in the present matter.

9. The upshot of this ruling is that the Notice of Motion dated 7/12/2016 is dismissed for lack of merit. It automatically follows that the Originating Summons dated 7/12/2016 and filed together with the said Notice of Motion is struck out for being statute-barred under **Section 4(1) and Section 7 of the Limitation of Actions Act**.

**Dated, signed and delivered at Nairobi on this 31st day of October, 2017.**

**B M EBOSO**

**JUDGE**

**In the presence of:**

Momanyi holding brief for Okao Advocate for the Plaintiff/Applicant

Halima Abdi: Court Assistant