



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 21 OF 2015

MARY V.B. OYSYULA (suing on behalf of the Estate of the late

MARTHA KAVESA BUSU):::**PLAINTIFF**

VERSUS

ZIPPY BUSU MASIZAH :::**DEFENDANT**

RULING

The defendant raised a preliminary objection as per paragraph 7 of the defence dated 14th July 2015. The defendant avers that the plaintiff's claim is statutory time barred, bad in law, incompetent and a gross abuse of the court process and the same should be dismissed with costs. That on or about the 5th March, 1996 the defendant obtained from the Kakamega District Land Registry a title deed of land comprised in N/MARAGOLI/KISATIRU/858 registered in her name. The suit was filed on the 3rd February, 2015, this is contrary to the Limitations of Actions Act cap 22 of the laws of Kenya. Section 7 stated that actions to recover land should be filed within 12 years. This matter has been brought to court 19 years later.

The plaintiff opposed the preliminary objection and states that the issues are about customary trust and not the ones in the plaintiff. The issues related to siblings and it should be heard on its own merit. The registration is in dispute and the court should not give undue emphasis to technicalities.

This court has considered the submissions on the preliminary objection by both the plaintiff and the defendant. From the plaintiff the case is that on or about the 5th March, 1996 the defendant fraudulently obtained from the Kakamega District Land Registry a title deed of land comprised in N/MARAGOLI/KISATIRU/858 registered in her name. she misrepresented herself as the only beneficiary of the estate of Japheth Akiyaga Busu. She failed to disclose that the land was being passed from Japheth Busu Akikaya to Martha Kaveza Busu and failed to disclose that she had other siblings.

The plaintiff states that the above mentioned parcel of land was for all intents and purposes supposed to be registered in the name of Martha Kaveza Busu (deceased) her having obtained a grant to administer the Estate of Japheth Busu Akikaya (deceased) dated 29th April, 1992. That she asks the court to compel the defendant to surrender the land title No. N/MARAGOLI/KISATIRU/858 to the land registry for rectification of the said anomaly so as to have all the dependants registered on the title deed. The plaintiff prays for judgment against the defendant for:-

1. An order nullifying the registration of title in favour of the defendant.
2. An order directing the Land Registrar Kakamega to register all that parcel of land known as N/MARAGOLI/KISATIRU/858 in the name of the estate of Martha Kaveza Busu.

3. Cost of this suit.

4. Any other or further relief that this honourable court may deem fit to grant.

It is not disputed that on or about the 5th March, 1996 the defendant obtained from the Kakamega District Land Registry a title deed of land comprised in N/MARAGOLI/KISATIRU/858 registered in her name. It is also not disputed that suit was filed on the 3rd February 2015. It is clear from the plaint on record that this is a matter relating to ownership and title to land and not a declaratory suit as per the plaintiff's submissions.

The Limitations of Actions Act cap 22 of the laws of Kenya. Section 7 stated that actions to recover land should be filed within 12 years. This matter has been brought to court 19 years later. This doctrine in Kenya is embodied in **Section 7** of the Limitation of Actions Act, which is in these terms:-

“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.”

In the the case of **Mtana Lewa vs Kahindi Ngala Mwangandi (2015) eKLR** the court of appeal held that, limitation of time for land claims as with claims of any other nature exist for three main reasons which are:

“ i. A plaintiff with a good cause of action ought to pursue it with reasonable diligence (equity does not aid the indolent);

ii. A defendant might have lost evidence over time to disprove a stale claim; and

iii. Long dormant claims have more cruelty than justice in them (Halsbury's Laws of England, 4th Edition.)”

I find that this case is for recovery of land and has been brought well over 12 years after the right accrued. I find that the preliminary objection has merit and I uphold the same. Consequently, this suit is incompetent to that extent and I strike out the same with costs to the defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23RD DAY OF NOVEMBER 2017.

N.A. MATHEKA

JUDGE