



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C NO. 34 OF 2017

PETER MURIITHI NYAGA.....PLAINTIFF

VERSUS

MADRIS KANINI MBUNGU.....1ST DEFENDANT

CEASER MURIITHI GAKIABI.....2ND DEFENDANT

RULING

1. By a plaint dated and filed on 22nd February 2017, the Plaintiff sought the following reliefs against the Defendants;

a. Transfer of 0.4 ha portions out of parcel L.R No Kyeni/Kigumo/1485 and 1486 the subject lands in the alternative the Deputy Registrar of the honourable court be mandated to sign the necessary forms to effect transfer 0.4 Ha out of the suit lands to the Plaintiff (sic).

b. Costs of this suit and interest from the date of filing the suit.

c. Any other relief the honourable court may deem fit to grant.

2. It was pleaded in the plaint that the Defendants were in breach of the sale agreements made on 6th May 2007 for the sale of a portion of 0.4 ha out of *Title No. Kyeni/Kigumo/1485* and 0.4 ha out of *Title No. Kyeni/Kigumo/1486* (hereinafter referred to as the “suit properties”). It was pleaded that the Defendants had failed or refused to transfer the suit properties to the Plaintiff.

3. The Defendants filed a statement of defence denying the Plaintiff’s claim. It was pleaded, *inter alia*, that the Defendants had no capacity to enter into such sale agreements since they had not obtained confirmation of the relevant letters of administration. It was pleaded, in the alternative, that the Plaintiff had failed to pay the balance of the purchase price in consequence of which the Defendants repudiated the sale agreements. The Defendants further pleaded that the Plaintiff’s suit was statute barred under the **Limitation of Actions Act (Cap 22)**.

4. The Defendants also filed a notice of preliminary objection dated 27th March 2017 in which they stated that the Plaintiff’s suit was totally defective for contravening the provisions of **section 4 (1) (a) of the Limitation of Actions Act (Cap 22)** (hereinafter referred to as “the Act”).

5. By consent of the parties, the said preliminary objection was canvassed through written submissions. The Defendants filed their written submissions in support of the preliminary objection on 24th August 2017 whereas the Plaintiff filed his submissions in opposition thereto on 19th September 2017.

6. The Defendants submitted that the applicable provision of the Act was **section 4 (1) (a)** which provides as follows:

“The following actions may not be brought after the end of six years from the date on which the cause of action occurred.

a) Actions founded on contract

b) ...

c) ...

d) ...

e) ...

It was the Defendant’s submission that the sale agreements for the suit properties were made on or about 6th August 2007 which was about 10 years ago. The Defendants relied upon the case of **Lucky Summer Estate Co Ltd & 3 Others Vs Kariuki & Gatheca Resources Ltd NBI HCCC No. 2587 of 1994** and urged the court to strike out the Plaintiff’s suit.

7. The Plaintiff, on the other hand, submitted that the instant suit was not statute barred because the applicable provision of the Act was **section 7 of the Act** which provided for a limitation period of 12 years for actions for recovery of land. The said section provides that:

“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 occurred to him or, if it first occurred to some person through whom he claims, to that person”.

8. The court has considered the pleadings herein, the submissions of the parties and the said provisions of the Act. The court is of the view that the Plaintiff’s action falls within the provisions of section 7 and not section 4(1) (a) of the Act. The Plaintiff’s suit is not an action on an ordinary contract but a contract for the sale of land which he is seeking to recover. The court is persuaded by the authorities cited by the Plaintiff’s advocate ie Embu ELC No 9 of 2015 **Salesio Njeru Mbogo Vs Michael Muriithi Njagi & Another [2017] eKLR** and **Board of Governors Kisasi Secondary School Vs Johnson Kitheka Kathenge [2017] eKLR** that the applicable section of the Act is section 7.

9. In those circumstances, the Plaintiff’s cause of action had not expired by the time he filed suit on 22nd February 2017. In my view, he still had 2 more years before expiry of time.

10. The upshot of the foregoing is that the court finds no merit in the Defendants’ preliminary objection dated 27th March 2017. Accordingly, the same is hereby dismissed with costs to the Plaintiff.

11. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 23RD day of NOVEMBER, 2017

In the presence of Mr Andande holding brief for Ms Wangoko for the Plaintiff

and

Mr Okwaro holding brief for Mr. Maina for the Defendant.

Court clerk Njue/Leadys.

Y.M. ANGIMA

JUDGE

23.11.17