

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 1016 OF 2015

MARGARET NDUTA WAGUCHU (Suing on her own behalf

& on behalf and for the benefit of the Estate of the late

GEORGE WAGUCHU WAMBU Deceased).....PLAINTIFF

VERSUS

TERESIAH WAMBUI NGUGI.....DEFENDANT

RULING

The Plaintiff filed the application dated 1/2/2016 seeking to have the defence struck out and judgement entered as prayed in the plaint on the basis that the defence does not raise any triable issues. In response to that application, the Defendant filed a notice of preliminary objection claiming that the suit is time barred; the transaction having been executed in 1998 yet the suit was filed in 2015. The Defendant also claims that the Plaintiff is a stranger to the suit for want of proper letters of administration permitting her to institute this suit on behalf of the estate of George Waguchu Wambu.

The Defendant argues that under Section 7 of the Limitation of Actions Act, this suit ought to have been filed within 12 years of 28/5/1998 when the sale agreement was executed. She contends that the Plaintiff should have sought extension of time and maintains that the demand letter cannot cure this anomaly. She also claims that the confirmed grant issued to the Plaintiff in respect of the Estate of the late George Waguchu Wambu does not list the suit property as part of the assets of the estate of the deceased. The Defendant urges the court to strike out the suit.

The Plaintiff opposed the application. She argues that the question is when the default arose since there is no contention that the agreement was signed in 1998. The Plaintiff contends that the default arose in 2012 when the Defendant refused to sign the transfer forms in favour of the Plaintiff. The sale agreement stated that Kshs. 50,000/= was paid on the day the agreement was executed and the balance of Kshs. 400,000/= was to be paid once the subdivision was cleared.

The court has looked at the mutation form which shows that the subdivision of Dagoretti/Waithaka/822 to create the suit property and other plots was done in 2010. The subdivision exercise could only be undertaken by the registered owner who is the Defendant. The Defendant does not advance reasons for the delay of over 12 years in getting the land subdivided. The Plaintiff also contends that the Defendant coerced the Plaintiff to pay a further sum of Kshs. 50,000/= in January 2015 despite having fully paid the purchased price. The Plaintiffs explanation as to why the suit property was not listed among the properties of her deceased husband is that the plot could not be included since the land had not been subdivided and given a new plot number.

The court has looked at Section 7 of the Limitation of Actions Act which states that no action to recover land may be brought after the end of twelve years from the date the right of action accrued. Time starts running from the date the cause of action arises. Section 11 of the Limitation of Actions Act states that a right of action to recover land by virtue of a breach of condition accrues the date the condition is broken.

The court agrees with the Plaintiff that her cause of action against the Defendant accrued when the Defendant subdivided the suit property in 2010 and failed to transfer the suit property to the Plaintiff. The preliminary objection lacks merit. It is dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this 22nd day of December 2017

K. BOR

JUDGE

In the presence of: -

Mr. Chengecha for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant