

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

CASE NO. 91 OF 2015

RAEL NALIAKA SAWENJA.....PLAINTIFF

VERSUS

JACKTONE MUKHWANA.....DEFENDANT

RULING

1. This is a ruling in respect of a preliminary objection raised by the defendant on the ground that this suit is statute barred on account of section 7 of the Limitation of Actions Act. The plaintiffs advocates were duly with the Preliminary objection which was set down for hearing on 13.10.2015 but they did not attend.
2. The defendant contends that the cause of action herein accrued to the plaintiff's late husband William Sawenja Silikwa in 1986 but that there was no suit filed until 28.6.2015. The defendant contends that the suit should have been filed by 1998. The defendant therefore argues that the suit is statute barred.
3. I have gone through the pleadings filed herein in a bid to determine whether this suit is statute barred. I notice from the record that the plaintiff's husband died on 4.11.2002. Prior to the death of the deceased he had been involved in litigation with some members of Birunda Farm Limited. It would appear the matter had gone before a panel of elders who ruled in favour of the members of Birunda Farm Ltd. The deceased then appealed against the elders decision which had been adopted as a judgement of the court.
4. On 8.6.1989 the counsel for the appellant (deceased) and the respondents entered a consent allowing the appeal on the ground that the lower court had no jurisdiction. Section 7 of the Limitation of Actions Act states as follows:-

“ 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. In the instant case the cause of action accrued to the plaintiff's husband before he died. The plaintiff's husband had started the process of claiming his land. When he was defeated in his attempt to claim his land, he went to the court of Appeal where a consent was recorded allowing the appeal. This meant that the position obtaining before the decision of the lower court was maintained. What remained was the process of execution i.e to remove those who had taken away his land. The only issue for determination is whether in the circumstances it can be said that the plaintiff's claim is statute barred.
6. It is clear from the pleadings that the deceased had started the process of claiming his land. It cannot therefore be claimed that the process started in 2015. The plaintiff has merely come to court for declaration that she is the lawful owner of the suitland. There is therefore no ground for alleging that the suit is barred by statute. I therefore dismiss the Preliminary Objection with costs to the plaintiff.

It is so ordered.

Dated, signed and delivered at Kitale on this 26th day of January, 2016.

E. OBAGA

JUDGE

In the presence of Mr. Ndarwa for applicant

Assistant - Isabellah.

E. OBAGA

JUDGE

26/1/2016