



Njoroge (Suing as an Administrator of the Estate of the Late Njoroge Githimbi) v Njoroge (Sued as the Administrator and Beneficiary of the Estate of the Late Simon Njoroge Wataku) & another (Environment & Land Case 2 of 2020) [2024] KEELC 937 (KLR) (22 February 2024) (Judgment)

Neutral citation: [2024] KEELC 937 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 2 OF 2020
JG KEMEL, J
FEBRUARY 22, 2024**

BETWEEN

MICHAEL JUSTUS NJOROGE (SUING AS AN ADMINISTRATOR OF THE ESTATE OF THE LATE NJOROGE GITHIMBI) PLAINTIFF

AND

ANNE MWIHAKI NJOROGE (SUED AS THE ADMINISTRATOR AND BENEFICIARY OF THE ESTATE OF THE LATE SIMON NJOROGE WATAKU) 1ST DEFENDANT

THE LAND REGISTRAR KIAMBU 2ND DEFENDANT

JUDGMENT

1. With leave of the Court the Plaintiff amended his Plaintiff dated the 15/11/2021. He sought the following orders against the Defendants;
 - a. A declaration that Njoroge Githimba (deceased) is the bonafide and rightful owner of all that parcel of land known as Githunguri/Kimathi/940.
 - b. A declaration that all subsequent transfers of the original parcel Githunguri/Kimathi/940 were irregular, fraudulent and that all subsequent titles of the said parcel are null and void.
 - c. A declaration that the subdivision of parcel Githunguri/Kimathi/940 into Githunguri/Kimathi/1571 & 1572 was fraudulent and unlawful.
 - d. An order directing the 2nd Defendant to cancel the titles Githunguri/Kimathi/1571 & 1572 issued to Simon Njoroge Wataku and George Gitau Gathimba and to revert the said titles into the original title Githunguri/Kimathi/940 in the name of Njoroge Githimba (deceased).
 - e. Cost of the suit and interest therefore from the date of filing the suit.



- f. Any other relief that the Honourable Court may deem just fit to grant.
2. The Plaintiff's claim against the Defendants is premised on illegalities and fraud pleaded in the plaint. It was his case that his late Brother one Daniel Wataku and the 2nd Defendant unlawfully transferred the land in the names of the said brother and another third party without his consent knowledge and contrary to the law. That the 2nd Defendant colluded with the said brother to interfere with the ownership of the property as a result of which a fraud was committed depriving him of the suit land. That the 1st Defendant who is the administrator of the estate of Simon Njoroge Wataku, was aware of the fraudulent activities of Simon and now seeks to benefit from the said actions. The 2nd Defendant was also faulted for negligence in the manner that it carried out its mandatory duties.
 3. The 1st Defendant denied the claim of the Plaintiff vide the statement of defence date the 9/8/2020 and contended that her husband one Simon Njoroge inherited the suit land from her father Daniel Wataku and upon her husband's death the land devolved to her name. That the whole process was above board and denied the particulars of fraud.
 4. The 2nd Defendant on the other hand denied the claim of the Plaintiff and averred that in all its actions it acted professionally being guided by the law and the registrations undertaken were done in accordance with the documents that were presented by the parties.
 5. At the hearing PW1- Michael Justus Njoroge led evidence on behalf of the Plaintiff and gave a detailed history of the suit land. That his father Njoroge Githimba held the land in trust for him as he was then still young to hold title. In 1989 he used the land as security to secure a loan from AFC through his father. He defaulted in servicing the loan upon which he approached his then brother Daniel Wataku to meet the liability and handed over the title to him. The witness led evidence that he nor his brother paid the loan. Upon the death of his father in 1990 he stated that he petitioned for succession and in 1995 when he wanted to register the transmission forms of the suit land in his name he found that the land had been registered fraudulently in his name and that of Daniel Wataku. Later the land was registered in the name of George Gitau Githimba and Daniel Wataku and subsequently partitioned into parcels 1571 & 1572. That he was not party to the illegal transactions however he admitted that he sold a portion of 0.25 acres to George Gitau in 1993 or thereabouts. The witness was categorical that the transfer of the land in the name of the two individuals coupled with the subdivision was fraudulent.
 6. PW2 – George Gitau Githimba stated that he purchased a portion of 0.25 acres of land in 1993 from the Plaintiff and took possession to date. That he is not aware how his name ended up in the register and that he was not aware that he is now registered as owner of the portion as he was waiting on the Plaintiff to transfer the land to him. The witness stated that he did not participate in any of the transactions that culminated in him being a registered owner of the portion of 0.25 acres. That at the time he purchased the title he was informed by the Plaintiff that the title of the mother title was with his brother Daniel Wataku. In addition, he confirmed that the 1st Defendant is in occupation of the suit land as well.
 7. On the other hand, DW1 – Ann Mwhiki led evidence that she is the wife of the late Simon Njoroge, the son of Daniel Wataku. That the Plaintiff is the brother of his father in law namely Daniel who died in 2001 and upon his estate being succeeded the suit land was inherited by Simon Njoroge his son in line with the confirmation of grant in the estate of Daniel. That upon the death of her husband Simon, she has petitioned for the succession in the said estate. That the Plaintiff filed a protest in the said succession proceedings claiming the land and the succession Court directed the parties to this Court so that the issue of ownership of the land may be determined.
 8. The witness further stated that she learned from her mother in law that the suit land had been used to secure a loan with Agricultural Finance Corporation (AFC) by the Plaintiff and upon default her



father in law paid up the loan and received the land in return. That she does not know the full history of the land as she got married into the family in 1996 and all she knows is what was passed down to her by her mother in law. She stated that the agreement to refund the money of 1997 is a forgery. That she and her children have lived on the land for over three decades and that even the Plaintiff never claimed the land in the life of his father in law who was his brother. That the claim coming so late in the day is statute barred and ought to be dismissed.

9. DW2 – Emmanuel Karissa stated that he examined the purported agreement of 1997 on refund of monies and reversion of title to the Plaintiff and found that the signature purporting to be that of Daniel Wataku is a forgery. He stated that Daniel did not sign the agreement.
10. The 2nd Defendant did not present any witnesses save that Ms Ndundu participated in the proceedings and cross examined all the witnesses. The case of the Plaintiff against the 2nd Defendant was therefore not controverted by way of evidence.
11. Parties filed written submissions which I have read and considered. I thank counsel for their respective highlights.
12. The issues for determination are;
 - a. Whether the claim of the Plaintiff is time barred
 - b. Whether the Plaintiff has proved fraud and illegalities
 - c. If yes is the Plaintiff entitled to the reliefs sought
 - d. Who meets the cost of the suit?
13. The 1st Defendant raised the issue of time bar in evidence and this being a question of jurisdiction, the Court finds that this is a question that ought to be dealt with upfront. I say so because a challenge based on limitation goes to the Jurisdiction of the Court to deal with the claim of the Plaintiff. The Court will proceed to deal with issue No. 1 and depending on the findings may proceed to determine the rest of the issues.
14. The case of the Plaintiff is premised on fraud and illegalities. The core claim is basically on the recovery of land. The issue then will be when the cause of action arose. The Plaintiff led evidence that the suit land was registered in the name of his father in 1986 to hold in trust for him. That upon the death of his father and after the completion of the succession cause in the estate of his late father he discovered in 1995 that the land had been transferred to his brother Daniel in a fraudulent manner. The cause of action then arose in 1995. In answer to whether he took any actions upon the discovery the Plaintiff stated that he neither filed any report to the police on the alleged fraud, he stated that he filed a case in 1996 to wit CMCC No 881 of 1986. The Court has perused the scanty pleadings in respect with this case and finds that the case was filed by Richard Njoroge and not the Plaintiff who was a Defendant in the case. Neither was there evidence laid before the Court in support of any counterclaim in the suit with respect to the claim in the suit land.
15. The Court also finds that in two other suits filed with respect to the suit land being HCCC No 1250 of 1997 which was consolidated with HCCC No 2928 of 1995, the Plaintiff was not the initiator of the suit but rather a Defendant in all of them. It is therefore correct to agree with the 1st Defendant that the Plaintiffs took no steps to recover the land despite his admission that he was aware of the fraud and illegality as early as 1995. Even if for argument sake the time is taken to run from 2003 when the cases were dismissed, then the Plaintiff had upto 2015 to file suit which he did not. Whichever way it is looked at the claim of the Plaintiff is statutorily barred either under recovery of land as well as on fraud.



16. Section 4 of the *Limitation of Actions Act* states as follows;

- “(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.
- (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:
- Provided that an action for libel or slander may not be brought after the end of twelve months from such date.
- (3) An action for an account may not be brought in respect of any matter which arose more than six years before the commencement of the action.”

17. The Court finds that actions based on fraud must be brought before the Courts within three (3) years in default the claim becomes stale. The Court was not shown any evidence to show that the leave of the Court was sought and obtained to file the suit out of time.

18. Section 7 of the *Limitation of Actions Act* also provides 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.”

19. The cause of action in this case arose in 1993 and therefore the action lapsed by way of effluxion of time by 2005. The cause of action of the Plaintiff is therefore long expired beyond redemption. I find no necessity to discuss the other issues framed by the Court as I am of the view that they are moot.

20. In the upshot the suit is time barred and the same be and is hereby dismissed.

21. The costs shall be met by the Plaintiff in favour of the 1st Defendant.

22. Orders accordingly.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 22ND DAY OF FEBRUARY, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of;



Isayi for the Plaintiff

Ms. Kamuyu for 1st Defendant

2nd Defendant – Absent but served

Court Assistants – Phyllis/Oliver

