



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 112 OF 2014**

1. SAMUEL NDIRANGU NJOROGE

2. NICHOLAS KIGO NDUNGU –

On behalf of GATHAITE FARMERS COOPERATIVE SOCIETY LTD.....PLAINTIFFS

VERSUS

RICHARD NGANGA KAMIRO.....RESPONDENT

**RULING**

By “*a home-made*” plaint originally filed herein on 7th May 2014 and later amended on 24th March 2015, the plaintiffs sought judgment against the defendant in the following terms:-

- (a) *That the defendant to relinquish the undeveloped school allocated land parcel No. MAKUYU/MAKUYU/BLOCK 2/1085.*
- (b) *That the defendant do surrender Title No. MAKUYU/MAKUYU/BLOCK 2/1085 to the District Land Registrar Muranga Lands office for destruction.*
- (c) *That the District Land Registrar Muranga Lands office to cancel the Title deed in the name of RICHARD NGANGA KAMIRO.*
- (d) *That the Land Registrar Muranga to prepare a new Title deed in the name of GATHAITE FARMERS CO-OPERATIVE SOCIETY LTD with an indication that it is for a school.*
- (e) *That the District Land Registrar Muranga Lands office to prepare a new Title deed in the names of MBITIKA COMMUNITIES SCHOOL.*
- (f) *That the Title deed for MBITIKA COMMUNITIES SCHOOL to be given to the County Commissioner fore retention.*
- (g) *Costs of this suit.*
- (h) *Any other relief this Court may deem fit to grant.*

From the plaint, the two plaintiffs **SAMUEL NDIRANGU NJOROGE** (1st plaintiff) and **NICHOLAS KIGO NDUNGU** (2nd plaintiff) have filed this suit on behalf of **GATHAITE FARMERS CO-OPERATIVE SOCIETY LIMITED** (the Society) which was registered in 1963 by Ex-freedom fighters to settle landless families where they could farm to improve their living standard. The Society’s

Management Committee was comprised of **ROBERT KIMONYE KARANJA** (Chairman) **ISAAC NJIRAINI NJARAMBA** (Secretary) and **GITAU NDUNGU** Alias Wakimendu (Treasurer) who are now all deceased. In 1973 the plaintiffs bought 582 acres of land from an European settler at Makuyu which was shared among the Society's members with each receiving 2 acres. Some land was set aside for other public utilities including land parcel No. MAKUYU/MAKUYU/BLOCK 2/1085 measuring 8.4 acres (the suit land) which was set aside for a school. In 1989, the Society experienced wrangles and in 1998 its members were informed that the deceased members of the Management Committee had in fact transferred the suit land to themselves with the aim of selling it for their own benefit. This was done without the approval of the Society's membership. The deceased members of the Management Committee were ordered by the area Chief to re-transfer the suit land in the names of the school but they did not and so the plaintiffs sought the services of the defendant who is an advocate of this Court to take up the matter in Court and gave him all the relevant documents. The defendant filed a case being Co-operative Societies Tribunal Case No. 142 of 2001 but it later transpired that while the case in the Co-operative Societies Tribunal was proceeding, the deceased Management Committee members of the plaintiff had transferred the suit land to the defendant. The Co-operative Societies Tribunal awarded the suit land to the school but that award was set aside in **JUDICIAL REVIEW APPLICATION No. 64 of 2011** whereupon the parties moved to this Court seeking the remedies mentioned above.

The defendant filed a defence in which he pleaded, inter alia, that he has never acted for the plaintiffs and this suit is time barred since the suit land was transferred to him by the registered owners in 2001 yet this suit was filed on 7th May 2014. The defendant also took issue with the pleadings on the ground that **GATHAITE FARMERS CO-OPERATIVE SOCIETY** being registered under the *Co-operative Society Act CAP 490* is capable of suing in its own names and in any event, the 1st and 2nd plaintiffs have no authority to sue on its behalf and therefore this suit, as drawn, discloses no cause of action and should be struck out for being an abuse of the process of this Court.

The defendant filed a Notice of Motion dated 5th November 2015 in which he sought the main prayer that this suit be struck out for being time barred. He also took issue with the pleadings which he alleged offend **Order 2 Rule 3 of the Civil Procedure Rules**. In his supporting affidavit, the defendant deponed that he bought the suit land in 2001 from the registered owners who were the deceased Management Committee members of the Society who all died in 2009 after transferring the suit land to him and this suit which was filed on 7th May 2014 is therefore caught by **Section 7 of the Limitation of Actions Act**.

The plaintiffs filed what they referred to as an opposing Notice of Motion dated 17th November 2015 in which they basically repeated their averments in the amended plaint. No reference was made to the plea of limitation.

The defendant's Notice of Motion dated 5th November 2015 is the subject of this ruling and submissions have been filed by both parties.

I have considered the defendant's Notice of Motion dated 5th November 2015, the opposition thereto and the submissions filed.

As indicated earlier, the plaintiffs are acting in person and their pleadings are not elegantly drawn. The plaint as drawn clearly offends the provisions of **Order 2 of the Civil Procedure Rules**. However, bearing in mind the wide powers to amend pleadings and also **Article 159 of the Constitution**, this Court will not strike out the plaint solely on account of that flaw.

The more serious issue which this Court must however address is whether their suit is in fact time barred in view of the provisions of **Section 7 of the Limitation of Actions Act**. That section 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 occurred to some person through whom he claims, to that person”.***

The defendant states that he bought the suit land from the deceased members of the Society's Management Committee in 2001. The plaintiffs have themselves pleaded that when the **CO-OPERATIVE TRIBUNAL CASE No. 142 of 2001** was in progress, they learnt that the suit land had been transferred to the defendant by the Society's deceased Management Committee members. I have however perused the Green Card to the suit land which is part of the plaintiffs list of documents. No. 27 and it shows that the suit land was transferred to the defendant on 26th April 2002. Therefore that is the date when the limitation period started running. This suit was filed on 17th May 2014 and was therefore, unfortunately for the plaintiffs, out of time, albeit by a short period of about one month. Perhaps if an application to file this suit out of time had been made, that short period may have worked in favour of the plaintiffs. This suit is however filed out of time and must therefore be struck out.

Even if this Court invokes the provisions of **Section 26 of the Limitation of Actions Act** which provides that in cases of fraud the limitation period does not begin to run until the plaintiff has discovered the fraud or could, with reasonable diligence, have discovered it, it is abundantly clear from the plaintiffs own pleadings that this discovery was made way back in 2001. In paragraph 16 of their amended plaint, the plaintiffs have pleaded as follows:-

***"We later came to learn that while this Co-operative Societies Tribunal Case No. 142 of 2001 was in process, Mr. Richard Nganga Kamiro our dependant lawyer had sealed a secret deal with our opponents Robert Kimonye Karanja, Isaac Njiraini Njaramba and Gitau Ndungu Alias Wakimendu (all deceased) to transfer the school land Makuyu/Makuyu/Block 2/1085 to him which was done"***

So this fraud was infact discovered by the plaintiffs in 2001 although the transfer itself was effected on 26th April 2002. Either way, this suit is caught up with the limitation period set out in **Section 7 of the Limitation of Actions Act**.

It is also clear from the plaint that the allegation of fraud in paragraph ten (10) and eleven (11) thereof are only levelled against the plaintiff's deceased Management Committee members i.e. Robert Kimonye Karanja, Isaac Njiraini Njaramba and Gitau Ndungu Alias Wakimendu. No specific allegation of fraud have been pleaded and particularized as against the defendant. Again this is because the plaintiffs were acting in person and the plaint, as I observed above, is **"home-made"**. Fraudulent conduct must be specifically pleaded and particularized – **RICHARD ODUOR OPOLE VS COMMISSIONER OF LANDS & ANOTHER C.A CIVIL APPEAL No. 285 of 2007 (2015) e K.L.R.**

Ultimately therefore, I make the following orders:-

- 1. This suit is time barred having been filed outside the time set out in Section 7 of the Limitation of Actions Act CHAPTER 22 Laws of Kenya. It is therefore struck out.***
- 2. On costs, the plaintiffs are pursuing land given to a school and are therefore doing so in public interest. I direct that each party meet their own costs.***

It is so ordered.

**B.N. OLAO**

**JUDGE**

**20<sup>TH</sup> DECEMBER, 2016**

Ruling delivered, dated and signed in open Court this 20<sup>th</sup> day of December, 2016

Mr. Miano for Waithera for Plaintiffs present

Mr. Ngangah for Defendant present.

**B.N. OLAO**

**JUDGE**

**20<sup>TH</sup> DECEMBER, 2016**