

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

MISC. CIVIL APPLICATION NO. 28 OF 2016

JOHN KENNEDY OFUNYA.....1ST APPLICANT

EUNICE KIBIRO.....2ND APPLICANT

VERSUS

FRANCISCA MORAA OMETE.....RESPONDENT

RULING

The application has come to court by way of Notice of Motion dated 3.11.2016 and seeks for leave to file a suit against the respondent out of time on grounds that the applicants and the respondent entered into a sale agreement on 18th September, 2005 for sale of ¼ of an acre of land at a consideration of Kshs.300,000/=. The applicants paid the full consideration. The respondent has sold the parcel of land to a 3rd party who is almost commencing construction as the construction materials are already at site. The 3rd party is a stranger to the applicants. The applicants wish to commence a suit before this Honourable Court as against the respondent. However, it is more than six (6) years since the sale agreement was entered into. Leave of this Honourable Court is thus necessary in the circumstances.

The application is supported by the affidavit of John Kennedy Ofunya who states: that his co-applicant and himself entered into an agreement with the respondent for sale of ¼ of an acre of land to be hived out of that parcel of land known as ***UASIN GISHU/KIMUMU/315*** at a consideration of Kshs.300,000/=. That they have paid the full consideration, however, the respondent has sold the parcel of land to a 3rd party who is soon commencing construction as the materials are already at the site. They desire to bring a suit against the respondent. The sale agreement is dated 18th September, 2005. That he is advised by his Advocates on record which advice he verily believe to be true and sound that actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued. That the agreement herein has been in existence for over 10 years. That it is therefore necessary that leave be granted to enable them present the intended suit.

I have considered the application and the relevant provision of law for extension of time in such matter. Section 22 of the Limitation of Actions Act provides for extension of time in case of disability. I do find that the same is not relevant. Section 23 provides for extension of time due to acknowledgment and part payment. Again this section is not relevant as there is no evidence of acknowledgment and part-payment.

Section 26 of the Act provides for fraud, mistake and ignorance of material facts, again the section is not relevant as it has not been established that the claim is based on fraud, mistake or ignorance of material facts.

The upshot of the above is that the applicant has not cited any section under which he is entitled to the order sought. Application is dismissed with no order as to costs.

DATED AND DELIVERED AT ELDORET ON 2ND DAY OF DECEMBER, 2016.

ANTONY OMBWAYO

JUDGE