



REPUBLIC OF KENYA



KENYA LAW
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Guyo v Maisha Bora Limited & 4 others (Environment & Land Case 149 of 2018) [2025] KEELC 961 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 961 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 149 OF 2018
EK MAKORI, J
FEBRUARY 26, 2025**

BETWEEN

HAJILA BAJILA GUYO APPLICANT

AND

MAISHA BORA LIMITED 1ST DEFENDANT

WESTERN SUNSHINE CO. LTD 2ND DEFENDANT

LAND REGISTRAR KILIFI COUNTY 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

MICHAEL K. KATANA 5TH DEFENDANT

RULING

1. The 1st defendant filed a Notice of Preliminary Objection dated 9th of June 2023, raising points of law as follows:
 - i. No consent was obtained before the institution of this suit and thus offending Section 30(1) as read with Section 2 of the [Land Adjudication Act](#) Cap 284 Laws of Kenya;
 - ii. Dispute Resolution Mechanism under Sections 26 to 30 of the [Land Adjudication Act](#) was by-passed;
 - iii. Doctrine of Exhaustion was offended;
 - iv. Section 13A of the [Government Proceedings Act](#) was by-passed;
 - v. [Limitation of Actions Act](#) 12-year rule was offended.



2. The court directed parties to canvass the preliminary objection via written submissions. The 1st defendant/applicant and the plaintiff/respondents complied—I did not see submissions filed by the other parties to this suit.
3. In its adherence to legal principles, the court acknowledges that a preliminary objection is only raised on pure points of law, as stated in the celebrated case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* [1969] EA 696. The court need not look elsewhere to determine the matter but rather to the pleadings.
4. The 1st defendant/applicant avers and submits that the suit properties Chembe/Kibabamche 397 & 440 fall under an Adjudication area; therefore, the suit properties are subject to the provisions of the [Land Adjudication Act](#) Cap 284 Laws of Kenya. The provisions of Section 30(a) of the [Land Adjudication Act](#) are couched in mandatory terms that the consent should be filed at the time of the institution of the suit, and that failure to file such consent is fatal to the suit. The plaintiff has not demonstrated that she obtained consent before filing this suit. The plaintiff also failed to file consent from the Adjudication Officer at the time of the institution of this suit.
5. In rebuttal, the plaintiff/respondent contends that the time and minute, the Settlement Fund Trustee received the money from the plaintiff and prepared, executed the instrument of transfer and registered the same instrument, their ownership interest of the two (2) properties ceased to exist by virtue of the two (2) properly executed instrument of transfer. That upon the plaintiff paying stamp duty to the Government and the two (2) instruments of transfers were properly stamped, the effect is that the interest on the two (2) plots shifted immediately to the plaintiff as the legal owner separate from the Settlement Fund Trustee Scheme. This ownership is constitutional.
6. The plaintiff further asserts that it ought to have been realized that once a discharge of charge has been prepared and registered, followed by a transfer instrument, it is trite that the interest of plots numbers 397 and 440 shifted from the Settlement Fund Trustee Scheme to the plaintiff as the legally new owner capable of suing and being sued without necessarily involving the former owners, i.e., the Adjudication Officer. The land adjudication process involves the following: after verification of documents by the adjudicating officers, the director of the settlement will issue a discharge of charge and transfer of land documents, which transfers the land from the Settlement Fund Trustee to the owner. So, the authority or consent to sue as a requirement is extinguished.
7. I agree with the plaintiff that what the plaint and the pleadings disclose is past the adjudication stage. The claim herein is based on alleged fraudulent activities over the suit properties post-adjudication. The provision and authorities cited by the 1st defendant regarding the adjudicative mechanism under the [Land Adjudication Act](#) and the exhaustion doctrine are not applicable in this matter.
8. On the issue of Section 13A of the [Government Proceedings Act](#), the 1st defendant argues that the Notice of Motion Application dated 22nd May 2023 and the proposed amendments to include the 8th and 9th defendants offend express provisions of Section 13A of the [Government Proceedings Act](#) Cap 40 Laws of Kenya as no Notice of Intention was issued by the plaintiff to the Attorney General. The proposed 8th and 9th defendants are government officers. The plaintiff's application and proposed amended plaint do not demonstrate that the plaintiff indeed sent out notices as envisioned in Section 13A of the [Government Proceedings Act](#).
9. On this point, neither the 8th nor the 9th defendant has been aggrieved – that there was no service of notice to sue. Based on that argument, I do not think it will be grounds to dismiss a claim by the plaintiff at a preliminary stage.



10. On the Limitation of Actions front, the 1st defendant states that the entire suit and the proposed amendments in the plaint to include the 6th and 7th defendants are barred by the *Limitation of Actions Act* Section 7, as read with Section 17.
11. The 1st defendant contends that the plaintiff states on the plaint dated 13th July 2018 and on the face of her application dated 22nd May 2023 that she was allegedly allotted the suit properties Chembe/ Kibabamche 397 and 440 in 1998. Evidence in the form of transfers filed in the 1st defendant's List of Documents dated 26th April 2023, the 6th proposed Defendant transferred the suit property in 2002, and the 7th proposed Defendant transferred the suit in 2006.
12. The 1st defendant concludes that the plaintiff is legally barred from instituting a suit more than 12 years after allegedly acquiring an interest in the suit properties. Further, the plaintiff is also barred by law from filing suit against the proposed 6th and 7th defendants who acquired the suit properties and sold them in 2002 and 2006.
13. That the plaintiff is, therefore, time-barred in bringing a suit against the 1st, 2nd, 3rd, 4th, and 5th defendants and the 6th and 7th proposed defendants as more than 12 years have elapsed since the plaintiff allegedly acquired an interest in the suit properties. Therefore, the entire suit should be dismissed or struck out for being time-barred by law.
14. In a rejoinder, the plaintiff states that Sections 7 and 17 of the *Act* are quoted as offended. The said sections are evident in their contents that any person should not bring an action to recover the land after the end of twelve (12) years from the date on which the action accrued. It's the plaintiff's submission that the 1st defendant has misunderstood the section as mentioned earlier since the plaintiff is not in court to recover her plots but is in court demanding that the title of the 2nd defendant, which was obtained fraudulently, be cancelled. The plaintiff argues that this is not a case of land recovery but a case of rectifying a fraudulent transaction, which is not time-barred.
15. The plaintiff further contends that she possesses the two properties. She obtained several orders against the defendants from this court and is in actual possession and occupation. Therefore, as indicated, her action is not to recover, but she is seeking orders to cancel the title in the names of the 1st and 2nd defendants.
16. From the pleadings by the parties, there seems to have been several actions involving the suit properties, including the cancellation of the title held by the 1st defendant by the NLC, which the court quashed and proposed that 1st defendant must be heard first; the interested parties also claim a stake on the suit property, time for purposes of recovery of land cannot be deciphered from the pleadings as amongst the parties. It is an issue to be reckoned with at the trial.
17. The upshot is that the preliminary objection is dismissed with costs.
18. Given how this matter has been handled with a deluge of applications, this court will no longer entertain other applications after this ruling. Parties must comply with Order 11 of the Civil Procedure Rules within 30 days hereof, and this court provides a date for a hearing on merit.
19. It is so ordered.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 26TH DAY OF FEBRUARY 2025.

E. K. MAKORI
JUDGE



In the Presence of:

Mr. Sausi, for the Plaintiff

Ms. Aoko, for the 1st Defendants

Ms. Otieno, for the 5th Defendant

Happy: Court Assistant

