



REPUBLIC OF KENYA



**KENYA LAW**  
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**Transfrica Motors Ltd v Ocean View Plaza Ltd & 4 others (Environment & Land Case 353 of 2015) [2025] KEELC 886 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 886 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT & LAND CASE 353 OF 2015**  
**YM ANGIMA, J**  
**FEBRUARY 27, 2025**

**BETWEEN**

**TRANSFRICA MOTORS LTD ..... PLAINTIFF**

**AND**

**OCEAN VIEW PLAZA LTD ..... 1<sup>ST</sup> DEFENDANT**

**RASHID AL-AMIN ..... 2<sup>ND</sup> DEFENDANT**

**VICTORIA M. KATIKU ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR –MOMBASA COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**A. Introduction**

1. The material on record shows that vide a plaint dated 24.12.2015, amended on 18.1.2018 and further amended on 12.06.2024 the plaintiff sued the defendants seeking the following reliefs;
  - a. A declaration that the 1<sup>st</sup> defendant is a trespasser into plot no. 10092 Section 1 MN.
  - b. A permanent injunction restraining the 1<sup>st</sup> defendant personally or through its employees, servants and/or agents from entering trespassing or in any way dealing with Plot Number 10092 Section 1 Mainland.
  - c. Damages for unlawful trespass.
  - d. Alternatively, an order directing the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants jointly and severally to pay the plaintiff the sum of Kshs. 17,000,000/= being the loss suffered as a result of their fraudulent concealment.



- e. Any other or further relief as this honourable court may deem fit to grant.
  - f. Costs of and incidental to this suit.
2. The plaintiff pleaded that all material times it was the registered owner of plot No. 10092 Section I/MN (the suit property) having purchased it in 2015 from the previous owners (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants) for a sum of Kshs. 17,000,000. The plaintiff pleaded that prior to the purchase it conducted an official on the suit property and had its transfer duly registered by the 5<sup>th</sup> defendant.
  3. It was the plaintiff's case that later on it discovered that the 1<sup>st</sup> defendant was also registered as owner of the suit property a matter he attributed to fraud on the part of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants. In particular, the plaintiff accused the 5<sup>th</sup> defendant of fraudulently concealing the existence of a second title, issuing a misleading search certificate and for misrepresenting that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants were the legitimate owners prior to the date of purchase.
  4. The plaintiff further pleaded that on or about 20.12.2015 the 1<sup>st</sup> defendant forcibly entered the suit property through its agents, evicted the security guards thereon and took over possession thereof. It was the plaintiff's case that as a consequence it had suffered loss and injury thereby necessitating the filing of the instant suit.

#### **B. 5<sup>th</sup> and 6<sup>th</sup> defendants' preliminary objection**

5. Although it is not clear from the record whether or not the Attorney General filed a defence on behalf of the 5<sup>th</sup> and 6<sup>th</sup> defendants, he filed a notice of preliminary objections dated 14.06.2024 raising the following objection to the plaintiff's suit.
  - a. That the suit was fatally defective and incompetent for contravening Section 3 (1) of the Public Authorities [Limitation of Actions Act](#) (Cap 39) and Section 26 of the [Limitation of Actions Act](#) (Cap 22).
  - b. That the court had no jurisdiction to entertain the suit in view of the contravention of the aforesaid statutes.

#### **C. Directions on submissions**

6. It would appear that there was no formal response to the preliminary objection by the rest of the parties to the suit. The record shows that when the matter was listed for directions it was directed that the preliminary objection shall be canvassed through written submissions. The record shows that it was only the Attorney General filed written submissions on the preliminary objection. The plaintiff and the rest of the defendants informed the court that they would not file any submissions.

#### **D. Issues for determination**

7. It is evident from the notice of preliminary objection dated 14.04.2024 that the main issue for determination is whether or not the plaintiff's suit is time barred either under the Section 3 of the Public Authorities [Limitation of Actions Act](#) or Section 26 of the [Limitation of Actions Act](#).

#### **E. Analysis and determination**

8. The Attorney General submitted that when the plaint was amended on 18.01.2018 the land registrar was joined as a defendant and that the allegations of fraud were first pleaded on 18.01.2018 even though the plaint was initially filed on 24.12.2015. It was submitted that the plaintiff had lodged a complaint with the National Land Commission in 2016 over alleged fraudulent dealings with the suit property



hence it knew about the fraud complained and that by the time of amendment in 2018 the claim against the 5<sup>th</sup> and 6<sup>th</sup> defendants was already time barred.

9. As was held in the case of *Mukisa Biscuits Manufacturing Co Ltd vs West End Distributors Ltd* [1969] EA 696, a preliminary objection must raise a pure point of law. It should not be raised where any fact requires to be investigated or ascertained. Even though a plea that an action is time-barred may be raised as a preliminary objection it should not be canvassed where the plaintiff has pleaded fraud against the defendants. This is because fraud is a question of fact which can only be proved at the trial.
10. The court has noted that in his written submission, the AG had referred to certain letters to and from the National Land Commission in bid to demonstrate the existence of certain facts. This is clearly not permissible when canvassing a preliminary objection. The 5<sup>th</sup> and 6<sup>th</sup> defendants should wait until the suit is set down for hearing when they can tender evidence in a bid to demonstrate that the plaintiff's suit is time barred.
11. Section 26 of the *Limitation of Actions Act* stipulates that:

Where, in the case of an action for which a period of limitation is prescribed, either—

- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—

- i. (in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- ii. in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

12. Section 3(1) of the Public Authorities *Limitation of Actions Act* provides that;

“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on when the cause of action accrues”.

13. However, Section 6 of the Act stipulates that the provisions of Part III of the *Limitation of Actions Act* shall apply with respect of disability, fraud, mistake or ignorance of material facts.
14. Section 6 of the said Act stipulates as follows;

“Notwithstanding the provisions of section 31 of the *Limitation of Actions Act*, section 22 of that Act shall not apply in respect of the provisions of this Act; and in section 27 of the



Limitation of Actions Act the reference to section 4(2) of that Act shall be read and construed as a reference to section 3 (1) of this Act, but subject thereto and notwithstanding section 42 of the Limitation of Actions Act, Part III of that Act shall apply to this Act.”

15. The effect of a pleading alleging fraud on the statutes of limitation were considered by the Court of Appeal in the case of Yasmin Anwar Yusuf vs Samuel Gatugi Maina and 2 Others [2021] eKLR as follows;

“It is important to note that this suit was filed against the Defendants based on fraud. In matters where fraud is alleged, time does not start running for purposes of limitation until the fraud is discovered. In the instant case, the Plaintiff discovered that the suit property had been fraudulently registered in the name of the 1st and 2nd Defendants in 2014 when she wanted to dispose of the suit property. She had gone to Ngong land registry where she was informed that the suit property no longer existed as the same had been sub-divided. It is therefore clear that this suit which was filed on 21st March 2014 is not statute barred. In the case of Margaret Wairimu Magugu Vs Karura Investment Limited & 4 Others, [2019] eKLR, the Court of Appeal while dealing with Section 26 of the Limitation of Actions Act stated as follows: -

“There is no doubt that under that provision, where the action is based on fraud, the period of limitation prescribed does not begin to run until the Plaintiff discovers the fraud. See for instance Kenya Ports Authority Vs Timberland (K) ltd [2017] eKLR”.

16. Although the AG took the view that the plaintiff’s cause of action may have arisen in 2015 there is no way of establishing at this interlocutory stage when the plaintiff discovered the alleged fraud. At least it does not appear on the face of the pleadings hence it is a matter which can only be determined upon trial of the action.
17. The court is unable to agree with the Attorney General’s submission that plaintiff’s allegations of fraud were made for the first time in 2018 when the first amended complaint was filed. This submission clearly ignores the principle of relating back. The court is of the view that every amended pleading is deemed to take effect from the date the original pleading was filed otherwise there shall be a danger of there being several suits within one plaintiff.

## **F. Conclusion and disposal order**

18. The upshot of the foregoing is that the court finds no merit in the 5<sup>th</sup> and 6<sup>th</sup> defendants’ notice of preliminary objection dated 14.06.2024. As a consequence, the same is hereby overruled with no order as to costs since the rest of the parties did not file any submissions on the preliminary objection.

Orders accordingly

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS PLATFORM THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

In the presence of:

Mr. Ali for the plaintiff

Mr. Omollo for the 1<sup>st</sup> defendant

Ms. Mwanazumla for the Attorney General for 5<sup>th</sup> and 6<sup>th</sup> defendants

No appearance for the 2<sup>nd</sup> - 4<sup>th</sup> defendants



Court Assistant Gillian

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**Y. M. ANGIMA**

**JUDGE**

