Ireri v Attorney General & 5 others (Civil Appeal 282 of 2019) [2023] KECA 1603 (KLR) (17 November 2023) (Judgment)

Neutral citation: [2023] KECA 1603 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CIVIL APPEAL 282 OF 2019

W KARANJA, J MOHAMMED & LK KIMARU, JJA

NOVEMBER 17, 2023

BETWEEN

CHARLES NDWIGA IRERI .... APPELLANT

AND

THE ATTORNEY GENERAL .... 1ST RESPONDENT

EMBU MUNICIPAL COUNCIL .... 2ND RESPONDENT

FRANCIS KARANJA MAINA .... 3RD RESPONDENT

JACOB NGEI NTHINI .... 4TH RESPONDENT

HELLEN WAIYUGO NJUE .... 5TH RESPONDENT

HARRISON NJUE NJERU .... 6TH RESPONDENT

(Being an appeal from the judgment of the Environment and Land Court of Kenya at Embu (Angima, J.) dated and deliveredon 31st January, 2019 inE.L.C. Case No. 19 of 2014)

JUDGMENT

1. This is a first appeal against the judgment of the Environment and Land Court (ELC) sitting at Embu (Angima, J.) delivered on 31st January, 2019, in ELC Case No. 19 of 2014.

2. The appellant instituted the suit before the ELC against the respondents. The property in dispute is plot number L.R. 1112/1206 comprised of L.R. 1112/1511 (hereinafter Plot No. 1511) and L.R. 1112/1512 (hereinafter 'Plot No. 1512') located within Embu Municipality.

3. The appellant's case before the ELC was that in 1977, he made an application to the 2nd respondent to be allocated Plot No. L.R. 1112/359 (hereinafter 'Plot No. 359'). He stated that the Commissioner of Lands issued him with the allotment letter for the said plot, which detailed the requisite fees that the appellant was required to pay to facilitate registration of Plot. No. 359 in his name. The appellant

averred that in a turn of events, the Commissioner of Lands refused to accept payment of the requisite fees by the appellant. According to the appellant, the 2nd respondent and the Commissioner of Lands, in bad faith and without notice to the appellant, fraudulently sub-divided Plot No. 359 into four plots namely L.R. 1112/1203, L.R. 1112/1204, L.R. 1112/1205 and L.R. 1112/1206.

4. The appellant averred that Plot No. 1205 was allotted to the then Mayor, Peter Muriithi Nyaga (Peter), Plot No. 1206 was allotted to the Mayor's wife Nancy Wairimu Muriithi (Nancy), while Plot 1203 and 1204 were sold to third parties. The appellant stated that Nancy sub-divided Plot No. 1206 into two plots, namely: L.R. No. 1112/1511 which she sold to the 3rd and 4th respondents; and L.R. No. 1112/1512 which she sold to the 5th and 6th respondents. This prompted the appellant to institute suit before the High Court in Embu, being Civil Case No. 148 of 2010 (O.S) against the Commissioner of Lands and the 2nd Respondent for recovery of Plot No. 1206. The appellant averred that the said civil suit, which was undefended, was decided in his favour, but the decree could not be executed, as Plot No. 1206 had by that time been sub-divided into two: LR No. 1112/1511 and LR No. 1112/1512. The appellant urged the ELC, inter alia, to declare that he was the rightful owner of Plot No. 1206, which was sub- divided to Plot No. 1511 and 1512, and order that the said parcels be transferred to him, or in the alternative, direct the respondents to pay him Kenya Shillings fifty (50) million as compensation.

5. The 1st respondent, in its statement of defence, denied the allegations made by the appellant in his plaint, and pleaded that the appellant's claim against the 1st respondent was time barred, and offended the provisions of the *Government Proceedings Act*. It was the 2nd respondent's case that the applicant's application for allotment of Plot No. 359 was denied due to the fact the requested parcel of land was within the show ground, vide the minutes of Town Planning Works and Housing Committee, Municipal Council of Embu TPWH.96/1977. The 2nd respondent explained that Plot No. 1206 was allotted to Nancy Wairimu Muriithi.

6. The 3rd and 4th respondents in their defence pleaded that the appellant's suit was time barred as the alleged allotment, having been said to have been made in 1997, while the appellant's suit was filed in 2012, fifteen (15) years after the alleged allotment. They averred that, although the appellant claimed that the then Mayor and his wife had illegally been allotted Plot No. 359, the appellant did not enjoin them as parties to the suit. They contended that they did not purchase Plot No. 1511 from Nancy as alleged by the appellant, but from Mugwe Self Help Group. At the time of the said purchase, there were no encumbrances against the title of the said plot.

7. The 5th and 6th respondents on their part, stated in their defence that, a letter of allotment was not proof of ownership of any parcel of land. They pleaded that the letter of allotment produced by the appellant was in reference to Plot No. 359 and not Plot No. 1512. It was their case that they purchased Plot No. 1512 for value without notice of any adverse interest that any person, including Nancy may have had in respect of the suit parcel of land.

8. The suit was heard by way of viva voce evidence. After hearing the parties, the learned Judge, in a judgment dated 31st January, 2019, found in favour of the respondents. The learned Judge determined that the appellant failed to prove that he had any proprietary rights over Plot No. 359 as alleged, and that he had also failed to provide any evidence to prove the allegations of fraud against the 1st and 2nd respondents. The learned Judge further found that the 3rdand 4th respondents, as well as the 5th and 6th respondents, were purchasers for value without notice of Plots No. 1511 and 1512 respectively, and that no encumbrances were registered against the titles at the time of purchase. The learned Judge determined that the appellant's suit against the respondents was barred by statute. In the end, the appellant's suit was dismissed for lack of merit.

9. Aggrieved by this decision, the appellant lodged this appeal citing twenty-three (23) grounds in his memorandum of appeal. In summary, the appellant was aggrieved that the learned Judge found that the titles held by the 3rd, 4th, 5th and 6th respondents in respect to Plots No. 1511 and 1512 were valid, yet they were obtained illegally, and failed to comply with the terms and conditions of the letters of allotment. He was aggrieved that the learned Judge had no jurisdiction to determine the case, as the High Court sitting in Embu, had already determined the issue of ownership of the suit property in his favour, in Civil Case No. 148 of 2010 (O.S). He took issue with the fact that the learned Judge failed to acknowledge that the 1st and 2nd respondents admitted to issuing the appellant with an allotment letter in respect of Plot No. 359, and that he had paid all the requisite fees, and was the rightful owner of the said parcel of land. He faulted the learned Judge for failing to find that Nancy illegally acquired the suit property, after the same had been allotted to the appellant, and had sub-divided it, before selling it to the 3rd, 4th, 5th and 6th respondents. The appellant was aggrieved that the learned Judge decided in favour of the respondents, yet the 1st and 2nd respondents failed to attend court to adduce evidence to challenge his case. In the premises, he urged this Court to allow his appeal as prayed.

10. The appeal was canvassed by way of written submissions. The firm of Kahiga, Mukami & Macharia Advocates was on record for the appellant. The appellant filed written submissions dated 4th March, 2022. The 1st and 2nd respondents did not file any submissions. The 3rd and 4th respondents, represented by the firm of Momanyi Gichuki & Company Advocates, filed their written submissions dated 30th March, 2022. The firm of Wagara, Koyyoko & Company Advocates was on record for the 5th and 6th respondents, who filed written submissions dated 23rd February, 2023.

11. Counsel for the appellant made submissions to the effect that the appellant was allocated Plot. No. 359 vide the allotment letter dated 5th January, 1997, and that the authenticity of the letter of allotment was not challenged by the 1st respondent, who issued the same. Counsel submitted that the appellant produced in evidence correspondence from the 2nd respondent, where the 2nd respondent admitted to having allocated Plot No. 359 to the appellant. Counsel called into question the extract of the minutes TPWH/96/77 of the Town Planning Committee produced by the 2nd respondent which indicated that the appellant's application for allotment of Plot No. 359 had been rejected on the basis that the land was part of the showground. Counsel explained that if that was the case, the 2nd respondent could not have, in its correspondence to the appellant, indicated that the appellant's application for allotment had been approved. Further, counsel questioned why the plot was sub-divided and allocated to other parties if it indeed formed part of the showground.

12. Counsel for the appellant urged that the failure, on the part of the appellant, to pay requisite fees within thirty (30) days of the date of the allotment, was because of no fault of the appellant, but because the 2nd respondent had at the time refused to accept the payment. Counsel submitted that there was fraud on the part of the 1st and 2nd respondents in the sub-division and re-allocation of Plot No. 359, which had originally been allocated to the appellant. He asserted that the Registry Index Map produced in evidence by PW2, Polly Gitimu, established that Plot No. 359 was in 1995, sub-divided into four resultant plots, that is L.R. No. 1112/1203 to 1206. Counsel explained that the subsequent allocation of Plot No. 1206 to Nancy was therefore void ab initio, and that the 3rd to 6th respondents could therefore not acquire good title from her. Counsel submitted that a constructive trust was created against the 3rd to 6th respondents, in favour of the appellant, by virtue of the fact that their titles were fraudulently acquired. It was counsel's position that the appellant's suit was based on trust, and is therefore not time barred in accordance with the provisions of Section 20 of the Limitations of Actions Act. In the premises, counsel for the appellant invited us to allow the appeal, and set aside the decision of the ELC.

13. Counsel for the 3rd and 4th respondent, on his part, submitted that the appellant assertion that he was allocated Plot No. 359 by virtue of minute TPWH/96/77, yet an extract of the said minutes,on page 268 of the record, established that the appellant's application was rejected. Counsel submitted that the evidence of the Land registrar established that Plot No. 1206 was not excised from Plot No. 359. He explained that the official search documents with respect to Plot No. 359, captured on pages 176 and 174 of the record, showed that Plot. No. 359 is trust land and was still in existence as at the date of the latest official search, which was conducted on 4th January, 2017. Counsel urged that the appellant failed to prove the allegations of fraud, as against the 1st and 2nd respondents, and that the alleged instigators, Peter and his wife Nancy, were not enjoined as parties to the suit by the appellant. Counsel submitted that the appellant's claim that the 3rd and 4th respondents held title to Plot No. 1511 in trust for the appellant was unfounded. Counsel urged that the suit before the ELC was instituted by the appellant, and he cannot, therefore, on appeal, allege that the said court had no jurisdiction to determine the same on the basis that the suit was res judicata. Counsel maintained that the respondents legally acquired Plot No. 1511 from Nancy.

14. Counsel for the 5th and 6th respondents submitted that the appellant failed to account for the period between 1977, when alleges he was allocated Plot. No. 359, to 1995, when the plot was sub-divided and allotted to third parties. He stated that the appellant did not produce any evidence to establish that he had accepted the offer contained in the allotment letter, or paid the requisite fees as demanded. Counsel pointed out that the correspondence relied on by the appellant indicated that he was attempting to make the requisite payments as required in the letter of allotment as late as 2006, which was several years after the date of the alleged allotment. Counsel maintained that the appellant failed to prove that he had acquired proprietorship rights over Plot No. 359. Counsel submitted that the 5th and 6th respondents took possession of Plot No. 1512 in 2001, which was vacant upon purchase. He explained that the fact that the appellant had not taken possession of the suit property at the time of the alleged allotment was indicative of the fact that he was never allocated the same. Further, he asserted that the appellant's suit sought to reclaim only one out of the four plots the alleged subdivisions of Plot No. 359. He submitted that the appellant did not connect the 5th and 6th appellants to any fraud or illegality, and as such, the respondents were innocent purchasers for value without notice of any defect of title.

15. This being a first appeal, it is the duty of this Court to analyze and re-assess the evidence on record and reach its own independent conclusion. This duty was reiterated by this Court in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, where the Court observed thus:

> " An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See *Selle v. Associated Motor Boat Co.* [1968] EA 123."

16. Having evaluated the record of appeal, as well as submissions by parties to the appeal, the issues arising for our determination can be summed up as follows:

    i. Whether the ELC had jurisdiction to determine the suit;

    ii. whether the appellant was allocated Plot No. L. R. 1112/359 Embu Municipality;

    iii. whether the appellant established he had proprietary interest in L. R. No. 1112/1206;

    iv. whether the 3rd, 4th, 5th and 6th respondents were innocent purchasers for value without notice and

v. whether the appellant's action against the respondents was time barred.

17. Starting with the first issue, the appellant, in his grounds of appeal, contended that the ELC had no jurisdiction to determine this suit, on the basis that the suit was res judicata, and that ownership of the suit property had been determined in his favour in Embu High Court Civil Case No. 148 of 2010(O.S).

18. The doctrine of res judicata was considered by the Supreme Court in *John Florence Maritime Services Limited & Another vs. Cabinet Secretary Transport and Infrastructure & 3 Others* [2021] eKLR where the court observed as follows:

> "For res judicata to be invoked in a civil matter, the following elements must be demonstrated:
>
> a. there is a former judgment or order which was final;
>
> b. the judgment or order was on merit;
>
> c. the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
>
> d. there must be between the first and second action identical parties, subject matter and cause of action."

19. It is interesting to note that the instant suit was instituted before the ELC by the appellant, claiming ownership of the suit property. The appellant now suddenly changed tact and claimed that the court had no jurisdiction to determine the matter, on the ground that the High Court sitting at Embu, which is a court of co-equal status with ELC but with different jurisdictions, had determined the issue of ownership of the suit property in favour of the appellant, in Civil Case No. 148 of 2010(O.S).

20. We observe that the question of res judicata was raised by the 2nd respondent before the ELC in a preliminary objection dated 28th March, 2013. The ELC (Olao, J.) in its ruling dated 12th February, 2014, determined that from the material placed before the court, the 2nd respondent failed to established that the suit was res judicata. We agree with this decision by the learned Judge. The pleadings and judgment of the court in Embu High Court Civil Case No. 148 of 2010 (O.S) did not form part of the pleadings or for that matter the record of this Court, and as such, this Court was not given the opportunity to determine whether the subject matter and parties in this suit were substantially the same in Embu High Court Civil Case No. 148 of 2010(O.S), and whether the judgment or order was issued on merit.

21. What was produced was an order of the court dated 8th April, 2011, directing the Commissioner of Lands and Embu Municipal Council to issue all documents required by law to enable the appellant acquire Plot No. 1112/1206. According to the said court order, the civil suit was between the appellant and the Commissioner of Lands. We note that though the civil suit was filed before the High Court at Embu, the court order was issued and signed by Chief Magistrate M. Wachira. Further, the respondents in the instant suit were not parties in the said civil suit. While the order in the civil suit made a mention of Plot No. 1112/1206, the instant suit encompasses parcels L.R. No. 1112/359, 1112/1511 and 1112/1512. It is our considered view that the material placed before us is insufficient to establish that the suit as filed by the appellant before the ELC was res judicata. We should also point out that if the appellant did not agree with the finding of the learned Judge on the issue of jurisdiction with respect to the preliminary objection, they ought to have lodged an appeal against the said ruling, as opposed to challenging the said finding in this appeal. In any event, the appellant successfully challenged the preliminary objection before the ELC. The appellant cannot therefore approbate and reprobate.

22. The second issue for determination by this Court is whether the appellant was allotted Plot No. L. R. 1112/359 by the 1st and 2nd respondents. The appellant told the court that his application for allotment of Plot No. 359 was approved by the 1st respondent in 1977, vide minutes of the Town Planning Works and Housing Committee, TPWH/96/77. The appellant, however, did not produce before court, an extract of the said minutes, where his application for allotment was said to have been approved. The 2nd respondent did produce an extract of the said minutes which established that the applicant's application for allotment of Plot No. 359 was rejected, on the ground that the land parcel formed part of the Embu Municipality Show Grounds.

23. The appellant further pegged his claim for proprietary interest in Plot No. 359 on an allotment letter dated 5th January, 1997. The appellant produced several correspondences between himself and offices of the 1st and 2nd respondents, which provided contradictory evidence on whether the allotment letter was issued to the appellant as alleged. While some of the correspondence detailed that the appellant had been allocated Plot No. 359, others put into question whether that was the case. For instance, the appellant adduced a letter dated 16th November, 2005, emanating from the Embu Municipality, and addressed to the Commissioner of Lands, stating that though Plot No. 359 was approved to be allocated to the appellant, an allotment letter was never issued. According to the letter, the then Embu Municipality was seeking authority to look for an alternative site to allocate to the appellant.

24. That said, if this Court were to assume that the appellant was indeed issued with an allotment letter with respect to Plot No. 359, this Court has previously held that an allotment letter was not capable of conferring an interest in land, as the letter merely serves as offer, awaiting acceptance and fulfilment of the terms and conditions stipulated therein, by the applicant. The letter of allotment is merely a step in the process of allocation of land. This Court in *Dr. Joseph N.K. Arap Ng'ok v Justice Moijo Ole Keiyua & 4 Others* [1997] eKLR held as follows:

> "It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.

25. From the foregoing, the allocation of land *vide* a letter of allotment is a contractual process and is determined within the ordinary rules of contract. For the letter of allotment to take effect, the allotee has to fulfil the conditions set out in the letter of allotment.

26. In the appellant's case, the allotment was subject to a written acceptance by the appellant, and payment of Kshs. 28,390. The evidence on record shows that the appellant neither accepted the offer nor fulfilled the conditions in the letter of allotment. No proof of communication of acceptance of the offer was provided by the appellant. Further, no evidence of proof of payment of the stand premium, stamp duty, land rates or rent was produced by the appellant.

27. The appellant contended that the 2nd respondent refused to accept the payment of the requisite fees stipulated in the letter of allotment. We observed that the letter of allotment was issued in 1997. The correspondence produced by the appellant which detailed his attempt to make payment for the requisite fees was dated 2006. This was way outside the timeline provided in the letter of allotment which required the appellant to make the payment within thirty days (30) days of the date of allotment. The appellant did not adduce any evidence to show that he attempted to make payment within the requisite period. We agree with the findings of the learned Judge that, the totality of the evidence on record, the offer contained in the letter of allotment lapsed by virtue of non-fulfilment of the conditions stipulated therein by the appellant. In that regard, the allotment letter did not confer to the appellant any rights over Plot No. 359 as alleged. In any event, it was clear from the evidence that by the time the

appellant obtained the said letter of allotment in 1997, the plot on the ground had ceased to exist the same having been subdivided into four parcels of land in 1995.

28. On whether the 1st and 2nd respondents fraudulently deprived the appellant of Plot No. 359, we are of the considered view that the appellant did not prove any of the particulars of fraud pleaded in his pleadings. This was correctly observed by the learned trial Judge. Although the appellant accused the Commissioner of Lands of deliberately failing to accept payment of the requisite fees detailed in the letter of allotment, this Court holds that the appellant did not provide any proof of any attempt that he made to make the payment of the amount demanded within the thirty days stipulated in the letter of allotment. The appellant did not provide any copy of a banker's cheque to that effect. The correspondence provided by the appellant which details his attempt to make payment of the requisite fees occurred after the offer of allotment had already lapsed.

29. Further, the appellant accused the then Mayor of Embu Municipality, Peter, of instigating the plan to illegally deprive him of Plot No. 359, and allocate it to himself and his wife, Nancy. We note that these two people were not made parties to the suit before the ELC by the appellant. The appellant cannot in turn, call upon this Court, to make a determination on the allegations of fraud against Peter and Nancy, as the two were not parties to the suit before the ELC that he himself filed. They did not participate in the proceedings before the ELC and therefore this court cannot make orders against them. To do so would imply that the two would be condemned unheard which is against the rules of natural justice.

30. The other contention by the appellant was that the Commissioner of Lands, in breach of contract, sub-divided Plot No. 359 into four plots, namely L.R. 1112/1203, L.R. 1112/1204, L.R. 1112/1205 and L.R. 1112/1206, and allotted the plots to the then Mayor, his wife and two other third parties, none of who were made party to the suit. The appellant's claim before the ELC was, however, only targeted at the recovery of Plot No. 1206, which he alleged was allotted to Nancy, who sub-divided the said plot into L.R. No. 1112/1511 and L.R. No. 1112/1512, and transferred the plots to the 3rd to 6th respondents.

31. Conflicting evidence was adduced by both sides, with respect to whether Plot No. 1206 was indeed excised from Plot No. 359. The appellant's witness, Polly Gitimu, a licensed land surveyor from the Survey of Kenya, testified that Plot No. 359 was sub-divided in 1995, to form Plots No. 1203, 1204, 1205 and 1206. She produced in evidence a Registry Index Map to that effect. On the other hand, the 2nd respondent's witness, Jane Gitari, a Land Registrar, told the court that Plot No. 1206 was not excised from Plot No. 359. She stated that Nancy was issued a letter of allotment for Plot No. 22, which upon survey, became L.R. Embu/Municipality/1112/1206. The Land Registrar testified that Nancy accepted the offer in writing, and made the requisite payment, after which the said plot was registered in her name. The 2nd respondent produced in evidence the letter of allotment, proof of acceptance and payment of fees by Nancy, as well as a copy of the title.

32. A copy of the certificate of official search for Plot No. 359 produced by the appellant dated 22nd December, 2006, showed that L. R. Embu/Township/359 was still in existence as of the date of search, and that the registered proprietor was the Trust Land Board. Two copies of the official search for the same property were produced by the 3rd and 4th respondents, one dated 13th April 2015, and another 4th January 2017, which similarly indicated that Plot No. 359 was registered to the Trust Land Board. This begs the question whether Plot No. 1206 was excised from Plot No. 359, as Plot No. 359 seemed to still be in existence as at the time the appellant filed the suit before the ELC, according to the certificates of official search produced by both sides.

33. Nevertheless, this Court has already found that the appellant did not establish that he had proprietary interest in respect of Plot No. 359. Therefore, the question of whether Plot No. 1206 was excised

from Plot No. 359 was irrelevant, as the appellant did not have any legally recognisable interest in Plot No. 359 in the first instance. The respondents adduced in evidence the letter of allotment issued to Nancy, her acceptance of the offer and payment of requisite fees, as well as the copy of the certificate of title, which all proved that she was the registered proprietor of Plot No. 1206, prior to its sub-division. The 3rd, 4th, 5th and 6th respondents were therefore in the circumstances of this appeal all bona fide purchasers for value without any notice of the defect in title of Plots No. 1511 and 1512 respectively. They produced in evidence their respective certificates of title which, by virtue of Section 26 of the *Land Registration Act* 2012, are deemed prima facie evidence of ownership of suit parcels of land. The said Section 26 provides that the title of such a proprietor is only subject to challenge:

a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

34. As we have already determined earlier on in this judgment, the appellant did not provide any proof of fraud on the part of 1st and 2nd respondents with respect to allocation of Plot No. 359 or Plot No. 1206. The appellant did not adduce any evidence to establish that the 3rd to 6th respondents were privy to any fraud, misrepresentation or illegal acts, with respect to their respective certificates of title. We agree with the finding of the learned trial Judge that the appellant did not make out a case for cancellation of titles as prayed in his statement of claim.

35. Lastly, the appellant faulted the learned Judge for finding that his claim on the suit property, which was based on trust, was time barred by virtue of the provisions of the Limitations of Actions Act. The suit property, Plot No. 1206, was allocated to Nancy in 1995. The appellant's suit before the ELC was filed in 2012, which is approximately seventeen years after the cause of action arose. The learned Judge determined, rightfully so, that the appellant's claim against the 1st and 2nd respondents, was based on tort and breach of contract, and was in the premise, barred by statute, by virtue of Section 3 of the *Public Authorities Limitation Act*. The said section provides that no actions based on tort against the Government can be instituted after twelve months from the date the cause of action accrued, while actions founded on contracts ought to be instituted within three years of the accrual of the cause of action.

36. We therefore hold that although the appellant's claim was based on allegations of fraud, he fell short of proving these allegations and consequently, failed to establish constructive or resultant trust on the part of the 3rd to 6th respondents. The *Limitation of Actions Act* was designed to protect parties against unreasonable delay in bringing suits against them. See *Gathoni vs Kenya Co- Operative Creameries Ltd*. [1982] eKLR.

37. Section 7 of the *Limitation of Actions Act* provides:

> " 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."

38. We have said enough to demonstrate that there is no merit in the appellant's appeal. The same is hereby dismissed with costs to the respondents.

DATED AND DELIVERED AT NYERI THIS 17TH DAY OF NOVEMBER, 2023.

W. KARANJA

………………………..

JUDGE OF APPEAL

JAMILA MOHAMMED

……………………………………

JUDGE OF APPEAL

L. KIMARU

…………………………….

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR