



**Le Pleidi Investment Limited v Director of Survey, Ruaraka Nairobi & 6 others;
CECM Lands, Kilifi County & another (Interested Parties) (Environment &
Land Case E76 of 2023) [2024] KEELC 3267 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3267 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E76 OF 2023**

**EK MAKORI, J
APRIL 12, 2024**

BETWEEN

LE PLEIDI INVESTMENT LIMITED PLAINTIFF

AND

DIRECTOR OF SURVEY, RUARAKA NAIROBI 1ST DEFENDANT

DIRECTOR OF LAND ADMINISTRATION 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

NATIONAL LAND COMMISSION, NAIROBI 4TH DEFENDANT

DIRECTOR OF PHYSICAL PLANNING 5TH DEFENDANT

REGISTRAR OF TITLES, MOMBASA 6TH DEFENDANT

SITI SHALI ALI 7TH DEFENDANT

AND

CECM LANDS, KILIFI COUNTY INTERESTED PARTY

LAND REGISTRAR KILIFI INTERESTED PARTY

RULING

1. There is an application dated 11th of September, 2023 for an order of injunction and a Preliminary Objection dated 7th October 2023 by the 7th defendant citing the Limitation of Actions and that the suit herein, being for the recovery of land has been brought outside the statutory 12-year period.
2. The Court directed that the two motions be heard simultaneously. Parties were also directed to file written submissions on the same.



3. The fundamental objection stated in the 7th defendant's Preliminary Objection is the limitation of actions. The current suit violates Section 7 of the [Limitation of Actions Act](#) since the land in question was allocated via a letter of allotment dated 12th July 1997, and being a recovery of land claim, it should have been launched before the expiration of 12 years.
4. On the other hand, the respondent contends that this suit was filed pursuant to a deed plan dated 8th September 2023, which is when the fraud was discovered and that is the period when time should start running for purposes of the [Limitation of Actions Act](#).
5. The issue then for the determination of this Court is whether the suit runs afoul of the provisions of Section 7 of the [Limitation of Actions Act](#). And whether the Preliminary Objection should be sustained. And who should bear the costs?
6. A preliminary Objection rests on the proposition that when raised, its fundamental fulfillment will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent management of time as a Court resource by summarily flagging out a frail and hopeless suit that if admitted to full trial, will be a waste of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary Objection is sustainable or not, but look at the pleadings and discover that the suit is a none starter - see Ogola J. in [DJC v BKL](#) (Civil Suit E021 of 2021) [2022] KEHC 10189 (KLR) (27 June 2022) (Ruling):

“The Supreme Court in *Hassan Ali Joho & another v Suleiman Said Shabbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

8. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR made the following observation as relates to Preliminary Objections:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection— against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”
7. The pleadings show that the act complained of is the deed plan issued on 8th September 2023 and title issued on the 25th day of September 2023, that is when in my view the time for purposes of the [Limitation of Actions Act](#) started running and not when the allotment letter was issued. One acquires land when one obtains a title to it an allotment letter does not confer a right of ownership. It is the



title deed that does - See the Supreme Court decision in [Torino Enterprises Limited v Attorney General](#) (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment):

“So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr. Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].

59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng’ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; *John Elias Kirimi v Martin Maina Nderitu & 4 others*, Environment and Land Suit No 320 of 2011; [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others*, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others*, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:

[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].”

8. The Preliminary Objection herein is premised on the allotment letter issued on 12th July 1997. The title was issued much later on 25th September 2023. It is this title that is said to have been fraudulently acquired and issued to the 7th respondent hence constituting the cause of action herein. The latter is the period to be reckoned for purposes of the Statute of [Limitation of Actions Act](#), to start running. It is when the alleged fraud was discovered. The Preliminary Objection is thus misconceived and is hereby dismissed with costs.

9. On the application for an injunction, the applicant avers that it is the registered owner of plot No. 662 which it acquired in the year 2005 that on 8th September 2023, and 25th September 2023 the respondents fraudulently moved to illegally and fraudulently registered and allocated plot No.19875



- on FR 694/35 which is an extension of the applicants plot No 662 adjacent to the ocean, this is against the law of accretion. An illegal access road was created which is subject to ongoing ELC Case No. 29 of 2023 filed on 15th May 2023 seeking among other prayers a permanent injunction against the respondents to cease from constructing such road.
10. On the other hand, the 7th respondent avers that the allocation of that land was done in 1997 its only titling which happened in 2023.
 11. Significantly at this point the Court is being asked to determine whether to issue a temporary injunction or not and who should bear the costs of this application.
 12. For an injunction to be attained as held in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] E.A. 360, the following threshold has to be surmounted:

“The applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”
 13. Firstly, this Court has to ascertain whether the applicant has established a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
 14. And, that the principles stated in the *Giella* case (*supra*) are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd Afraba Education Society* [2001] 1 EA 86 as cited in [*Karen Bypass Estate Ltd v Print Avenue and Company Ltd* \[2014\] eKLR](#):

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed”.
 15. From the material I have and the submission by the parties, in my considered view, the issues at the heart of this matter will be the creation of the access road (which is subject to another pending matter before this Court that is the ongoing ELC Case No. 29 of 2023 filed on 15th May 2023) and who is entitled a right to the sea between the plaintiff and the 7th defendant and the accreted land by recession of the sea under the doctrine of accretion. Already the allocation of the two plots is complete and at this stage, there is nothing to injunct.
 16. The Court also notes the pendency of another matter aforesaid on the creation of a road over the same suit properties and one wonders why we should have the two suits over the same subject matter running contra the doctrine of sub judice leading to further convolusion. Why not deal with the issues raised at once?
 17. At this point based on the principles enunciated in the *Giella* case (*supra*), and as I have stated the alleged creation of an access road and allocation of accreted land can only be resolved at the hearing hereof and based on evidence from the parties. At this point, I see nothing to injunct the application dated 11th of September, 2023 is declined the same is hereby dismissed with costs.



DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 12TH DAY OF APRIL 2024.

E.K MAKORI

JUDGE

In the Presence of:

Mr. Asitiba for the Plaintiff.

Mr. Otara for the 7th Defendant.

Ms. Abwao for the 1st Interested Party.

Court Assistant: Happy.

In the Absence of:

Ms.Lutta for the 1st, 2nd, 3rd, 5th, 6th, 7th and 1st Interested p

