



**Muthamia v Kinoti (Sued as the administratrix of the Estate of Silas Kinoti M'Itonga)
(Environment & Land Case 129 of 1994) [2025] KEELC 757 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 129 OF 1994
CK YANO, J
FEBRUARY 20, 2025**

BETWEEN

ANJERO KINOTI MUTHAMIA PLAINTIFF

AND

**MONICA KINYA KINOTI (SUED AS THE ADMINISTRATRIX OF THE ESTATE
OF SILAS KINOTI M'ITONGA) DEFENDANT**

RULING

1. For determination is the Notice of motion dated 23rd October, 2024 brought pursuant to section 4(4) of the *Limitation of Actions Act*, Cap 22, Sections 3A and 63 of the *Civil Procedure Act*, Cap 21 and Order 51 Rules 1, 3 & 4 of the Civil Procedure Rules. The Plaintiff/Applicant is seeking for orders: -
 1. Spent
 2. Spent
 3. That the order giving rise to, and the consequential warrant to the court bailiff to give possession given herein on 20.06.2024 and the warrant of attachment of movable property given herein on 21.06.2024 directed to the Officer-in-Charge, Giaki Police station, Meru and Quickline Auctioneers of P.O Box 2387 – 60200, Meru, respectively, be set aside.
 4. That an order be issued declaring that execution of the judgement dated 10.12.2010 and the consequential order of even date, is statutorily time-barred by dint of section 4(4) of the *Limitation of actions Act*, Cap 22 Laws of Kenya and so, such execution is null and void for all intents and purposes.
 5. That costs of this application be provided for.
2. The application is supported by the affidavit sworn by Angelo Kinoti Muthamia on 23rd October, 2024 and is predicated on the following grounds: -



- i. That through the warrants given herein by the Deputy Registrar on 20th and 21st June, 2024 the Defendant/Respondent is executing the judgement dated 10.12.2020 against the Plaintiff/Applicant.
 - ii. That since the subject judgement was delivered on 10.12.2010, its execution is time-barred under section 4(4) of the *Limitation of Actions Act*, and so, such execution is illegal, null and void.
 - iii. That the said warrants were issued without involvement of the plaintiff/Applicant or his advocates.
 - iv. That the Plaintiff/Applicant risks to suffer grave injustice if the court does not intervene urgently.
3. The Applicant averred that his claim herein was allowed by the trial judge, but on appeal, it was dismissal with costs and the Defendant's counter-claim against the plaintiff/Applicant was allowed with costs vide the judgement and order both dated 10.12.2010. Copies of the said judgement and order are annexed and marked "AKM 1" and AKM2". The Applicant averred that from 10.12.2020 when that judgement was delivered to 2024 is a period of about 14 years, and that he has been advised by his advocate that section 4(4) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya prohibits execution of Judgment upon or after expiry of 12 years from when it was delivered. That in this case, the Hon. Deputy Registrar issued two warrants dated 20th and 21st June, 2024 respectively for the applicant's eviction from the suit land and attachment of his properties in satisfaction of the said judgment dated 10.12.2020. Copies of the said warrants marked "AKM3" and "AKM4" have been annexed.
 4. The applicant argued that under the said section 4(4) of the *Limitation of Actions Act*, the said execution against him is time barred. The applicant relied on the decision of Nzili J. in MERU ELCA NO. Eo53 of 2023 – PAUL MURIUKI MBUI –VS- GEOFFREY MUTHURI – DECEASED (SUBSTITUTED BY AILEEN KINYA MUTHURI).
 5. The Applicant averred that an officer from M/s Quickline Auctioneers served him with the aforesaid two warrants on 22.10.2023 when he became aware of their existence and moved the court promptly. That the applicant and his advocate were not notified of the date when the order which gave rise to the two warrants was made, and that had they been notified, they would have objected to the issuance of the same for being statutorily time- barred. The applicant contended that the Respondent is about to illegally plunge him into irredeemable injustice by levying time-barred execution against the applicant which he prays to be protected against.
 6. The application is opposed by the Defendant/Respondent through a Replying affidavit dated 31.10.2024 sworn by Isayah Mwenda Mwarania advocate wherein he averred that the application herein is ill-advised and lacks merit. The deponent averred that the warrants herein were issued pursuant to the application for execution dated 13/1/2022 and filed in court on 21/11/2022, and therefore filed very much within time as 12 years were lapsing on 10/12/2022. Copies of the application, system generated invoice for the same and the payment receipt are annexed and marked "IMM1 a," "b" and "c" respectively. The Respondent's counsel argued that once a matter is filed within time, the length of time it takes to be concluded is never computed in the limitation of time.
 7. It was also contended by the Respondent that the court file herein had disappeared and re-constructed 5 times and now believes that the disappearance may have been instigated by the plaintiff so as to plead limitation of time, but that was the aspect the respondent stated they were keen on.



8. The Respondent's counsel deponed that prior to the issuance of the warrants, a notice to show cause why execution should not issue was taken out by them on 4/3/2019 and was challenged by the plaintiff by the application dated 5/7/2019 which together with his earlier applications dated 30/7/2013 and 27/11/2019 were heard and dismissed with costs on 18/11/2000. A copy of the said ruling marked "MM2" has been annexed. That since 2013 when they finalized the taxation of costs both in this court and the Court of Appeal, the plaintiff has been filing application after application, and in between them causing the disappearance of the court file and skeleton files subsequently re-constructed so as to buy time and claim time bar even when there is no merit in the claim just because he is on the land so as to continue enjoying the land that he should have vacated 14 years ago. That even the current application is geared towards that. That owing to the numerous applications by the plaintiff, it was not until 28/4/2022 that the Notice to show cause was determined in the defendant's favour and the execution process started in earnest. The court was urged to find that the application herein has no merit and proceed to dismiss the same with costs.
9. The application was canvassed by way of written submissions. The Applicant filed his submission dated 13th December, 2024 through the firm of Carlpeters Mbaabu & Co. Advocates. The Respondent filed submissions dated 6.2.2025 through the firm of Mwenda Mwarania, Akwala & Co. Advocates outside the time granted by the court. The Respondent's advocates explained that they were unable to file their submissions in time because of their inability to join the online platform on 16-12-2024 as they had closed their offices for Christmas and New year holidays. I will therefore exercise the discretionary powers of the court under Article 159 of *the constitution* and section 1A and 3A of the *Civil Procedure Act* and deem the same as duly filed on time.
10. The applicant's counsel reiterated that the execution comes about 14 years after judgement was delivered on 10.12.2020 in contravention of section 4(4) of the Limitation of Action Act which limits such execution to be within 12 years from the date of delivery of judgement. Learned counsel for the applicant relied on the case of M'kiara M'rinkanya & Another V Gilbert Kabere M'mbijiwe (2007) eKLR and urged the court to find and hold that the execution herein of the judgement dated and delivered on 10.12.2010 is statute –barred and allow the application in terms of prayers 3, 4 and 5 thereof.
11. On their part, the respondent's counsel reiterated that once an action has been instituted within time, in this case the filing of the application for execution, time ceases being of the essence and proceedings, judgement, decree or order emanating from the action is valid notwithstanding when it was issued. It was submitted on behalf of the respondent that Notice to show cause under Order 22 Rule 18(1), (a) of the Civil Procedure Rules was issued way back on 4/3/2019 but was delayed by now the applicant who filed two applications in opposition to the same which were dismissed on 18/11/2020 and execution allowed to proceed. The Respondent repeated the facts contained in the replying affidavit and submitted that the application is without merit and ought to be dismissed with costs.
12. I have considered the application, the response and the submissions filed. The issues for determination are whether the execution herein is statute-barred and whether the application herein should be allowed or not.
13. In this case, it is not in dispute that the applicant herein sued the respondent claiming entitlement to 3 acres out of land parcel No. Nyaki/Giaki/1073 through the doctrine of adverse possession. The Respondent denied the claim and raised a counter-claim for the applicant's eviction. Judgement was delivered in the applicant's favour on 21.09.2004. Being aggrieved by the said judgement, the respondent lodged an appeal in Nyeri Court of Appeal No. 48 of 2005 where judgement was delivered in her favour on 10.12.2020 and wherein the respondent's counter-claim for eviction of the applicant



- was allowed and the applicant herein was ordered to vacate the suit premises within three months. The respondent herein was also awarded costs in the court of Appeal and in the High Court. It is apparent that the applicant did not vacate the suit premises.
14. The record shows that the respondent herein as the decree-holder made an application for execution of decree dated 26th February, 2021 and filed in court on 8th March, 2021. It appears the same was not acted upon, and pursuant to the application for execution dated 13.10.2022 and filed in court on 21.11.2022, the warrants herein were issued on 20th and 21st June, 2024. Now the applicant seeks orders that the execution of the judgement dated 10.12.2010 and consequential order is statute-barred by dint of section 4(4) of the [Limitation of Actions Act](#), and therefore null and void.
 15. Section 4(4) of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya provides as follows: -

“An action may not be brought after the end of twelve years from the date on which the judgement was delivered, or (where the judgement or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgement debt may be recovered after the expiration of six years from the date on which the interest became due.
 16. The general power to order execution for a decree is given to the court by Section 38 of the [Civil Procedure Act](#). Order 49 of the Civil Procedure Rules deals with the special powers of the Registrar (which includes a Deputy Registrar) and rule 5 states that execution may be ordered by the Registrar (and Deputy Registrar). These include formal orders for attachment and sale of property and for the issue of Notices to show cause on application. In this case, the warrants were to give vacant possession of the suit premises.
 17. In the instant case, whereas the Hon. Deputy Registrar issued two warrants dated 20th and 21st June, 2024, it is clear that the said warrants were issued pursuant to the application for execution dated 13.10.2022 and filed in court on 21.11.2022 and therefore within time as 12 years from 10.12.2010 were lapsing on 10.12.2022. I am in agreement with the respondent’s argument that once a matter is filed in court within time, the length of time it takes for it to be conducted is never computed in the limitation of time. Once the application was filed before the expiry of 12 years, the respondent cannot be faulted if the same was acted upon by the court after time had lapsed. The court file shows that the application for execution was filed on 21.11.2022 and the fees of Kshs 4500/= are shown to have been paid on 18.11.2022. As a matter of practice and also as a matter of law, documents are deemed validly filed in the Civil registry when the fees is paid and the documents received. In my view, the applicant’s argument that the execution herein is time-barred under section 4(4) of the [Limitation of Actions Act](#) is not correct since 12 years’ period over the judgement that was delivered on 10.12.2010 was to lapse on 10.12.2022.
 18. Accordingly, it is my finding that the Notice of Motion dated 23rd October, 2024 is devoid of merit and is dismissed with costs.
 19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 20TH DAY OF FEBRUARY, 2025 VIDE MICROSOFT TEAMS.

HON. C. YANO

ELC, JUDGE



In the presence of;

Mr. Mawira holding brief for Carlpeters for Plaintiff/Applicant.

No appearance for Defendant/Respondent.

Court Assistant - Laban

