



**Adison v Nakuo & 2 others (Environment & Land Case
E078 of 2022) [2024] KEELC 5358 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5358 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E078 OF 2022
MN GICHERU, J
JULY 16, 2024**

BETWEEN

NARIMU ENE ADISON PLAINTIFF

AND

REUBEN SARUNI OLE NAKUO 1ST DEFENDANT

DANIEL SOLITEI NAMADI 2ND DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO 3RD DEFENDANT

RULING

1. This ruling is on the amended notice of preliminary objection dated 20/6/2023. The said objection is as follows.
 - i. This matter brought before this court is statute barred as provided by Section 7 of the *Limitation of Actions Act*.
 - ii. The plaintiff claims that sometime in the year 1992 subject to an agreement between her deceased husband and the 1st defendant, the latter designed to finance the subdivision of L.R. Kajiado/Kaputiei-North/1890 and 1891 obtained the said title deeds and upon completion of the subdivision process fraudulently transferred the resultant titles to himself.
2. The preliminary objection may have been opposed but I have not seen the physical copies of the submissions by learned counsel for the parties. Be that as it may, I find that the preliminary objection has no merit for the following reasons. Firstly, the plaintiff has pleaded fraud in paragraphs 19 and 20



of the plaint dated 6/10/2022. Though she has not stated when she discovered the alleged fraud, in her pleadings at paragraph 11 of the affidavit dated 6/10/2022, states as follows.

“That the 1st and 2nd respondents are currently trying to get forcible entry into the suit properties for the purposes of dispossessing me and taking possession...”

This implies that she may have discovered the alleged fraud just before she filed the suit. Section 26 (a) of the *Limitation of Actions Act* provides as follows.

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, the period of limitation does not begin to run until the plaintiff has discovered the fraud or mistake...”

The time of discovery of the alleged fraud remains unpleaded and unproved. It is a triable issue because it is not admitted by any of the defendants. It is therefore not correct to plead limitation before the trial has taken place.

3. *The Constitution* at Article 50(1) provides as follows.

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

It would not be proper to strike out the plaintiffs’ suit without hearing her. It would not be in line with *the Constitution*. Since many facts are in dispute, we need a trial in all the circumstances of the case. It is also a draconian move to strike out a suit. The court should always sustain a suit rather than strike out a suit.

For the above stated reasons, I dismiss the preliminary objection dated 20/6/2023.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF JULY 2024.

M.N. GICHERU

JUDGE

