



**Koech v Korir & 2 others (Environment & Land Case 84 of 2016)
[2024] KEELC 5993 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5993 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 84 OF 2016
MC OUNDO, J
SEPTEMBER 19, 2024**

BETWEEN

STEPHEN KIMETET KOECH PLAINTIFF

AND

WESLEY KORIR 1ST DEFENDANT

EDWIN KORIR 2ND DEFENDANT

ANNAH LANGAT 3RD DEFENDANT

JUDGMENT

1. Vide a Further Amended Plaintiff of 12th January, 2022, the Plaintiff herein sought for the following orders;
 - i. An eviction order against the Defendants and/or any other person, using, cultivating or occupying land parcel No. Kericho/Chepseon/2361 under the authority of the Defendants together with a further order of permanent mandatory injunction restraining the Defendants from interfering with the Plaintiff's quite possession of the suit land.
 - ii. In the alternative and without prejudice to the foregoing, an order that the Plaintiff be allowed to excise a portion measuring approximately 0.6 acres to enable him recover the unpaid balance of Kshs. 100,000/= with interest from the date of filing the suit.
 - iii. Costs of the suit be provided for.
 - iv. In the alternative and without prejudice, the court orders that the transaction which was amongst the Defendants and the Plaintiff had become moribund and no longer tenable in law since the Defendants never honored their part.
 - v. Any other relief the court deems fit and just to grant.



2. The 3rd Defendant filed her Statement of Defence dated 18th February, 2017 wherein she denied the contents of the Plaint putting the Plaintiff to strict proof while stating that the Plaintiff had agreed to sell the whole of his land L.R No. Kericho/Chepseon /2361 (the suit land) measuring approximately 1.6 acres (0.66 hectares) to the 2nd Defendant at an agreed price of Kshs. 250,000/= wherein the said 2nd Defendant had paid a sum of Kshs. 150,000/= leaving a balance of Kshs. 100,000/=. That subsequently, the Plaintiff had given to the 2nd Defendant one (1) acre out of the suit land which was equivalent to Kshs. 150,000/= hence the Plaintiff had on 29th April, 2003 signed an application for consent of the Land Control Board to affect the transfer of the same to the 2nd Defendant wherein the suit land was to be sub-divided into two portions measuring 1 acre and 0.6 acres.
3. That it was while waiting for the Plaintiff to affect the transfer to the 2nd Defendant, that one Margaret Soi had on 24th April, 2004 purchased the one-acre portion of the suit land from the 2nd Defendant and later sold the same to the 3rd Defendant's late husband hence the Plaintiff was not entitled to the orders that he was seeking herein.
4. She denied the allegations that she was occupying, possessing, cultivating and/or using the suit land despite not clearing part of the consideration of Kshs. 100,000/= or any part thereof. That in any case, the remaining part of the suit land measuring 0.6 acres had been sold by the Plaintiff to Paul Kipkorir Rono vide an agreement dated 19th September, 2004 at a consideration of Kshs. 120,000/= thus all the persons who were occupying the suit land were therein legally as purchasers. That accordingly, having sold the entire suit land, the Plaintiff was not entitled to the orders sought herein.
5. The 1st and 2nd Defendant did not enter appearance.
6. In the pendency of the matter, the original 1st Defendant, one Mark Yegon passed away and was substituted, vide an Application dated 11th November, 2020, by Wesley Korir as the 1st Defendant.
7. On the 14th February, 2024 when the matter was called out for hearing, only the Plaintiff and his witnesses responded. Subsequently, it proceeded for hearing ex-parte pursuant to the provisions of Order 12 Rule 2(a) of the Civil Procedure Rules with the evidence of PW1, Stephen Kimetet Koech, the Plaintiff herein who testified that he lived in Chebole Village in Kiptulwo sub-location within Bomet County and was a farmer. That the 1st and 2nd Defendants herein were the children of Mark Yegon (Deceased), whom he had sold to the suit land, and from whom the 3rd Defendant had purchased the same.
8. That he had sold his land parcel No. Kericho/Chesoan/2361 measuring 1.6 acres to Mark Yegon either in the year 2002 or 2003 wherein the said Mark had paid him a sum of Kshs.150,000/= and had promised to pay the balance of Kshs. 100,000/= within 7 days but had not honored his promise up to the time of his demise. That on the 8th day after their agreement, he had gone to follow up on the balance of the purchase price from Mark Yegon who inquired from him whether his sons, the 1st and 2nd Defendants herein, had not given him the money. Mark had then fainted wherein he had ran away.
9. That thereafter Mark's children, from his third wife, had delivered to him a copy of a letter dated 10th June, 2003 written by Mark Yegon (Deceased) to his children, the 1st and 2nd Defendants herein wherein he had specifically asked them to pay a sum of Kshs. 100,000/= to him (Plaintiff). It was his evidence that the 1st and 2nd Defendants had not honored their father's instruction.
10. He produced the title deed to land parcel No. Kericho/Chesoan/2361 and the letter dated 10th June, 2003 as Pf exh 1 and 2 before proceeding to testify that thereafter, he contacted his Advocate who had summoned Mark Yegon's children via a demand letter dated 15th October 2007 herein produced as Pf



- exh 3, to pay the sum of Kshs. 100,000/=, but they failed to comply. That as per the Green Card which he produced as Pf exh 4, the land was still in his name.
11. He testified that he had come to court to have the people in occupation of the suit land evicted because he had now decided not give it to the deceased Mark Yegon sons as per the wishes of their father.
 12. That the 3rd Defendant was in occupation of the suit land on a claim that the 1st and 2nd Defendants had sold the same to her despite the fact that Mark Yegon had bought the same for his children.
 13. That the 2nd Defendant had taken possession of the suit land after one month of the Sale agreement, wherein despite a warning not to build on the land before completing the payment, he had occupied the same by force causing the Plaintiff to consult his Advocate. That it had been after getting into the suit land that the 2nd Defendant had sold it to Margaret Soi who later sold it to the 3rd Defendant herein who was now in occupation of the suit land.
 14. He explained that he filed the suit against the 1st Defendant because his father, Mark Yegon (Deceased) had written a letter to him asking him to pay him (Plaintiff) the balance of the purchase price. That he wanted them to be evicted from the suit land and was ready to refund the money that Mark Yegon had paid him, to his family. That whereas the Defendants had not come to court, yet they had been aware of the instant suit as he had always served them. He adopted his Witness Statement as his evidence in chief and sought for the costs of the suit.
 15. PW2, one Geoffrey Kipngetich Rono testified to the effect that he lived in Kipelchi and was a farmer. That he knew the Defendants herein as they were his neighbors. He confirmed that the 3rd Defendant was in occupation and living on the Plaintiff's parcel of land having bought the same from one Margaret who had bought it from 2nd Defendant. That further, the 1st and 2nd Defendants were the deceased Mark Yegon's children and further that it had been the deceased Mark Yegon who had bought the suit land from the Plaintiff.
 16. That whereas he had been there when the suit land was sold, he could not remember the exact year but it might have been around the year 2003. That the purchase price had been Kshs. 250,000/= wherein Mark Yegon had paid a deposit of Kshs. 150,000/= and had remained with a balance of Kshs. 100,000/= which balance had not been paid to date. That his knowledge was based on the fact that his land bordered the Plaintiff's land and he had seen the Plaintiff visiting Mark Yegon to collect his debt. He asked the court to help the Plaintiff refund the money.
 17. The Plaintiff thus closed his case
 18. Upon the closure of the case, only the Plaintiff filed his submissions dated 26th February, 2024 wherein he summarized the factual background of the matter, the evidence adduced in court as well as the contents of the 3rd Defendant's Defence before submitting that his suit had met the legal requirements as stipulated by the law to grant him the reliefs and/or prayers sought in his further amended Plaintiff.
 19. He placed reliance on the provisions of Section 3A of the *Civil Procedure Act* to submit that having filed the instant suit and served the same upon the Defendants in which only the 3rd Defendant had responded by filing a Defence. That his documentary evidence having portrayed clearly that he was still the owner of the land, he deserved to be granted the prayers he had sought in his Further Amended Plaintiff.
 20. That despite the 1st and 2nd Defendant's father one Mark Yegon alias Mark K. Biegon (deceased) having, through his letter dated 10th June 2003, confirmed that the balance owed to him was to be paid by the said 1st Defendant, the 2nd Defendant had taken possession of the suit land Kericho/Chepseon/2361 despite not having complied with the terms of the transaction between him and their deceased father.



21. His submission was that the 1st and 2nd Defendants having failed to comply or tell the 3rd Defendant to pay the Plaintiff the balance of the Purchase Price, they had waived their right to the suit land, therefore, he was entitled to repossess his land and have the 3rd Defendant evicted therefrom. He placed reliance on the contents of the letters dated 10th June, 2003 and 12th October, 2007 that had been produced in evidence.
22. That indeed through viva voce and documentary evidence herein adduced in court, there had been no dispute that he was the owner of the suit land title No. Kericho/Chepseon/2361 and that the Defendants owed him a sum of Kshs. 100,000/= and therefore they, specifically the 3rd Defendant had thus become a trespasser on his (Plaintiff's) land having entered into an illegal transaction with the 1st and 2nd Defendants and therefore there be issued a declaratory order that failure by the Defendants to clear the balance of Kshs. 100,000/= was bad in law, hence he (Plaintiff) was still the owner of the parcel of land known as title No. Kericho/Chepseon/236, secondly that the 3rd Defendants be declared a trespasser on the Plaintiff's land known as Kericho/Chepseon/236 and lastly that the Defendants to pay the costs of the suit.

Determination.

23. I have reviewed and considered the uncontroverted evidence of the Plaintiff, which was precise and to the point, in support of his claim, as well as the law. It should be noted that in the pendency of the matter the original 1st Defendant one Mark Yegon passed away and was substituted, vide an Application dated 11th November, 2020, by his son Wesley Korir, as the 1st Defendant.
24. The gist of the matter in question is that sometime early in the year 2003, the Plaintiff herein who was the proprietor of parcel of land No. L.R No. Kericho/Chepseon/2361 (the suit land) measuring approximately 1.6 acres (0.66 hectares), sold the same to the 1st and 2nd Defendants' father, the deceased Mark Yegon, at an agreed price of Kshs. 250,000/=. That the said Mark Yegon deceased had paid a sum of Kshs. 150,000/= leaving a balance of Kshs. 100,000/=. That vide a letter dated the 10th June, 2003 herein produced as Pf exh 2, before his death, the deceased had asked his son, the 1st Defendant to transmit the balance of Ksh. 100,000/= to the Plaintiff to finalize the purchase of the suit land, once a matter that was pending before the chief had been finalized.
25. It is in evidence that this was not done and instead the 2nd Defendant took possession and occupation of the suit land after one month of the Sale agreement, wherein he had proceeded to sale the same to one Margaret Soi who later sold it to the 3rd Defendant herein who was now in occupation of the same.
26. The Plaintiff brought suit against the Defendants in his further amended Plaint seeking that the Defendants and/or any other person, using, cultivating or occupying land parcel No. Kericho/Chepseon/2361 be evicted from therein and there be a permanent mandatory injunction restraining the Defendants from interfering with his quiet possession of the suit land.
27. That in the alternative and without prejudice to the foregoing, there be an order that he be allowed to excise a portion measuring approximately 0.6 acres from parcel No. Kericho/Chepseon/2361 to enable him recover the unpaid balance of Kshs. 100,000/= with interest from the date of filing the suit and in the alternative and without prejudice, that there be an order that the transaction between the parties had become moribund and no longer tenable in law since the Defendants never honored their part. That there be any other relief the court deemed fit and just to grant and he be granted costs of the suit.
28. There was no defence tendered.



29. From the evidence adduced, I find the issue for determination as being whether the Plaintiff is entitled to the eviction orders sought against the Defendants.
30. It is important to note that no sale agreement was produced at the hearing. In the case of *Peter Mbiru Michuki v Samuel Mugo Michuki* [2014] eKLR, the Court of Appeal had held as follows:
- “Section 3(3) of the *Law of Contract Act* provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is in writing, executed by the parties and attested. Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. Section 3(3) of the *Law of Contract Act*, came into effect on 1st June, 2003. Prior to the amendment of Section 3(3) of the *Law of Contract Act* in 2003, the subsection read as follows: -
- (3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it”
31. Secondly upon consideration of the Plaintiff’s pleading’s it is clear that vide his original Plaintiff dated the 14th November 2016 and filed on 15th November 2016, at paragraph 10, the Plaintiff had clearly stated as follows;
- “The Plaintiff avers that in the year 2003, he entered into land sale agreement with the 1st defendant at agreed purchase price of Ksh. 250, 000/= and made down payment of Ksh. 150, 000/= leaving a balance of Ksh.100,000/= which has remained unpaid date but the 2nd defendant who the (sic) son to the 1st defendant sold the same land to the 3rd defendant before the balance is (sic) made.”
32. The Plaintiff’s Counsel, craftily filed a “further amended Plaintiff” on the 13th January 2022 indicating that it was further amending an amended Plaintiff previously dated the 26th November 2007, and amended on 26th June 2015. There was however no amended Plaintiff on record. The alleged “further amended Plaintiff” of 12th January 2022, skilfully omitted the contents of paragraph 10 of the original Plaintiff thereby cunningly omitting to indicate when the cause of action arose. However in his evidence the Plaintiff and his witness PW2 had reiterated that the sale agreement between him (Plaintiff) and the deceased Mark Yegon had taken place in the year 2003.
33. The cause of action therefore had occurred in the year 2003 when the sale agreement took place and wherein the Plaintiff was owed a balance of Ksh. 100,000/= by the deceased. Indeed it is also in evidence that whilst the balance was still outstanding that the deceased through his letter dated the 10th June, 2003 herein proceed as Pf exh 2 had asked his son, the 1st Defendant to transmit the balance of Ksh. 100,000/= to the Plaintiff to finalize the purchase of the suit land.
34. The date of the cause of action was also reiterated in the demand letter dated 15th October 2007 herein produced as Pf exh 3, where the Plaintiff’s Counsel had reiterated that the sale agreement had been entered into in the year 2003. The Plaintiff herein sought to recover land wherein the cause of action had occurred in the year 2003.
35. A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings suit.



36. 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

37. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the Plaintiff could only sue to recover the land from the Defendants within twelve years after the impugned agreement for sale. The alleged sale agreement having transpired in the year 2003, and the Plaintiff having filed suit in the year 2016 there is no mistake that this suit was brought more than the stipulated period of 12 years and therefore the Plaintiff's claim for the recovery of land after the prescribed period of 12 years had lapsed.

38. The Court of Appeal in *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR held that:

“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”

39. The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. It follows therefore that by the time the Plaintiff filed this suit, the claim was already statute barred.

40. In the case of *Bosire Ongero v Royal Media Services* [2015] eKLR the court had held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.

41. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1. where Justice Nyarangi of the Court of Appeal had held as follows

'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

42. I therefore find that the Plaintiff's claim is time-barred under Section 7 of the *Limitation of Actions Act*. The same is an abuse of the process of the court having been filed 13 years after the cause of action allegedly arose. Since limitation goes to the jurisdiction of the court, the matter is at its end and I will have to down my tools and take no further step. The Plaintiff's suit is herein dismissed with no costs.



**DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 19TH DAY OF
SEPTEMBER 2024.**

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

