



Elijah & another v Langat (Sued as the Personal and Legal Representative of the Estate of the Late James Kipkirui Langat) & 5 others (Environment & Land Case E008 of 2023) [2024] KEELC 6964 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6964 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E008 OF 2023
LA OMOLLO, J
OCTOBER 24, 2024**

BETWEEN

**RUTH CHEROTICH ELIJAH 1ST PLAINTIFF
RAPHAEL KIPRUTO LANGAT (SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF ELIJAH ARAP CHERUIYOT (DECEASED) 2ND PLAINTIFF**

AND

**ESTHER CHEROTICH LANGAT (SUED AS THE PERSONAL AND LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JAMES KIPKIRUI LANGAT) 1ST DEFENDANT
ESTHER CHEROTICH LANGAT 2ND DEFENDANT
BETTY CHEBET 3RD DEFENDANT
THE LAND REGISTRAR, KERICHO 4TH DEFENDANT
THE ATTORNEY GENERAL 5TH DEFENDANT
LETSHEGO KENYA LIMITED 6TH DEFENDANT**

RULING

Introduction

1. This ruling is in respect of the 1st and 3rd Defendant’s Notice of Preliminary Objection dated November 24, 2023 which is on the following grounds;
 1. This suit is time barred having been brought outside the statutory limitation period of 12 years required for actions to recover land in view of Section 7 of the *Limitations of Actions Act*.



2. The Plaintiffs claim as administrators is also time barred in view of Section 16 of the *Limitation of Actions Act*.

Factual Background.

2. The Plaintiffs commenced the present proceedings vide the Plaint dated 19th October, 2023. The Plaintiffs pray for judgement against the Defendants for;
 - a. A declaration that the late Elijah Arap Cheruiyot is the original and rightful owner of all that parcel of land known as Kericho/Kabartegan/340.
 - b. A declaration that any purported transfer, sub-division, charge, guarantee and/or sale of Title No Kericho/Kabartegan/340 or a portion thereof by the Defendants or any of them is null and void.
 - c. A declaration that any dealing in respect of Title No Kericho/Kabartegan/340 or a portion thereof after the date of the late Elijah Arap Cheruiyot's death i.e. 15th September, 1995 without the Plaintiff's involvement is null and void.
 - d. A permanent injunction restraining the Defendants, their agents/servants and employees from transferring, charging, trespassing, entering, invading, developing, occupying, interfering with, carrying out any demolition, construction or any transaction whatsoever on Title No Kericho/Kabartegan/340 or on any buildings thereon.
 - e. An order evicting the 1st, 2nd and 3rd Defendants, their agents/servants and employees from Title No Kericho/Kabartegan/340 and or any portion thereof.
 - f. A declaration that title number Kericho/Kabartegan/1394 is null and void and the cancellation of the illegal title registered as Kericho/Kabartegan/1394 and or any other being resultant sub-divisions of Kericho/Kabartegan/340 and a consequent order directing the 4th Defendant to rectify the register in respect of the suit premises by restoring the late Elijah Arap Cheruiyot as the registered proprietor of the suit premises.
 - g. The OCS Kabartegan Police Station do ensure compliance with orders c and d above.
 - h. An order directing the Defendants to restore Title No Kericho/Kabartegan/340 and any buildings thereon to their status before the Defendants' unlawful possession and or illegal and fraudulent dealings.
 - i. Damages for trespass on Title No Kericho/Kabartegan/340.
 - j. Interest on (i) above.
 - k. Costs of the suit and interest thereon.
3. The 1st, 3rd, 4th and 5th Defendants entered appearance but have not filed their statements of Defence.
4. The preliminary objection first came up for directions on 25th January, 2024 when the Court directed that it be served upon all the parties.
5. The matter was mentioned on 14th February, 2024 on which date the Court gave directions that the preliminary objection be disposed of by way of written submissions.



6. The matter was also mentioned on 24th April, 2024 when the Court once again ordered that the Preliminary Objection be served upon all the parties after realizing that some parties had not been served.
7. The matter was further mentioned on 22nd May, 2024 and 3rd July, 2024.
8. On 3rd July, 2024 Counsel for the 4th, 5th and 6th Defendants informed the Court that they would not be participating in the hearing of the preliminary objection.
9. The preliminary objection was then reserved for ruling.

Issues for Determination.

10. The Plaintiffs filed their submissions on 2nd July, 2024 while the 1st and 3rd Defendants did not file any submissions.
11. The Plaintiffs submit on the following issues;
 - a. Whether this suit is barred having been brought outside the statutory limitation period of 12 years required for actions to recover land in view of Section 7 of the [Limitation of Actions Act](#).
 - b. Whether the Plaintiff's claim as administrators is also time barred in view of Section 16 of the [Limitation of Actions Act](#).
12. The Plaintiffs submit that the cause of action before Court is fraud and therefore the Provisions of Section 26 of the [Limitation of Actions Act](#) apply.
13. The Plaintiffs also submit that the period of limitation does not begin to run until the fraud or mistake has with reasonable diligence been discovered.
14. The Plaintiffs further submit that the 1st and 3rd Defendants preliminary objection is premised on Sections 7 and 16 of the Limitation of Action Act.
15. The Plaintiffs submit that they filed Kericho High Court Succession Cause No 5 of 2018 in the matter of the estate of Elijah Arap Cheruiyot.
16. It is the Plaintiffs submissions that the said matter is still pending in Court and that it was during the pendency of the said suit that they discovered the fraudulent activities the 1st and 3rd Defendants were engaged in.
17. It is also the Plaintiffs submissions that the late James Kipkirui Langat died on 2nd April, 1996 and that after he died, the 1st and 3rd Defendants allegedly fabricated a Succession Cause in respect of his estate in order to acquire the suit property.
18. It is further the Plaintiffs submissions that they were not aware of the said fraudulent activities until 4th September, 2018. They submit that a period of six years has not lapsed from the time they became aware of the fraud.
19. The Plaintiffs submit that Sections 7 and 16 of the [Limitation of Actions Act](#) envisage instances where a cause of action arises during the lifetime of a deceased person. But in the present case, the fraudulent dealings were occasioned after the demise of the original registered proprietor.
20. The Plaintiffs rely on the judicial decision of [Kimayi v Kemei & 3 others](#) (Environment and Land Case Civil Suit 126 of 2014) 2-2024} KEELC 4246 KLR) 16 May, 2014) and seek that the Preliminary Objection dated 24th November, 2023 be dismissed with costs.



Analysis and Determination.

21. I have considered the 1st and 3rd Defendants preliminary Objection and the Plaintiffs submissions and the issues that arise for determination are as follows;
- a. Whether the Plaintiffs' suit is statute barred for having been filed more than twelve years after the course of action arose and whether on account of this, it offends the Provisions of Section 7 of the *Limitation of Actions Act*.
 - b. Whether the Plaintiffs' claim as administrators is statute barred in view of Section 16 of the *Limitation of Actions Act*.

A. Whether the Plaintiffs' suit is statute barred for having been filed more than twelve years after the course of action arose and whether on account of this, it offends the provisions of Section 7 of the *Limitation of Actions Act*.

22. In the judicial decision of *Oraro v Mbaja* [2005 1 KLR 141 the Court said:

“A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.” (Emphasis mine)

23. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. In other words, a preliminary objection should not deal with disputed facts nor should it derive its foundation from factual information.
24. The 1st and 3rd Defendant's Objection is that the Plaintiffs commenced the present proceedings after the statutory period of twelve years had lapsed and the suit is therefore statute barred.
25. The Plaintiffs on the other hand submit that their claim is based on fraud which they discovered on 4th September, 2018. They also submit that the statutory period of six years is yet to lapse since they discovered the alleged fraud.
26. Section 7 of the *Limitation of Actions Act* provides as follows;

“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.”

27. In *Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi* [2019] eKLR the Court held as follows;

“13. The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The Court should formulate limitation as one of the issues for determination and decide it on evidence adduced at the trial. (Emphasis mine)



On this see the case of *Oruta & another v Nyamato* [1998] KLR 590, where the Court held that limitation of action:-

“...could only be queried at the trial but not by...a preliminary objection...The appellant could raise the objection at the trial and the trial Judge would have to deal with the matter on the evidence to be adduced at the trial” (Emphasis mine)

14. See also the case of *Divecon Ltd v Shirinkhanu S. Samani* Civil Appeal No 142 Of 1997, where the Court quoted with approval the words of Gachuhi, J.A., the leading Judge in the *Oruta* case (ibid) that:

“It will be up to the Judge presiding at the trial to decide the issue of limitation as one of the issues but not as a preliminary point. The raising of the preliminary issue that would cause the suit for the plaintiff to be struck out is not encouraged by the *Limitation of Actions Act*...” (Emphasis mine)

28. As was held in the above cited judicial decision, the defence of limitation of time can only be determined at the trial and cannot be dealt with as a preliminary objection. This is because the determination of the issue of limitation of time requires the Court to ascertain facts which can only be done by interrogating evidence.

B. Whether the Plaintiffs claim as administrators is statute barred in view of Section 16 of the *Limitation of Actions Act*.

29. The 1st and 3rd Defendant’s objection is that the Plaintiffs claim as administrators is statute barred in light of Section 16 of the *Limitation of Actions Act*.
30. In response the Plaintiffs submit that Section 16 of the *Limitation of Actions Act* provides that once letters of administration have been issued, the administration of an estate dates back to the date of death of the deceased.
31. Section 16 of the *Limitation of Actions Act* provides as follows;
- “For the purposes of the Provisions of this Act relating to actions for the recovery of land, an Administrator of the Estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the Letters of Administration.”
32. The Court of Appeal in *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR held as follows;
- “Section 16 of the *Limitation of Actions Act* (Cap 22 of the Laws of Kenya) provides that actions for the recovery of land, an Administrator of the Estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the Letters of Administration. The effect of this provision is that when the Letters of Administration was granted for the Estate of the Plaintiff in this case, the Administration of the Estate dates back to the date of death.”



33. In the judicial decision of *Njoki v Pussy* (Environment and Land Appeal E006 of 2022) [2023] KEELC 945 (KLR) (16 February 2023) (Judgment) the Court while considering the provisions of Section 16 of the *Limitation of Actions Act* held as follows;

“...Section 16 provides that for purposes of that Act relating to actions for the recovery of land, an Administrator of the Estate of a deceased person is taken to claim as if there was no interval of time between the death of the deceased person and the grant of Letters of Administration.

48. This Court’s understanding of sections 9 (2) and 16 is that an Administrator of the Estate of a deceased person is deemed to have had the legal capacity to file an action to recover land which was owned by a deceased person from the date of death and not merely from the date the administrator obtained grant of Letters of Administration for the Estate of the deceased.”

34. As was held in the above cited judicial decisions, Section 16 of the *Limitation of Actions Act* provides that an Administrator of an Estate of a deceased person is deemed to have had legal capacity to file an action for recovery of land from the date of death of the deceased and not from the date the administrator obtained grant of Letters of Administration.

35. The 1st and 3rd Defendants allege that the Plaintiffs claim as administrators is time barred in view of Section 16 of the *Limitation of Actions Act* but have not demonstrated how the Plaintiffs suit is time barred in light of the Provisions of this Section. I am unable to get into their minds.

Disposition.

36. Consequently, I find that the 1st and 3rd Defendants Preliminary Objection dated November 24, 2023 lacks merit. I hereby dismiss it with costs.

37. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 24TH DAY OF OCTOBER, 2024.

L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Cherono for Langat for the 1st, 2nd and 3rd Defendants.

Miss Mugweru for the Plaintiffs.

Mr. Bwire for Ouru for the 6th Defendant.

Miss Chepkemoi for 4th and 5th Defendants.

Court Assistant; Mr. Joseph Makori.

