



**Mundia v Ngisa & 2 others; Land Registrar, Kajiado County  
(Interested Party) (Environmental and Land Originating Summons  
E008 of 2021) [2024] KEELC 6957 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6957 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2021  
MN GICHERU, J  
OCTOBER 23, 2024**

**BETWEEN**

**CHRISTOPHER MUNGAI MUNDIA ..... PLAINTIFF**

**AND**

**RONALD MORARA NGISA ..... 1<sup>ST</sup> DEFENDANT**

**MORARA NGISA & CO ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**HELEN NJERI WANDAKA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**LAND REGISTRAR, KAJIADO COUNTY ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the notice of preliminary objection dated 23/11/2023. The objection which is by the third defendant is as follows.
  1. “The plaintiff’s action is barred by Section 26 (1) of the *Limitation of Actions Act* (cap 22) which provides as follows, “Where, in the case of an action for which a period of limitation is prescribed (...) this section does not enable an action to be brought to recover, (...) or set aside any transaction affecting, any property which – (1) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed (...)”
  2. Taking all the plaintiff’s pleadings to be true, nothing is on record showing that the 3<sup>rd</sup> defendant had any knowledge of the alleged fraud by the 1<sup>st</sup> and 2<sup>nd</sup> defendants as against the 3<sup>rd</sup> defendant. The plaintiff therefore has no standing or legal basis upon which to maintain the said action as against the 3<sup>rd</sup> defendant as per Section 8 of the *Civil procedure Act*. Reasons



wherefore, the 3<sup>rd</sup> defendant prays that the originating summons be struck out/dismissed with costs.

2. The summons by the plaintiff dated 12/7/2021 seeks to have the plaintiff registered as the owner of LR Kajiado/Kisaju/3132 and 80361, vacant possession of the same land, a declaration that the third defendant represented the plaintiff in the purchase of the suit land. Secondly, even though the plaintiff paid the entire purchase price, the suit land was transferred to the third defendant. He blames his advocate for this fraud.
3. None of the defendants has filed a replying affidavit in response to the originating summons. There is therefore no material upon which this court can evaluate the defences that the defendants may have. The preliminary objection will therefore be determined solely on the material filed by the plaintiff which are the summons, the grounds, the supporting affidavit and the annexures.
4. I have carefully considered the preliminary objection in its entirety including the summons, the grounds, the affidavit and annexures. I find that the following issues arise.
  - a. Whether the suit is time barred.
  - b. Whether the third defendant is a necessary party.
  - c. Whether it is fair or just to strike out the suit at this stage.
5. On the first issue, I find that the suit is not time barred. From the supporting affidavit, it seems that the sale agreement between the plaintiff and W.K. Chelimo and another is dated 8/6/2009. It was not until the year 2016 that the plaintiff discovered the alleged fraud. Under Sections 7 and 26 of the Limitation of Actions Act, the period of 12 years starts running in the 2016 and lapses in the year 2028. This suit having been filed on 30/7/2021 was filed on time.
6. On the second issue, I find that the third defendant is a necessary issue in these proceedings because he is alleged to be a beneficiary of the land that was meant for the plaintiff. If it is proved that the land that she occupies was meant for the plaintiff, then by dint of Article 40 (6) of the Constitution, the right to own such property is not protected under Article 40. It provides as follows.

“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired”.

7. On the third and final issue, I find that it is not fair or just to strike out the suit against the third defendant. Striking out a suit is a draconian act which denies an aggrieved party a meritorious determination of a dispute. The power to strike out a suit should be exercised sparingly and a court should rather sustain a suit than dismiss it. It is noteworthy that the 3<sup>rd</sup> defendant has not even filed a defence or any other material in response to the plaintiff's suit. The preliminary objection is therefore not anchored on anything tangible. In effect, the pleadings are not closed. I find that it would be contravention of Article 50 (1) of the Constitution to strike out the suit against the third defendant. It would not be a fair hearing to dismiss a case that has not yet crystallised owing to lack of disclosure by the defendants.

For the above stated reasons, I dismiss the preliminary objection dated 23/11/2023.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 23<sup>RD</sup> DAY OF OCTOBER 2024.**

**M.N. GICHERU**



**JUDGE**

