



**Lekumok v Onduso & 2 others (Environment & Land Case E021 of 2022)
[2024] KEELC 13314 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13314 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E021 OF 2022
MN GICHERU, J
NOVEMBER 20, 2024**

BETWEEN

KANCHORI OLE LEKUMOK PLAINTIFF

AND

FRANCIS NDAR ONDUSO 1ST DEFENDANT

GRACE OTIENO 2ND DEFENDANT

LAND REGISTRAR, KAJIADO 3RD DEFENDANT

RULING

1. This ruling is on the notice of preliminary objection dated 12/10/2023. The said objection is based on three grounds which read as follows.

1. That the suit is statute barred by dint of Section 7 of the *Limitation of Actions Act* and leave to file the same out of time was not sought by the plaintiff.
2. That the suit is a pure abuse of the court process.
3. That the suit is procedurally and substantively bad in law, hence suitable to be dismissed and/or struck out with costs to the 1st and 2nd defendants.

For the above stated grounds, the suit filed vide the plaint dated 1/3/2022 should be struck out with costs.

2. The preliminary objection is unopposed because I have not seen any submissions filed by the plaintiff's counsel or any form of response. I have not seen any submissions by the defendants' counsel either.



3. I find that the preliminary objection has no merit for one reason. Under Section 26(a) of the Limitation of Actions Act, it is provided 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, or
- b. The right of action is concealed by the fraud of any such as aforesaid, or
- c. ...

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

At paragraph 9 of the plaint dated 1/3/2022 it is averred that the alleged fraud of the defendants was not discovered until around August 2021. Again at paragraph 13, the plaintiff has pleaded 11 (eleven) particulars of fraud. Going by Section 26 of the Limitation of Actions Act, time started running in August 2021 and the suit was filed in March 2022. The suit is not time barred because it was brought within eight months of the discovery of the alleged fraud. Section 7 provides for twelve years. The plaintiff's suit is on time.

For the above stated reasons, I dismiss the notice of preliminary objection dated 12/10/2023. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 20TH DAY OF NOVEMBER 2024.

M.N. GICHERU

JUDGE

