



**Karani v Pharis (Environment and Land Miscellaneous Application  
E031 of 2024) [2024] KEELC 13868 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13868 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E031 OF 2024  
CK YANO, J  
DECEMBER 19, 2024**

**BETWEEN**

**JOHN WANJOHI KARANI ..... APPLICANT**

**AND**

**SAMUEL KINYUA PHARIS ..... RESPONDENT**

**RULING**

1. By an ex-parte originating summons dated 12<sup>th</sup> August 2024 brought pursuant to Section 27 and 28 of the *Limitation of Actions Act* and Order 37 Rule 6 of the *Civil Procedure Rules*, the applicant seeks for leave to file and proceed with suit against the respondent out of time. The application is premised on the grounds that the court has the jurisdiction to enlarge time to enable the applicant file a case against the respondent out of time.
2. The application is supported by the affidavit of John Wanjohi Karani sworn on 12<sup>th</sup> August 2024 and a supplementary affidavit sworn on 30<sup>th</sup> October, 2024 in which he deposed that the intended suit arises out of a sale of land agreements dated 14<sup>th</sup> December, 2011 and 22<sup>nd</sup> December, 2011 entered between the applicant and the respondent. Copies of the said agreements marked “JWK 1 (a) & (b)” are annexed. It is contended that the respondent has refused, neglected failed and/or ignored to transfer the said land measuring one acre.
3. The applicant further contended that he did not deliberately fail to institute the suit in time but was due to the reasons that they were negotiating for settlement out of court, but the negotiations have collapsed. The applicant stated that he is now advised by his advocate that a suit of this nature should be filed within a period of six (6) years. It is the applicant’s contention that he has a good cause of action against the respondent and requires leave of the court to file the same.
4. The applicant contended that the other reason was that there was a caution lodged against the main parcel of land LR No. KIIRUA/KIIRUA/1732 and Meru Criminal case No. 1785 of 2016 touching



on LR NO. KIIRUA/KIIRUA/602. Copies of the certificate of official search and judgment in the criminal case have been annexed.

5. The applicant stated that the respondent is not denying the contents of the said agreements but is only taking refuge on technicalities. The applicant deposed that he has been in occupation and utilization of the suit property and has extensively developed the same. The applicant urged the court to grant the orders sought.
6. The applicant clarified that there was a typographical error in his supporting affidavit which reads the respondent “got sick and died” and withdrew the said averment.
7. Although the application is ex-parte, the respondent filed a replying affidavit sworn on 14<sup>th</sup> October, 2024 in which he refuted the averments in paragraph 3 of the applicant’s supporting affidavit (which has since been withdrawn) and averred that he is much alive and not dead as alleged. It is the respondent’s contention that the application is a non-starter by dint of Section 27 and 28 of the Limitation of Actions Act. That Section 27 only provides for extension of Limitation period in case of ignorance of material facts in action for negligence and not for an action for breach of contracts as in the instant case.
8. The respondent stated that the sale agreement was entered into on 14<sup>th</sup> December, 2011 which is about 12 years ago, and deposed that if at all the applicant was desirous of prosecuting the respondent, he had a whole 6 years to pursue his claim but did not do so. It is contended by the respondent that the applicant has not given any viable reason for the inordinate delay in filing his claim. That the application lacks merit, is an abuse of the court process, noting that equity does not aid the indolent but the vigilant. The respondent stated that the application ought to be dismissed with costs.
9. The application was canvassed by way of written submissions which were duly filed by both parties and which I have read and considered and I need not reproduce the same in the ruling.
10. Section 27 of the Limitation of Actions Act under which the instant application has been filed provides as follows-;
  27. Extension of Limitation period in case of ignorance of material facts in actions for negligence etc.
    - (1) Section 4(2) does not afford a defence to an action founded on tort where
      - (a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
      - b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any personal injuries of any person, and
      - c) The court has, whether before or after the commencement of the action, granted leave for the purpose of this section, and
      - d) The requirements of subsection (2) are fulfilled in relation to the cause of action.
    - (2) the requirements of this sub-section are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a



decisive character which were at times outside the knowledge (actual or constructive) of the plaintiff until a date which –

- (a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period, and
- b) In either case, was a date not earlier than one year before the date on which the action was brought.

(3) this section does not exclude or otherwise affect –

- (a) Any defence which, in an action to which this section applies, may be available by virtue of any written law other than Section 4(2) of this Act (whether it is a written law imposing a period of Limitation or not) or by virtue of any rule of law or equity or
- (b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.”

11. Section 28 of the [Limitation of Actions Act](#) provides for application for leave of court under Section 27 and states-;

- (1) An application for the purposes of Section 27 of this Act shall be made ex-parte, except in so far as rules of court may otherwise provide in relation to application made after the commencement of the relevant action.
- (2) Where such an application is made before the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the action relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would in the absence of any evidence to the contrary, be sufficient-;
  - (a) to establish that cause of action, apart from any defence under Section 4(2) of this Act, and
  - (b) to fulfil the requirements of Section 27(2) of this Act in relation to that cause of action.
- (3) Where such an application is made after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that if, the like evidence would in the absence of any evidence to the contrary, be sufficient –;
  - (a) to establish that cause of action, apart from any defence under Section 4(2) of this Act, and
  - (b) to fulfil the requirements of Section 27(2) of this Act in relation to that cause of action, and it appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had accrued on such a date as (apart from Section 27 of this Act) to afford a defence under Section 4(2) of this Act.
- (4) In this Section, “relevant action” in relation to an application for the leave of the court, means any action in connection with the leave sought by the application is required.



- (5) In this section and in section 27 of this Act “Court”, in relation to an action, means the court in which the action has been or is intended to be brought.
12. A reading of Section 27 and 28 above expressly refers to claims in tort where the action is for damages for negligence, nuisance or breach of duty. They do not provide for claims arising from contractual relationships as in the present case. The applicant’s intended suit has nothing to do with the tort of negligence, nuisance or breach of duty, but the same is founded on a contract, in particular, the agreements for sale dated 22<sup>nd</sup> December, 2011 and 14<sup>th</sup> December, 2011 between the applicant and the respondent herein.
13. In the case of *Mary Osundwa Vs Nzoia Sugar Company Limited* [2002] eKLR, the Court of Appeal expressed its views regarding the provisions of section 27 of the *Limitation of Actions Act* as follows-;
- “This action clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. This section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other cause of action other than those in tort.”
14. The Court of Appeal in the case of *Divecon Limited Vs Samani* (1995 – 1998) 1EA P 48 and in *Josephat Ndirangu Vs Nenkel Chemicals (EA) Limited* [2013] eKLR was categorical that the limitation period is never extended in matters based on contract.
15. Being guided by the above decisions of the Court of Appeal which are binding on this court, and in view of the express provisions of Sections 4(1), 27 and 28 of the *Limitation of Actions Act*, this court has no jurisdiction to grant the orders sought by the applicant.
16. In the result, the application is dismissed with costs to the respondent.
17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024**

In the Presence of

Court Assistant – Tupet

Joel Muthomi for respondent

Omari for applicant

**C.K YANO**

**JUDGE**

