



Mungu & 6 others v County Secretary, Uasin Gishu & 2 others (Environment and Land Appeal E023 of 2022) [2024] KEELC 13844 (KLR) (17 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13844 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E023 OF 2022
EO OBAGA, J
DECEMBER 17, 2024**

BETWEEN

**JOSEPH FREDRICK MUNGU 1ST APPELLANT
EMILY CHEPSIROR 2ND APPELLANT
SALINA KENDAGOR 3RD APPELLANT
SALOMON WANYOIKE KIBITHI 4TH APPELLANT
CLARA JEPKEMOI ARUSEI 5TH APPELLANT
JEREMIAH KOECH 6TH APPELLANT
JOHN OKUTOYI WAMBANI 7TH APPELLANT**

AND

**COUNTY SECRETARY, UASIN GISHU 1ST RESPONDENT
COUNTY SECRETARY LANDS, HOUSING, PHYSICAL PLANNING & URBAN
DEVELOPMENT 2ND RESPONDENT
COUNTY ATTORNEY 3RD RESPONDENT**

*(Being an appeal against the ruling and order of Hon. Naomi Wairimu
– Senior Principal Magistrate, Eldoret delivered on 22nd July, 202)*

JUDGMENT

1. The Appellants filed an appeal against the Respondents on the following grounds:-
 1. That the learned trial magistrate erred in law in upholding the preliminary objection dated 31/03/2022 which were purely based on facts and not points of law.



2. That the learned trial magistrate erred in law and fact by failing to invoke the overriding objective envisaged under section 1A, 1B and 3 of Civil Procedure Act.
 3. That the learned trial magistrate erred in law and in fact in failing to appreciate the basic tenets of preliminary objection as expounded in the celebrated case of Mukisa Biscuit CO. Ltd vs West End Distributors Ltd (1969) EA 696.
 4. That the learned trial magistrate erred in law and in fact in dismissing the Appellants' suit on the ground that the suit was time barred in total disregard of section 7 of the Limitation of actions act.
 5. That the trial learned magistrate erred in law and fact in relying on section 3 (1) of the Public Authorities Act and Section 4(2) of Limitation of Actions Act which is based on contract whereas the Appellants' claim was on land transaction.
 6. That the learned trial magistrate erred in law in failing to find that the cause of action arose on or about 15/06/2020 when the respondents unlawfully demolished the appellants' plots situated on ELD/MU/Block 15/864.
 7. That the learned trial magistrate erred in law and fact in failing to find that the appellants had locus standi to institute the suit by virtue of their lawful allotments.
 8. That the trial magistrate erred in law and fact in failing to find that letter of allotment conferred ownership rights on the appellants and have been lawful allottees for close to 30 years.
 9. That the learned trial magistrate erred in law and fact in failing to find that the court had jurisdiction to handle the matter.
2. The Appellants had filed a suit against the Respondents in the lower court in which the Appellants alleged that the Respondents had demolished their business premises on LR. No. Eldoret/ Municipality Block 15/863. The demolition occurred on or around 15.6.2020. The Appellants had been allotted their respective plots by the defunct Eldoret Municipal council the predecessor of the County Government of Uasin Gishu in 1990.
 3. On 31.3.2022, the Respondents filed a preliminary objection on the following grounds: -
 1. That the Honourable court lacks jurisdiction to entertain and/or hear and determine the suit herein as against the Defendants.
 2. That the Plaintiff's suit against the 1st, 2nd and 3rd Defendants is time barred under the provisions of sections 3(1) of the Public Authorities Limitations Act, (CAP 39) Laws of Kenya.
 3. The plaintiffs' suit against the 1st, 2nd and 3rd Defendants is time barred under the provisions of section 4(2) of the Limitation of Actions Act, (CAP 22) Laws of Kenya.
 4. That the suit is filed contrary to section 6 of the Civil Procedure Act hence the court lacks jurisdiction to grant the orders prayed for.
 5. That the plaintiffs herein have no locus standi to bring or maintain this suit since they have no legal or possessory title to Eldoret/Municipality Block 15/863.
 6. That there would be no purpose in proceeding on with this matter and yet the same issues are before another court of competent jurisdiction. As a result, this may lead to parallel and/or contrary decisions in multiple forums to the detriment of the Defendant.



7. That the suit as filed and pleaded against the Defendants is frivolous, vexatious and otherwise an abuse of the Court process, waste of judicial time and bad in law and hence should be dismissed with costs.
4. The preliminary objection was argued based on written submissions. In a ruling delivered on 22.7.2022, the trial magistrate upheld objections on grounds that the Appellants' suit was time barred and that the Appellants had no locus standi to file the case.
5. The parties were directed to file written submission in respect of the appeal herein. The Appellants filed their submissions on 16.10.2024. The Respondents were granted 14 days within which to file their submissions with effect from 17.10.2021. As at 1.11.2024 when writing this judgement, the Respondents had not filed their submissions.
6. The Appellants submitted that the trial magistrate was wrong in striking out their suit on ground that it was time barred. They submitted that the cause of action arose on 15.6.2020 when the Respondents demolished their structures and the suit was filed on 16.6.2020 well within the time prescribed in the statute.
7. On the issue of locus standi, the Appellants submitted that the trial magistrate was wrong in holding that as the Appellants did not have certificate of title, they had no locus standi to file the suit. They submitted that there was contention that the Appellants had been issued with allotment letters and that this being the case, there was need to ascertain facts and that the trial magistrate should not have made a finding that the Appellants had no locus standi as letter of allotment does not amount to prove of ownership.
8. The Appellants relied on the case of Aviction & Allied Workers Union Kenya –vs- Kenya Airways Limited & 3 others (2015) eKLR where it was held as follows:-

“ Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”
9. This being a first appeal, this court is entitled to evaluate the evidence before the trial court and reach its own conclusion. In *Selle & another –vs- Associated motor Boat Co. Ltd & others* (1968) EA 123, it was held as follows:-

“ ... this court is not bound necessarily to accept the findings of fact by court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s finding of fact it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
10. I have re-evaluated the submissions before the trial court, the preliminary points raised therein as well as the submissions filed herein. The issues which emerge for determination are firstly whether the Appellants' suit is statute barred. Secondly, whether the Appellants had locus standi to bring the suit.



11. The Respondents had stated that the Appellants' suit was statute barred on account of section 3(2) of the [Public Authorities Limitation Act](#) which states as follows: -

“No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”
12. The Respondents also relied on section 4(2) of the Limitations of Actions which states as follows: -

“This section shall not affect any proceedings by or on behalf of the Government against a local authority.”
13. In their respective submissions before the lower court, the Appellants submitted that the cause of action arose on 15.6.2020 whereas the Respondents submitted that the cause of action arose in 1990. I have looked at the ruling of the trial magistrate. She was convinced by the submissions by the Respondent that the cause of action arose in 1990 and hence the Appellants' suit was time barred.
14. I have looked at the pleadings in the case before the lower court. The Appellants pleaded that they had been allotted their properties in 1990 by the municipal council of Eldoret. They proceeded to build premises where they were operating businesses such as shops, butcheries etc. They used to pay levies to the municipal council of Eldoret. Their premises were demolished on 15.6.2020 and they filed this suit on 16.6.2020.
15. Prior to 15.6.2020, the Appellants had no reason to file a suit against either Eldoret Municipal council or County government of Uasin Gishu. They were peacefully operating their businesses until 15.6.2020 when their business premises were demolished by the County Government of Uasin Gishu. The cause of action therefore arose on 15.6.2020. The trial magistrate was therefore wrong to find that the Appellants' suit was statute barred.
16. On the issue of locus standi, I have gone through the lower court file and the record of appeal. There were only three Appellants who provided copies of letters of allotments from the municipal council of Eldoret. These copies were attached to the application for injunction. The other Appellants did not attach any copies of allotment letter. The trial court made a finding that a letter of allotment does not confer ownership and as such, the Appellants had no locus standi to file their suit.
17. The trial magistrate delved into an issue which required ascertainment of certain facts namely whether there were allotment letters to the Appellants; whether the land in issue was available for allotment and whether all the Appellants had allotment letters. The trial magistrate embarked on whether the Appellants had a reasonable cause of action which is a matter which cannot be disposed of by way of a preliminary point.

Disposition;

18. From the above analysis, it is clear that the trial magistrate was wrong in upholding the preliminary objection by the Respondents. I allow the appeal by the Appellant with the result that the ruling and order of the trial magistrate delivered on 22.7.2022 is set aside. The Appellants shall have costs of this appeal.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 17th day of DECEMBER, 2024.

E. OBAGA



JUDGE

In the virtual presence of;

M/s Kosgei for Appellant.

M/s Sang for M/s Chesoo for 1st Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

17th DECEMBER, 2024

