



REPUBLIC OF KENYA



Ethics & Anti-Corruption Commission v Pineapples Edge Limited & 3 others (Environment & Land Case 37 of 2022) [2023] KEELC 829 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELC 829 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 37 OF 2022
LA OMOLLO, J
FEBRUARY 16, 2023**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

PINEAPPLES EDGE LIMITED 1ST DEFENDANT

TROJAN NOMINEES LIMITED 2ND DEFENDANT

WILSON GACHANJA 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

Introduction

1. This ruling is in respect of the 1st defendant's preliminary objection dated July 6, 2022. The objection is on the following ground:

That the suit is statutory time bad and should be struck out with costs to the 1st defendant.

Factual Background.

2. This suit was commenced by way of a plaint dated June 27, 2022.
The plaintiff is a body corporate established under section 3 of the [Ethics and Anti-corruption Commission Act](#), No 22 of 2011.
3. The plaintiff brings this suit in respect of loss suffered by the Government of Kenya pursuant to the provisions of section 7 of the [Anti-corruption and Economic Crimes Act](#) No 3 of 2003.



4. The backbone of the plaintiff's claim is that pursuant to its mandate under the [Ethics and Anti-corruption Commission Act](#) and the [Anti-corruption and Economic Crimes Act](#) it investigated allegations of irregular and/or illegal alienation and allocation of Naivasha Municipality Block 5/289 (the suit property).
5. The plaintiff avers that the suit property was at all material times planned and set aside for use as public utility reserved for KALRO (Kenya Agricultural and Livestock Research Organization), previously KARI (Kenya Agricultural Research Institute) for purposes of livestock research.
6. Subsequent to the said investigation, the plaintiff avers that it found that the suit property was illegally, unlawfully and irregularly acquired and/or transferred to the 1st and 2nd defendant.
7. In the plaint, the plaintiff seeks the following orders:
 - a. A declaration that allocation and registration of Naivasha Municipality Block 5/289 to the 1st defendant was issued *ultra vires* the 3rd defendant's statutory powers and is illegal null and void ab initio.
 - b. A declaration that the allocation and transfer of the parcel of land particularly described as Naivasha Municipality Block 5/289 to the 1st defendant had no good title/interest over the suit property and the purported transfer to the 2nd defendant is illegal, null and void ab initio and incapable of conferring ownership rights and/or any other proprietary rights in the said public land.
 - c. An order directed to the Chief Land Registrar to rectify the register by cancellation of the entries relating to the issuance of titles in favour of the 1st and 2nd defendant over Naivasha Municipality Block 5/289.
 - d. A permanent injunction do issue against the 2nd defendant, restraining them, their agents, servants employees and/or assigns from trespassing upon, transferring, leasing, wasting and/or dealing in any manner whatsoever with the suit properties particularly described with the Naivasha Municipality Block 5/289, which property comprising of public land, other than by way of a surrender to the Government of Kenya.
 - e. Costs of the suit.
8. The 3rd defendant filed his statement of defence on July 14, 2022 wherein he contends that the suit is unconstitutional, selective and frivolous and with no cause of action. He contends that he ceased to hold the office of the commissioner of lands 23 years ago. He denied all the other allegations in the plaint.

Plaintiff's Response.

9. The plaintiff in opposition to the preliminary objection filed its grounds of opposition dated October 12, 2022. It raised the following grounds:
 1. That the preliminary objection is not maintainable in law by dint of section 42(1) (d) of the [Limitation of Act](#) cap 22 Laws of Kenya which excludes recovery of public land from the application of the said Act.



2. That the preliminary objection is incompetent, unmerited and born out of ignorance of the law.

Issues for Determination.

10. The 1st defendant filed its submissions on September 28, 2022. It submits that he was the registered owner of the suit land since 1997, the parcel having been allocated regularly by the government.
11. It further submits that it has been in quiet possession since then and that the right to sue accrued to KARI (now KALRO) in 1997. The 1st defendant argues that in 2011 the plaintiff was established but it chose to sit back until 2022 when it now purports to sue suo motu.
12. The 1st defendant cites section 7 of the *Limitation of Actions Act* and submits that the right to sue accrued to KARI (now KALRO) over twenty-five (25) years ago. It further argues that no fraud or evidence of coercion of KARI or KALRO is shown by the plaintiff. The 1st defendant submits that leave of court has not been sought and that there has been general lack of interest to pursue this claim.
13. In conclusion, the 1st defendant submits that there was inordinate delay in bringing the present suit and therefore it is time barred and should be struck out with costs.
14. As at the time of writing this ruling, I have not seen responses and submissions by the other parties.

Analysis and Determination.

15. Upon perusal of the 1st defendant's submissions and the plaintiff's grounds of opposition, the single issue for determination is:

a. Whether the instant suit is barred by the Limitation of Actions Act, chapter 22 Laws of Kenya.

16. 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.”

17. Section 42 (1) of the same Act excludes certain proceedings from the application of the Act. It provides as follows:

This Act does not apply to—

- a. Criminal proceedings
- b. Matrimonial proceedings
- c. an action to recover possession of trust land; or
- d. proceedings by the Government to recover possession of Government land, (Emphasis is mine) or to recover any tax or duty, or the interest on any tax or duty, or any penalty for non-payment or late payment of any tax or duty, or any costs or expense in connection with any such recovery

18. The suit land is alleged to have been planned and set aside for use as public utility reserved for KALRO (Kenya Agricultural and Livestock Research Organization), previously KARI (Kenya Agricultural Research Institute) for purposes of livestock research.



19. A reading of section 42 of the *Limitation of Actions Act*, reveals that suits for recovery of illegally alienated Government/Public land instituted by or on behalf of state agencies are not subject to limitation period contemplated under section 7 of the *Limitation of Actions Act*.
20. In *Riverbank Plaza Limited v Nairobi City Council* [2021] eKLR, the learned judge held as follows;
- “The defendant is a county government and hold land for the use and benefit of the public hence the suit land is public land. Section 42 of *Limitation of Actions Act* excludes proceedings to recover possession of government land from the application of the *Limitation of Actions Act*.”
21. Similarly, in *Ethics & Anti-Corruption Commission v Gitthaiga & 4 others* (Environment and Land Case civil suit E087 of 2022) [2022], the learned judge stated thus;
- “My reading of the foregoing provisions fortify my perception that suits for purposes of recovery of illegally alienated government/public land, mounted by and or on behalf of state agencies, are not subjected to the *Limitation of Actions Act*.”

Disposition.

22. In the result, I find as follows;
- a. The preliminary objection by the 1st defendant is misconceived and is hereby dismissed.
 - b. The costs of the preliminary objection shall abide the outcome of the suit.
23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF FEBRUARY, 2023.

L. A. OMOLLO

JUDGE

In the presence of: -

Miss Kiprop for the 1st Defendant/Applicant.

Miss Maina for the Plaintiff/Respondent.

Mr. Ombira for the 2nd Defendant/Respondent.

No appearance for 3rd Defendant/ Respondent.

No appearance for 4th Defendant/ Respondent.

Court Assistant; Ms. Monica Wanjohi.

