



**Koech (Suing as Legal Personal Representative and beneficiary of the Estate of the Late Kipkoech arap Mutai) v Siele & 18 others (Environment & Land Case E003 of 2022) [2023] KEELC 861 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 861 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**  
**ENVIRONMENT & LAND CASE E003 OF 2022**  
**MC OUNDO, J**  
**FEBRUARY 16, 2023**

**BETWEEN**

**JOHANA KIBET KOECH (SUING AS LEGAL PERSONAL REPRESENTATIVE AND BENEFICIARY OF THE ESTATE OF THE LATE KIPKOECH ARAP MUTAI) ..... PLAINTIFF**

**AND**

**JOEL KIPLANGAT SIELE ..... 1<sup>ST</sup> DEFENDANT**  
**ROBERT MARITIM ..... 2<sup>ND</sup> DEFENDANT**  
**PETERSON TOWETT ..... 3<sup>RD</sup> DEFENDANT**  
**ZEDDY CHEPKIRUT ..... 4<sup>TH</sup> DEFENDANT**  
**ARAP YEGON ..... 5<sup>TH</sup> DEFENDANT**  
**BENARD BOYON ..... 6<sup>TH</sup> DEFENDANT**  
**PRISCILLA BETT ..... 7<sup>TH</sup> DEFENDANT**  
**ROBERT MUTAI ..... 8<sup>TH</sup> DEFENDANT**  
**RICHARD RONDO ..... 9<sup>TH</sup> DEFENDANT**  
**DENNIS KIRUI ..... 10<sup>TH</sup> DEFENDANT**  
**BENARD TERER ..... 11<sup>TH</sup> DEFENDANT**  
**DAVID TERER ..... 12<sup>TH</sup> DEFENDANT**  
**ARAP CHEPKWONY ..... 13<sup>TH</sup> DEFENDANT**  
**MARTHA KIRUI ..... 14<sup>TH</sup> DEFENDANT**  
**MATTHEW TOO ..... 15<sup>TH</sup> DEFENDANT**



<b>EZEKIEL KIRUI .....</b>	<b>16<sup>TH</sup> DEFENDANT</b>
<b>SARAH KIRUI .....</b>	<b>17<sup>TH</sup> DEFENDANT</b>
<b>MARK CHERUIYOT LANGAT .....</b>	<b>18<sup>TH</sup> DEFENDANT</b>
<b>THE LAND REGISTRAR BOMET' .....</b>	<b>19<sup>TH</sup> DEFENDANT</b>

## RULING

1. The Plaintiff herein filed a suit against the Defendants via his Complaint dated February 16, 2022 wherein he had sought for:
  - i. A declaration that the cancellation of the name of the deceased in the parcel No Kericho/Boito/1087 and registrations of Titles, LR No Kericho/Boito/1275 (resultant titles being LR No Kericho/Boito/1302, 1303 and 1304) 1276, 1277 & 1278, 1290 (further sub divided into LR No Kericho/Boito/1492), and 1348 (sub divided to LR No Kericho/Boito/1493) in the register is illegal, null, void and fraudulent and the registration should be cancelled.
  - ii. A declaration that the registration of the Defendants in a property belonging to the deceased person, intestate, without complying with the land law as to obtain his consent and consent from Land Control Board is a fraud hence the register should be rectified to reinstate the name of Kipkoeh arap Mutai as the proprietor of land parcel LR No Kericho/Boito/1087.
  - iii. A permanent injunction restraining the Defendants, their agents, servants, employees or any other person acting on their behalf in whatever capacities, jointly and severally from transferring, selling, leasing and/or in any other manner dealing with the suit properties to the detriment of the Plaintiff's interest.
  - iv. A declaration that the Defendants jointly and severally are trespassers on the said parcels of land.
  - v. An order of eviction against the Defendants jointly and severally from the said parcels of land.
  - vi. Costs of this suit and interest thereon,
  - vii. Any other such relief as this honorable court may deem appropriate.
2. Simultaneously with the Complaint, the Plaintiff sought for interim orders of injunction against the Defendants restraining them from developing, undertaking construction on, selling, disposing and/or in any way whatsoever dealing with the said suit land and its resultant subdivisions.
3. Following the said finding of the Complaint, the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> Defendants filed their grounds of opposition and Preliminary Objection dated the March 16, 2022, March 21, 2022 and May 9, 2022 respectively for reasons that;
  - i. That the Plaintiff's claim for title to the suit land which has been held by the 1<sup>st</sup> Defendant for over 12 years without the Plaintiff presenting any claim for it within that period, is time barred. (See *Susan Wanjiru Waweru v Musa Kimengich Kimuge* [2019] eKLR)
  - ii. That the Suit herein was incompetent, premature and an abuse of the Court process as it was *sub judice* Sotik PMC ELC Suit No E040 of 2021, Johana Kibet Koech (Suing as Legal



Personal Representative and Beneficiary of the Estate of the late Kipkoech Arap Mutai) vs Joel Kiplangat Siele & 18 Others which involved the same subject and the same parties.

- iii. That the suit was *res judicata* and hence barred by the provisions of Section 7 of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya.
  - iv. The Plaintiff's claim was ousted by the provisions of Section 4 of the [Limitation of Actions Act](#), Chapter 22 Laws of Kenya.
4. Directions were issued on March 23, 2022 for the Preliminary Objection to be disposed of, in the first instance, through written submissions.

#### **1<sup>st</sup> Defendant's submissions**

5. The 1<sup>st</sup> Defendant framed his issue for determination as to whether the claim to title to the suit land was time barred.
6. He gave a brief history of the matter before submitting that the issue as to whether the suit was time barred was a point of law and therefore a Preliminary Objection as was described in the [Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd](#) (1969) EA
7. That a Preliminary Objection therefore tended to raise pure points of law, which would be argued on the assumption that all facts pleaded by the other side were correct. That it could not therefore be raised if any fact had to be ascertained from elsewhere or if the court would be called upon to exercise its judicial discretion.
8. That the Plaintiff had clearly alleged that sometime between the years 1994 and 2001, the 1<sup>st</sup> Defendant had colluded with the 19<sup>th</sup> Defendant and fraudulently transferred the suit parcel of land being LR No Kericho/Boito/1087 to himself wherein he had taken possession.
9. That its proprietor Kipkoech Arap Mutai had died on 19<sup>th</sup> January 1998 and therefore, there being an assumption that all facts as pleaded by the Plaintiff were correct, even if it was assumed that the title and possession to the land were taken by the Defendants in the year 2001, that the time period from the year 2001 to when the suit herein was filed in 2022 had been more than 20 years.
10. Reliance was placed on the provisions of Section 7 of the [Limitation of Actions Act](#) to submit that there was a limitation period to recover possession of land and not title to land which was buttressed by the provisions of Section 9 of the [Act](#).
11. That the said provision of the law implied that where there was a person holding Title to land, or was in possession of his land, action against him/her to recover possession of his land could only be brought within 12 years from the time his action accrued.
12. That the Plaintiff sought to recover possession of the land after more than 20 years and was therefore, time barred since he could not even seek to recover the same for the estate. That he had sat back and watched as the land continued to be subdivided and that was why the number of Defendants stood at 18.
13. That it would further be of no use if the court were to grant title but fail to give possession to the Plaintiff. Reliance was placed on the decided case in [Susan Wanjiru Waweru v Musa Kimengich Kimuge](#) [2019] eKLR where the court had held that in the entire [Limitation of Actions Act](#), it did not find any provision limiting the period for a person to bring an action for recovery of title to the land. The court had further found that the Plaintiff's suit was time barred since more than 12 years had lapsed from the date when the 1<sup>st</sup> Defendant was registered as the proprietor.



14. That it could also not be reasonably expected that all documents in support of the 1<sup>st</sup> Defendant's case were available since 20 years had lapsed since he acquired title. That to now call upon him to defend in such a case would cause him undue hardship and also embarrass the court. The 1<sup>st</sup> Defendant invited the Court to find that the suit was time barred, was a non-starter, frivolous, hopeless, vexatious, and forlorn and an abuse of the process of the court. That the same only deserved to be struck out with costs to the 1<sup>st</sup> Defendant.

**The 2<sup>nd</sup>, 8<sup>th</sup>, 14<sup>th</sup>, and 16<sup>th</sup> Defendants' submissions.**

15. In their submissions, the above captioned Defendants submitted while relying on the Mukisa Biscuits case (supra), that the Plaintiff's suit was *sub judice*. Reliance was also placed on the provisions of Section 7 of the [Civil Procedure Act](#) which deals with suits being *res judicata*, to submit that courts had stated the importance of the doctrine of *res judicata* as;
- i. It prevents the multiplicity of suits which would ordinarily dog the courts, and heave unnecessary costs on the parties to litigate and defend two suits which ought to have been determined in a single suit ;
  - ii. It ensures litigation comes to an end; disappointed parties are barred from camouflaging already decided cases in new garment in the pleadings
16. That in the instant case, the Plaintiff had filed a suit in a competent court of law, involving the same subject matter and between the same parties, wherein the Defendants herein had not only entered appearance but had also filed a defense. Subsequently, the Plaintiff had then proceeded to file another suit, before this court thus requiring the Defendants to file their defense again, which in turn resulted in the duplicity of suits thus occasioning the parties herein unnecessary costs. Reliance was placed on the decision in [Bernard Mugo Ndegwa vs James Nderitu Gitbae & 2 Others](#) [2010] eKLR.
17. That the subject property in both suits was Kericho/Boito/1277. The Plaintiff herein had sued the same Defendants in the suit in Sotik PMCC No E40/2021 seeking the same prayers wherein the court in Sotik was also of competent jurisdiction. That the Plaintiff did not file a Replying Affidavit to the grounds of opposition.

**The 6<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants' Submissions.**

18. The Defendants' submission based on their grounds for determination was that the instant suit was premature, misconceived, bad in law, incompetent and legally untenable as the issues raised vide the instant suit were sub-judice an allegedly filed suit by the Plaintiff against them in Sotik PMC ELC No E40/2021 which was pending determination. That the instant suit was therefore in contravention of the provisions of Section 6 of the [Civil Procedure Act](#). Reliance was placed on the Supreme Court decision in [Kenya National Commission on Human Rights vs. Attorney General Independent Electoral & Boundaries Commission & 16 others \(Interested Parties\)](#) [2021] eKLR .
19. That further, the suit was also *res-judicata* and hence barred by the provisions of Section 7 of the [Civil Procedure Act](#).
20. That the transfer of the original parcel of land having taken place on August 11, 1995, the instant suit had been lodged out of the statutory time lines of 12 years, the cause of action having occurred more than 27 years ago. That in any event, the Plaintiff's claim had still been ousted by the provisions of Sections 4 of the [Limitation of Actions Act](#) as his action could not have been brought six years after which the action founded on contract had accrued.



21. That the Plaintiff did not disclose any actionable cause of action against the Defendants and further that he was also non-suit to file the suit. The Defendants prayed that their Preliminary Objection be allowed and the Plaintiff's struck out with costs.

### **Plaintiff's submissions**

22. The Plaintiff framed his issues for consideration in view of the application dated February 16, 2022 and the Grounds of Opposition dated the March 16, 2022 as follows;
- i. Whether the present claim is time barred?
  - ii. Whether the suit herein is sub-judice?
  - iii. Whether the application merits the grant of temporary injunctive orders?
  - iv. Who should bear the costs of the application?
23. On the first issue for consideration, the Plaintiff submitted that the present claim was one of a fraudulent transfer of land, which fraudulent dealings were only discovered on or about the 8<sup>th</sup> November 2022. That while conceding with the provisions of Section 7 of the Limitation of Actions Act, the 1<sup>st</sup> Defendant/Respondent had however failed to conclusively peruse Section 26 of the Limitations of Actions Act. That, in matters regarding fraudulent activities and dealings, the period of limitation only begun to run at the time when the Plaintiff has discovered the fraud or mistake as was held in Kwale ELC No 109 of 2021, George Stephen Njoroge Macharia vs. Issa Mjawiri Jabiri & 2 Others and in Thika ELC No 42 of 2017 Mary Muthoni Njoroge vs. Joseph Wachira Nderitu & Another.
24. That the Applicant had alleged that he had discovered fraud on or about the 8<sup>th</sup> of November 2021, wherein the present suit was filed on the 16<sup>th</sup> of February 2022 which means that the suit was within the timelines and was not statute barred
25. On the second issue as to whether the suit herein was sub-judice, the Plaintiff submitted while placing his reliance on Section 6 of the Civil Procedure Act, that indeed there was a suit filed in Sotik PMC being ELC No 40 of 2021 between the present parties, but that the same had since been withdrawn upon filing of the Notice of Withdrawal of Suit by the present Plaintiff on the 12<sup>th</sup> of January 2022. That the matter had not been set down for hearing, and by virtue of Order 25 Rule 1 of the Civil Procedure Rules, the Plaintiff was at liberty to withdraw the same. That in the circumstances, the present matter could not be *sub judice*. Reliance was placed on Bungoma ELC Appeal No 5 of 2020, Wensley Barasa vs. Immaculate Awino Abongo & Another.
26. On whether the application merited the grant of temporary injunctive orders, the Plaintiff submitted in the affirmative, for the reasons that the law granting interlocutory injunctions was set out under Order 40(1) (a) and (b) of the Civil Procedure Rules where the Applicant must demonstrate the principles laid down in the settled case in Giella v Cassman Brown.(sic)
27. On the issue of establishing a prima facie case, the Plaintiff submitted that their contention was that he was the legal representative of the estate of Kipkoech Arap Mutai the proprietor of the suit land being LR No Kericho/Boito/1087 and who had passed away on the 19<sup>th</sup> January 1998 and whose land had been fraudulently subdivided by the 1<sup>st</sup> Defendant in collusion with the 19<sup>th</sup> Defendant into Kericho/Boito /1246 and 1247 further subdivided into Kericho/Boito/1275 (resultant titles being Kericho/Boito 1302, 1303, 1304), 1276 1277, 1278, 1290 (Further divided into LR No Kericho/Boito/1492 and 1348 (Subdivided to LR No Kericho/Boito/1493), the beneficiaries of the said poisonous trail



being the 2<sup>nd</sup> to 18<sup>th</sup> Defendants/Respondents. That since the said transfers were made fraudulently as the deceased never signed any transfer forms and no Control Board Consent had been sought but the 19<sup>th</sup> Defendant/Respondent had proceeded to effect the transfers in the absence of the registered owner and without due regard to the estate of the late Kipkoech Arap Mutai, that the beneficiaries had a right that should be protected by the court.

28. That since the Plaintiff/Applicant herein had demonstrated that he was the legal representative of the estate of the late Kipkoech Arap Mutai who was the owner of the Land Parcel Kericho/Boito/1087 which was sub-divided into the resultant titles, that the Defendants/Respondents were likely to evict them. That this would render them homeless and essentially, they will suffer irreparable injury that could not be compensated by an award of damages. Reliance was placed on the Court of Appeal decision in *Muiruri vs. Bank of Baroda Kenya Ltd* 2001 eKLR, where the court had observed that disputes over land in Kenya evoke a lot of emotions and except in very clear cases, it could not be said that damages will adequately compensate a party for its loss.
29. That the beneficiaries of the estate of the late Kipkoech Arap Mutai inclusive the Plaintiff/Applicant would suffer irreparable injury as they will lose their inheritance and ancestral land. That their eviction would result in them suffering irreparable injury which could not be compensated by an award of damages.
30. On the issue of the balance of convenience, the Plaintiff submitted that he had demonstrated that the balance of convenience tilted in his favour. That he was apprehensive that were the orders sought not granted, there was a risk of irreparable injury as he and the beneficiaries of the estate will be evicted and will lose their inheritance and their ancestral land. That the Defendants/Respondents had not demonstrated any adverse effect on their part if the said injunctive orders are issued.
31. On who should bear the cost of the application, the Plaintiff's submission was that since he was the successful party that it was trite that costs follow the event as set out under Section 27(1) of the *Civil Procedure Act*, and therefore he should be awarded the same.

#### **Determination.**

32. Before I analyze my finding, I wish to point out that pursuant to the service of the Notice of Preliminary Objection and Grounds of opposition upon the Plaintiffs, he chose not to file his response to the same but instead filed his submissions challenging both the Preliminary Objection and Grounds of Opposition. The Supreme Court of Kenya in *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR held as follows:

“A Replying Affidavit is the principal document wherein a Respondent’s reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence of this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1<sup>st</sup> Respondent on 17<sup>th</sup> August, 2018 are of no effect.”
33. As I understand, the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup>, and 16<sup>th</sup> Defendants’ Preliminary objection, and Grounds of objection inter alia are based on two limbs, firstly that the suit was untenable for being sub-judice hence in contravention to the provisions of Section 6 of the *Civil Procedure Act* because there was a suit filed by the Plaintiff against them in Sotik PMC ELC No E40/2021 which matter was pending determination.
34. Secondly that the Plaintiff’s claim to title to the suit land was time barred by virtue of the provisions of Section 7 of the *Limitation of Actions Act*.



35. A Preliminary Objection according to the decided case by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co. Ltd-v- West End Distributors Limited* (1969) EA. 696 was stated to be thus:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

36. It is evident that a Preliminary Objection consists of pure points of law and it is also capable of bringing the matter to an end preliminarily. See the case of *Quick Enterprises Ltd. vs. Kenya Railways Corporation*, Kisumu HCCC No22 of 1999, where the Court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

37. In the case of *Avtar Singh Bhamra & Another vs Oriental Commercial Bank*, Kisumu HCCC No53 of 2004, the Court held that:-

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

38. I find the matters arising for my determination as follows;

- i. Whether the Preliminary Objection raised is sustainable.
- ii. Whether the said Preliminary Objection has merit and should be upheld

39. I have also considered the first issue raised in the Preliminary Objection herein to the effect that there was a similar case pending at the Sotik PMC ELC No E040 of 2021, between Johana Kibet Koech (Suing as Legal Personal Representative and Beneficiary of the Estate of the late Kipkoech Arap Mutai) vs. Joel Kiplangat Siele & 18 Others which involved the same subject matter and the same parties. I have considered the annexure to the 16<sup>th</sup> Defendant’s Replying affidavit marked as EK1 and I find that the Plaintiff herein as well as the parties and subject suit are similar to the ones in the present suit. In both suits, the Plaintiff herein is claiming that subdivisions therein revert to the original title being LR No Kericho/Boito/1087 in the name of the deceased Kipkoech Arap Mutai.

40. The provisions of Section 6 of the *Civil Procedure Act* which provides as follows:

‘No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.’

41. I find that the matter in issue in the present suit is directly and substantially in issue with the previously instituted suit pending before the Sotik PMC in ELC No E040 of 2021, and therefore the present matter is *sub judice*.



42. It is trite that where the test of *res sub judice* is established or met, the marginal notes in Section 6 of the [Civil Procedure Act](#) stipulates that the latter suit would be stayed until the earlier suit is heard or determined. There can be no justification in having the two cases being heard parallel to each other. That would not only be an affront to the sub-judice rule but would also be in violation of the overriding objective of the [Civil Procedure Act](#) which require under Section 1B that there be an “efficient use of the available judicial and administrative resources”. What is clear is that no evidence had been provided by the Plaintiff to convince me that the earlier suit referred to by the Defendants being Sotik PMC in ELC No E040 of 2021 has been terminated in one way or another. The current suit, I find is therefore an abuse of the court process.
43. On the second issue raised that the suit herein is time barred, I find that it is on record that the original suit land herein being LR No Kericho/Boito/1087 was registered to the deceased Kipkoech Arap Mutai wherein the Defendants herein allegedly subdivided it resulting into Kericho/Boito/1246 and 1247 which was further subdivided into Kericho/Boito/1275 (resultant titles being Kericho/Boito 1302, 1303, 1304), 1276 1277, 1278, 1290 (Further divided into LR No Kericho/Boito/1492 and 1348 (Subdivided to LR No Kericho/Boito/1493), and registered themselves as the respective proprietors.
44. The present suit which seeks for recovery of the original suit land by cancellation of the subsequent titles issued therein was filed on the 18<sup>th</sup> February 2022. It is also on record from the Plaintiff’s documents herein filed, more so the green card to LR No Kericho/Boito 1247, that it was a subdivision of the original land parcel No LR No Kericho/Boito 1087 and was subdivided again in 1995 giving rise to 1275-1278. That Parcel No 1275 was subdivided on the August 8, 1996. It is also not disputed that the original proprietor to Kericho/Boito/1087, Kipkoech Arap Mutai, who was its proprietor as at 13<sup>th</sup> October 1994 to 11<sup>th</sup> August 1995 passed away on the 19<sup>th</sup> January 1998, which was almost three years after the subdivision.
45. The cause of action having been stated to have taken place in the year 1995, there is no doubt that the suit to recover land was filed 27 years later.
46. A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings suit.
47. Section 7 of the [Limitation of Actions Act](#) provides:
- “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
48. Section 7 of the [Limitation of Actions Act](#), provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the Plaintiff could only sue to recover the land it from the Defendants, but only if he did so within twelve years after the said sub-divisions and issuance of titles.
49. Quite clearly the Plaintiff’s claim is for the recovery of land which he had cleverly drafted as “nullification of LR Kericho/Boito/1275 (resultant titles being Kericho/Boito 1302, 1303, 1304), 1276 1277, 1278, 1290 (Further divided into LR No Kericho/Boito/1492 and 1348 (Subdivided to LR No Kericho/Boito/1493), so that it can revert to the original title being LR No Kericho/Boito/1087 in the name of the deceased Kipkoech Arap Mutai”. There is no doubt that the period of about twenty seven (27) years have lapsed since 1996 when LR Kericho/Boito/1275 was subdivided.



50. The Court of Appeal in *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR held that:

“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”

51. The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. It follows therefore that by the time the Plaintiff filed this suit, the claim was already statute barred.

52. In the case of *Bosire Ongero vs Royal Media Services* [2015] eKLR the court had held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.

53. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal had held as follows

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

54. Clearly, this Court lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further step. The Preliminary Objection on both limbs succeeds with the result that the Plaintiff’s suit is herein struck out with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup>, and 16<sup>th</sup> Defendants.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 16<sup>TH</sup> DAY OF FEBRUARY 2023**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

