



REPUBLIC OF KENYA



**Kinuthia & another v Wanyiri (Environment and Land Miscellaneous Application 2 of 2023) [2023] KEELC 16612 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16612 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2023**

**YM ANGIMA, J**

**MARCH 29, 2023**

**BETWEEN**

**DANIEL MACHARIA KINUTHIA ..... 1<sup>ST</sup> APPLICANT**

**ENOCK KIHAGI NDIGIREGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**AMOS WANGOMBE WANYIRI ..... RESPONDENT**

**RULING**

1. By an ex parte chamber summons dated 19.12.2022 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap. 21), Order 37 rule 2 and Section 4(1) (a) of the *Limitation of Actions Act* (Cap.22) and Article 159 of *the Constitution* of Kenya, 2010 and all enabling provisions of the law, the Applicants sought an extension of time and leave to file suit against the Respondent out of time. They also sought that costs of the application be in the cause.
2. The application was based on the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1<sup>st</sup> Applicant, Daniel Macharia Kinuthia, on 19.12.2022 and the exhibits thereto. It was contended that sometime in 2013 the Respondent had purported to sell the Applicants 3 acres of land to be excised out of Title No. Nyandarua/Ndaragwa/522 as a result of which he was paid a total of Kshs. 915,000/= by the Applicants.
3. It was further contended that in breach of the terms of the relevant sale agreements the Respondent had failed to transfer the 3 acres of land to the Applicants in consequence whereof he was arrested, charged and convicted of obtaining money by false presences contrary to Section 313 of the *Penal Code* (Cap. 63) in Nyahururu CM Criminal Case No. 2904 of 2015 – Republic v Amos Wang’ombe Wanyiri.
4. The Applicants stated that they were desirous of instituting legal proceedings against the Respondent either for specific performance or for recovery of the purchase price paid but were now faced with the limitation period under Section 4 of the *Limitation of Actions Act* (Cap. 22).



5. The reasons given for failure to file the intended suit within the limitation period was that the Applicants were peasant farmers who were illiterate. It was also contended that the Applicants were adversely affected by the Covid-19 pandemic hence it took them a long time to raise legal fees to enable them take legal action against the Respondent. The Applicants further stated that they were under the mistaken belief that they required copies of the typed proceedings in the criminal case to enable them institute civil proceedings against the Respondent hence the delay.
6. The record shows that the application was initially filed before the High Court but the same was transferred to this court on 09.03.2023. When the matter was mentioned before this court, the Applicants' advocate requested for 14 days to file written submissions on the application. The matter was consequently fixed for ruling on 29.03.2023.
7. The limitation period for filing claims for breach of contract is provided for in Section 4(1) of the Limitation of Actions Acts (LAA) as follows:

“The following actions may not be brought after the end of six years from the date on which the cause of action occurred: -

  - (a) Actions founded on contract;
  - (b) Actions to enforce a recognizance;
  - (c) Actions to enforce an award;
  - (d) Actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
  - (e) Actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”
8. Part III of the LAA provides for extension of the periods of limitation in cases of disability; acknowledgment; part payment; fraud; mistake; and ignorance of material facts. Sections 20 and 21 of the Act also excludes the application of the various limitation periods in cases of fraudulent breach of trust and actions for recovery of trust property.
9. It is evident from the application that the Applicants did not bring their application within any of the provisions of Part III of the LAA on extension of the limitation period. It was not contended that the Applicants were under any disability or that they were ignorant of the material facts constituting the cause of action. It was not contended that the cause of action was concealed from them by the fraud of the Respondent or that their intended claim was a claim for recovery of trust property. Their application was hinged primarily upon their ignorance of the law and their alleged inability to raise advocates' fees to enable them take legal action because of the Covid-19 situation.
10. The court is of the opinion that the instant application for extension of time can only be considered under the provisions of Sections 27 and 28 of the LAA. It has been held that there is no provision under the Act for extension of time in claims for breach of contract. In the case of *Mary Osundwa v Nzoia Sugar Company Ltd* [2002] eKLR the Court of Appeal held, inter alia, that:

“The section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the tort of negligence, nuisance or breach of duty and the damages claimed are in respect of injuries to the plaintiff



as a result of the tort. The section does not give justification to extend time for filing suit in cases involving contract or any other cause of action than those in tort.”

11. Similarly, in the case of *Divecon Limited v Samani* [1995 – 1998] EA 48 the Court of Appeal held, inter alia, that:

“...to us, the meaning of the wording of Section 4(1)... is clear beyond doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for bringing of the action.”

...a perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear provisions, it would be unacceptable to imply as the learned Judge of the superior court did, that “the wording of Section 4(1) of the *Limitation of Actions Act* (Chapter 22) suggests a discretion that can be invoked.”

12. The court is unable to follow the High Court decisions of *Nation Media Group Limited & 2 Others v Margaret Kamene Wambua* [2021] eKLR and *Royal Media Services Ltd -vs- Valentine Mugure Maina & Another* [2019] eKLR where it was held that the court retained discretion to allow an extension of time in spite of the provisions of the LAA. This court considers the Court of Appeal decisions to be binding upon this court. The Supreme Court decision in the case of *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR was not about extension of time under the LAA but extension of time to file an appeal out of time against the decision of the Court of Appeal.
13. In the circumstances of this case, the court is not satisfied that the Applicants have made out a case for extension of time to file suit out of time. Apart from their failure to bring their case within the provisions of Part III of the LAA, they did not demonstrate plausible reasons for not filing suit within the prescribed period. Their alleged ignorance of the law as opposed to ignorance of the material facts cannot be a good reason for seeking extension of time. Their alleged state of penury cannot be a good reason for failing to file suit within time. The LAA applies equally to all persons, both rich and poor, and it is binding even upon the Government of Kenya.
14. The court is also far from satisfied that the Covid-19 situation in Kenya prevented the Applicants from instituting proceedings within the limitation period. The material on record shows that the sale agreement between the Applicants and the Respondent were signed in 2013 with a completion date of 01.02.2014. It is in the public domain that the first Covid-19 case was reported in Kenya in March, 2020 and that was after the period of limitation and the completion period had lapsed.
15. The upshot of the foregoing is that the court finds no merit in the application for extension of time and leave to file suit out of time. Accordingly, the Applicants’ chamber summons dated 19.12.2022 is hereby dismissed with no order as to costs.

Orders accordingly.

**RULING DATED AND SIGNED AT NYAHURURU THIS 29<sup>TH</sup> DAY OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

Ms. Njoki Mureithi for the Applicants



N/A for the Respondent

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

