



REPUBLIC OF KENYA



**Mwangi v Mwangi (Civil Suit 652 of 1995)  
[2023] KEHC 26142 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26142 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 652 OF 1995  
HM NYAGA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**MARY WANJIRU MWANGI ..... PLAINTIFF**

**AND**

**APOLLO KIARIE MWANGI ..... DEFENDANT**

**RULING**

1. The Application before court is the one dated 18<sup>th</sup> May,2023 filed by the Defendant. It is brought under Section 4(4) *Limitations of Actions Act*, Sections 1A,1B,3A of the *Civil Procedure Act* and Order 22 Rule 48(1),49(b), & 50 of the *Civil Procedure Rules*. The Application seeks the following orders: -
  1. That a Declaration be made that the Judgement delivered on 31<sup>st</sup> January,2005 and the subsequent Decree issued on 22<sup>nd</sup> March, 2005 and the Certificate of costs and any attachment have been caught up by the *Limitation of Actions Act* Sections 4(4) and the same can no longer be executed.
  2. That the Prohibitory Order issued on 22<sup>nd</sup> September,2005 and registered against Bahati/ Kabatini Block 1/25 on 5<sup>th</sup> December,2005 be lifted unconditionally since the judgement and decree have been caught up by the *Limitation of Actions Act*.
  3. Costs of this Application be provided for.
2. The Application is premised on grounds that the Judgement delivered on 31<sup>st</sup> January,2005 and the subsequent decree, certificate of costs issued thereafter have been caught up by the Limitation of Actions Act; that the Applicant's title known as Bahati/Kabatini Block 1/25 remain encumbered by a prohibitory order; that this matter can only come to a close after the Prohibitory Order issued and registered is lifted; that only this court can lift the Prohibitory order issued; &that there is no justification to continue the attachment of the property aforesaid now that the judgement or decree is statute barred.



3. The Application is supported by an affidavit of the Defendant/Applicant sworn on 18<sup>th</sup> May,2023.
4. The Application is unopposed.

### **Analysis & Determination**

5. The sole issue for determination is whether the defendant/ applicant has made up a case for being granted the orders sought.
6. To put matters into context, this suit was filed on 25<sup>th</sup> October 1995. The plaintiff averred that by an agreement evinced in writing and dated 12<sup>th</sup> June,1992, she entered into contract with the Defendant of converting, modifying and fitting 3 old roller mills originally designed for wheat milling to be converted for maize milling purposes at an agreed cost of Ksh. 484,000/-. She claimed the defendant breached the contract by failing to complete the aforesaid work and abandoning the same. She pleaded that she had paid the defendant Ksh. 434,000/= and that she engaged another contractor to complete the aforesaid works at a costs of Ksh. 322,506/=. She therefore prayed for judgement against the defendant for special damages of Ksh. 322,506; General damages for breach of contract, interest and costs of the suit. The defendant filed a defence on 22<sup>nd</sup> December, 1995 denying the Plaintiff's case and asserted that the plaintiff frustrated the completion of the said works by failing to supply items the contract required her to supply.
7. In a judgement delivered on 31<sup>st</sup> January,2005, Musinga J (as he then was) entered judgement for the plaintiff in the sum of Ksh. 167,199/= plus interest at court rates from the date of filing suit until payment in full plus Ksh. 100,000/= as general damages for breach of contract which was to attract interest at court rates from the date of judgement until payment in full. Subsequently, the defendant filed a notice of Appeal dated 7<sup>th</sup> February,2005.
8. On 8<sup>th</sup> June,2005, a certificate of costs in the sum of Ksh. 128,450.00 was issued in favour of the Plaintiff. Thereafter the plaintiff in an attempt to execute against the judgement obtained warrants of attachment of movable goods of the Defendant dated 13<sup>th</sup> July,2005. On 22<sup>nd</sup> September 2005 a prohibitory order was issued by this court prohibiting and restraining the defendant from transferring and charging the property known as Bahati/Kabatini Block 1/25 which is registered in his name. Since then nothing much seems to have happened to the case until this application was filed on 18 May,2023.
9. Central to the issues before court is the interpretation to be given to Section 4 (4) of the Limitation of Actions Act, which provides as follows: -

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”
10. The purpose of the above section is to eradicate stale claims and stop the vexing of litigants. Where a judgment creditor elects to sleep on a decree, he is estopped from waking up from his slumber after 12 years have lapsed to claim his right. The law bars such claims.
11. In the case of Willis Onditi Odhiambo v Gateway Insurance Company Limited (2014) eKLR, the Court of Appeal held that the term ‘action’ covers execution of judgments and that the time within



which to execute a decree could not be extended once expired. In that case the Court of Appeal stated as follows:

“In the matter before us, it matters not that the original suit was founded on the tort of negligence and damages claimed were in respect of personal injuries as a result of the tort of negligence. Here, the extension was sought to enforce a judgment and/or decree. Time within which to lodge such action cannot be extended under the provisions of Section 27 of the *Limitation of Actions Act*.”

12. In the instant case 18 years have lapsed since the judgement, decree, certificate of costs and the said Prohibitory order were issued. The Judgement delivered on 31<sup>st</sup> January,2005 and the subsequent Decree issued on 22<sup>nd</sup> March, 2005 and the Certificate of costs and any attachment are therefore time barred. It appears the Plaintiff lost interest in pursuing her rights and there is no justifiable ground to continue having by the said prohibitory order in place.
13. Consequently, I find merit in the Application and I proceed to issue the following orders: -
  1. A declaration be and is hereby issued that the Judgement delivered on 31<sup>st</sup> January,2005 and the subsequent Decree issued on 22<sup>nd</sup> March, 2005 and the Certificate of costs and any attachment have been caught up by the *Limitation of Actions Act* sections 4(4) and the same can no longer be executed.
  2. A Prohibitory Order issued on 22<sup>nd</sup> September,2005 and registered against Bahati/Kabatini Block 1/25 on 5<sup>th</sup> December,2005 be and is hereby lifted unconditionally.
  3. Each party to bear their own costs
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**H. M. NYAGA**

**JUDGE**

In the presence of;

Mr. Kiburi for Defendant/Applicant

N/A for Plaintiff/Respondent

