



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HIGH COURT CIVIL CASE NO. 197 OF 1992

GEORGE A. ODHIAMBO.....PLAINTIFF

VERSUS

CHARLES INDIRI (DECEASED).....DEFENDANT

RULING

The application before me is dated 7th October 2020. It is an application which was filed by the Plaintiff, **GEORGE A. ODHIAMBO**, seeking orders for;

(a) Eviction;

(b) Committal to Civil Jail for being in Contempt

of the Court; and

(c) Attachment of property, for eviction costs.

1. After that application was served, **ROSE ANYANGO OWALA** and **GEORGE OMONDI OWALA** filed an application, seeking to substitute the Defendant, **CHARLES INDIRI**. The 2 Applicants informed the Court that the Defendant died on 28th June 2019.
2. Following the death of the Defendant, the 2 Applicants expressed the desire to substitute him, so that they may thereafter continue defending the suit to its logical conclusion.
3. One of the steps they expressed a desire to take, was the filing of an appeal to challenge the Ruling dated 10th September 2020.
4. Through the said Ruling the Court had directed the Respondents to immediately vacate the suit premises.
5. The Ruling had directed that if the Respondents, or their agents, servants, children or any other relative should not have moved out of the suit premises within 7 days, the Plaintiff would be at liberty to move the Court for Eviction and also for Committal to Civil Jail of the persons who would be in contempt of court.
6. The Plaintiff conceded to the joinder of Rose Anyango Owala and George Omondi Owala to this suit, as Defendants. Following the substitution of the Defendant, it follows that the new Defendants are the Respondents to the Plaintiff's application for eviction.
7. The Defendant's response to the application was that it was time-barred, pursuant to **Section 4 (4)** of the **Limitation of Actions Act**. The said section reads as follows;

“An action may not be brought upon a

Judgement after the end of twelve years

from the date on which the judgement

was delivered, or (where the judgement

*or a subsequent order directs any payment
of money or 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, in
respect of a judgement debt may be
recovered after the expiration of six years
from the date on which interest became due.”*

8. In the case of **WILLIS ONDITI ODHIAMBO Vs GATEWAY INSURANCE CO. LTD., CIVIL APPEAL NO.37 OF 2013**, the Court of Appeal said;

*“Executon of judgements and/or decrees is
governed by Section 4 (4) of the Limitation
of Actions Act which is in the following
terms:-*

*‘4 (4) An action may not be brought
upon a judgement after the end of
twelve years from the date on which
the judgement was delivered.’*

*The judgement which the appellant sought
to execute was passed on 26th August, 1996.
The judgement should therefore have been
executed on or before 27th August 2008.”*

9. The second answer cited by the Defendants was that this court lacks jurisdiction to entertain the application.

10. The Defendants submitted that the only Court that had the requisite jurisdiction to entertain the application was the Environment and Land Court [ELC].

11. **Article 162** of the Constitution birthed the Environment and Land Court, with the jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to land.

12. **Section 13 (2)** of the **Environment and Land Court Act** echoed the provisions of **Article 162** of the **Constitution**, by expressly giving power and authority to ELC to hear and determine disputes to, inter alia, Land use, title, boundary disputes, environment and land generally.

13. In the circumstances, the Defendants submitted that this Court lacked jurisdiction to hear and determine the application of the dispute relating to the land which is the subject matter thereof.

14. This case was filed in the year 1992, which is long before the creation of the Environment and Land Court. Therefore, at the time the case was instituted, it was not possible to comply with the clear procedure for redress prescribed by the **Constitution of Kenya 2010** or by the **Environment and Land Court Act, 2011**.

15. By the time the **ELC Act** was formulated, the Court had already granted judgment in the case. Indeed, that is the very reason being relied upon by the Defendants, to submit that the application was time-barred.

16. The suit was prosecuted before a court of competent jurisdiction.

17. In my Ruling dated 10th September 2020, I noted as follows;

“28. On 13th June 2012 Hon. Lucy Gitari CM

(as she then was) expressed herself thus,

when handling a Notice To Show Cause;

‘I find that there is nothing on

record to prevent the execution of

the judgement.’

29. In my considered view, the Judgement

remains as valid today, as on the date

it was delivered.”

18. The point is that the Plaintiff commenced the process of execution of the Judgment well within the period of 12 years from the time when the said judgment was delivered.

19. On 7th June 2007, the learned Deputy Registrar Hon. Ong’injo (as she then was) signed an Eviction Order.

20. Another Eviction Order was issued by Hon. J. Sala on 17th September 2013.

21. Surely, a Judgment-Debtor cannot be permitted to continually place hurdles in the Decree-Holder’s path, and then be rewarded by a declaration that the Judgment or Decree could no longer be executed because it was time-barred.

22. I reiterate my disdain for the conduct of the Defendants, who would like the Court to sanitize their wilful disregard of the Orders of the Court.

23. Incidentally, I note that the learned advocate for the Defendants is Mr. Jared Sala, of Sala Mudany Advocates.

24. The Order issued on 17th September 2013 was signed by Hon. J. Sala. It strikes me that the Judicial Officer who signed an Eviction Order in September 2013 might be the advocate now acting for the party against whom the eviction order had been issued.

25. If Advocate Jared Sala is the same person who issued the Eviction Order on 17th September 2013, I hold the view that his current role may need to be carefully considered.

26. For now, I find that the Defendants’ defiance, by their refusal to vacate the suit premises, constitutes contempt of court.

27. Before determining the appropriate action to be taken against the Defendants, I will give them an opportunity to address the Court.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF MARCH 2021

FRED A. OCHIENG

JUDGE