



Shepherd Catering Limited v Nairobi Holdings Limited & 2 others (Environment & Land Case 359 of 2004) [2023] KEELC 18905 (KLR) (17 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 359 OF 2004**

**LN MBUGUA, J
JULY 17, 2023**

BETWEEN

SHEPHERD CATERING LIMITED PLAINTIFF

AND

NAIROBI HOLDINGS LIMITED 1ST DEFENDANT

CHIEF LAND REGISTRAR OF TITLES 2ND DEFENDANT

STEEL SON LIMITED 3RD DEFENDANT

RULING

1. Before me is a Notice of motion Application dated May 4, 2023 where the plaintiff (1st defendant in the counterclaim) is seeking orders for the striking out of the 3rd defendant's (plaintiff in the counterclaim) Amended Statement of defence and Counter-claim dated May 15, 2020.
2. The grounds in support of the application are that the cause of action arose in year 2003, thus the claim for mesne profits set out at paragraph 16 ought to have been brought within 6 years. Further, the claim purports to introduce new parties to the suit whom it cites as directors of the plaintiff. Thus there is no sustainable cause of action against the 2nd and 3rd defendants.
3. On June 8, 2023, counsel for the respondent indicated that they desired to oppose the application which had been served upon them. The court granted them upto June 13, 2023 to file and serve their replying affidavit. I have not seen any such document. The respondent did not file any submissions either. It follows that the application is unopposed.



4. In the case of *Gideon Sitelu Konchellab v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the Supreme court stated that;

“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

5. Guided by the above decision, this court will proceed to consider whether the application is merited or not. In its submissions filed on June 20, 2023, the applicant contends that the introduction of a claim for loss and damage in the counterclaim is in contravention of the law of Limitations Act. It relies on the cases of *Elijah Mainigi Kimengere vs. Teresiah Wanjiku Juma* (2022) eKLR and *Gathoni v Kenya Co-Operative Creameries Ltd* (1982) eKLR to buttress the point that the claim of the Respondent is time barred.

6. As rightly submitted by the plaintiff, “The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them” See- *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited* [2017] eKLR. In the case of *Mehta v Shah* [1965] EA 321, Grabbie J.A in his judgment stated as follows:-

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

7. In its ruling of February 23, 2023, this court dealt with the issue of the additional claim on mesne profits as set out in paragraph 8 thereof. The court was of the view that the claim was simply being updated. Allowing the application on the basis that there is additional claim of mesne profits would amount to a review of this court’s own ruling.

8. However, a perusal of the amended pleadings of the Respondent reveals that it has brought in new parties namely Salome Wangeci and Alfred Wambugu as 2nd and 3rd defendants instead of Nairobi Holdings Limited and Chief Land Registrar. Section 4 (2) of the *Limitation of Actions Act* provides that:

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued”.

9. The claim against these new parties is certainly time barred having been brought against them 17 years from when the suit was filed in year 2003. The application dated May 4, 2023 is therefore partially allowed with costs to the 1st defendant in the counterclaim. The net effect is that the amended statement of defence and counterclaim of the plaintiff in the counterclaim is hereby struck out in so far as it relates to the 2nd and 3rd defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE



In the presence of:-

C.N Kihara for 3rd Defendant (Plaintiff in Counter claim)

Biko Angwenyi holding brief for Onguto Mogere for Plaintiff

Court Assistant: Philis

