

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 16 OF 2019

GICHERE INGRID.....PLAINTIFF/APPLICANT

VERSUS

CIC GENERAL INSURANCE LIMITED...1ST DEFENDANT/RESPONDENT

CIC INSURANCE GROUP LIMITED.....2ND DEFENDANT/RESPONDENT

RULING

The Plaintiff brought this suit against the defendants for a declaration that they (the defendants) are under statutory and contractual obligation to make payments in respect of any judgments that may be delivered in favour of the plaintiff in CMCC No. 923 of 2015 - **Benson Alison Karanja- V- Gichere Ingrid**

Going by the averments in the plaint filed on 24th January, 2019, the defendants are said to have issued a policy of insurance to cover motor vehicle registration No. KBD 908J, which was involved in an accident with motor vehicle registration No. KAC 915G belonging to Benson Alison Karanja. It is Benson Alison Karanja who filed the suit in Magistrate's Court cited above.

The defendants filed a defence to the claim denying liability and in particular pleaded that, there was breach of the insurance policy by the plaintiff herein. Further, it was pleaded that the suit was bad in law, incompetent and time barred under the Limitation of Actions Act, Cap 22 Laws of Kenya.

The Defendants pleaded that they shall raise a preliminary objection to have the suit struck out with costs. Indeed, this ruling relates to the Notice of Preliminary Objection dated and filed on 27th February, 2019. As pleaded by the defendants, the claim by the plaintiff being founded on contract is said to be bared by the provisions of Limitation of Actions Act, since it was filed on 24th January, 2019 which was more than 6 years after the cause of action arose. That contract was said to have commenced on 22nd August, 2012. On that basis, the defendants prayed that the suit be dismissed with costs.

Counsel for the parties have addressed the court on the preliminary objection. The submissions centred on the provisions of Cap 405, The Insurance (Motor Vehicle Third Party Risks) Act and in particular Section 5 thereof, and the Limitation of Actions Act, Cap 22 Laws of Kenya.

A preliminary objection has correctly been defined in the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) EA 696** as follows: -

“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.”

In the same case, it was observed that such an objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

Having perused the pleadings before me and considered the submissions by counsel, I note that it is true the defendants pleaded the issue of limitation and undertook to raise the preliminary objection. There is a submission by both sides which centres on when the cause of action arose. Whereas it may be true that the perusal of the contract may determine that issue, it is clear that the date when the defendant informed the plaintiff to collect summons is a matter to be decided by evidence.

The date when the time started running is an issue that has to be determined and/or ascertained by calling evidence. It is clear, therefore, that the preliminary objection herein cannot result in determining, conclusively, the matters that have been pleaded.

The raising of preliminary objections must be deprecated because they contribute to delay in determining the matters brought to the court. The present case falls in that category. I find that the preliminary objection raised by the defendants is lacking in merit and, therefore, dismissed with costs to the plaintiff.

Pleadings having been closed, the parties are now invited to comply with Order 11 of the Civil Procedure Rules to facilitate the hearing and disposal of the case.

Dated, signed and delivered at Nairobi this 27th day of June, 2019.

A. MBOGHOLI MSAGHA

JUDGE