



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL CASE NO. 5 OF 2019**

**JULIUS MATHU MAIRUKI.....PLAINTIFF**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**JULIUS MATHENGE WAWERU.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff herein instituted this suit vide plaint dated 20<sup>th</sup> February 2015 filed in the High Court of Kenya at Nairobi (HCC No. 129 of 2015). The 1<sup>st</sup> Defendant filed its memorandum of appearance, preliminary objection and defence on 23<sup>rd</sup> April 2015. The plaintiff filed a reply to the defence on 17<sup>th</sup> September 2015.

2. In the Preliminary Objection the 1<sup>st</sup> Defendant prays for the suit to be dismissed with costs to the defendant on the grounds:

**a. The suit has been filed out of time in contravention of the Public Authorities Limitations of Actions Act.**

**b. The court lacks jurisdiction to determine the suit as the Cause of Action arose in Nyeri.**

3. On 29<sup>th</sup> June 2018 when the Preliminary Objection was placed for directions the trial Judge handling the matter Hon Lady Justice Githua directed the matter be transferred to this Honourable Court for its trial and determination. On 16<sup>th</sup> July 2019 parties took directions and it was agreed that the Preliminary Objection shall be canvassed through written submissions.

4. The plaintiff did lengthy submissions which was to the effect that the plaintiff was unreasonably arrested and maliciously prosecuted at the instigation of the 2<sup>nd</sup> Defendant. The plaintiff was later acquitted on 27<sup>th</sup> August 2007 pursuant to section 210 of the C.P.C. That on even date he requested for certified copies of the proceedings from the trial court. That on 12<sup>th</sup> August 2008 he wrote again to the Chief Magistrate Nyeri requesting in the alternative to be supplied with the typed proceedings to enable him institute the suit. That the plaintiff made many trips to the trial court to follow up with the matter. The typed proceedings were however finally availed to the plaintiff four years later hence the filing of the instant suit out of time availed.

5. He submitted that the typed proceedings and judgement remain critical documents to be relied on in filing this suit. Overall this has been a continuing transaction in earnest endeavour for redress on the violation and infringement on the rights and fundamental freedom on the part of the plaintiff.

**Analysis and Determination**

6. Section 3(1) of the Public Authorities Limitation Act, 1974 Laws of Kenya provides that; "No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued."

7. **Odunga J** in **Jacob Juma & another v Commissioner of Police & Another Civil Suit 661 of 2007 [2013] eKLR** opined thus:

**“The first issue for determination is whether the claim herein is time barred. As was held in Mbowa vs East Menjo District Administration (supra) the damage to the plaintiff results at the stage in the criminal proceedings when the plaintiff is acquitted or, if there is an appeal, when his conviction is quashed or set aside. In other words, the damage results at a stage when the criminal proceedings came to an end in his favour, whether finally or not since the plaintiff cannot possibly succeed without proving that the criminal proceedings terminated in his favour, for proving any or all of the first three essentials of malicious prosecution without the fourth which forms part of the cause of action, would not take him very far. In other**

words the action does not lie until the plaintiff has been acquitted of the charge and he cannot maintain an action after he had been convicted. His right to bring the action only accrues when he secured his acquittal of the charge or on appeal after which he then has the right to bring this action for damages. Time, for the purposes of limitation must begin to run as from the date when the Plaintiff could first successfully maintain an action and the cause of action is not complete until such a time, and in this case this was only after he was acquitted on 20th November 2006. This suit was filed on 16th September 2007. Under section 3(1) of Cap 39 aforesaid, proceedings on tort against the Government or a local authority must be brought before the end of twelve months from the date on which the cause of action accrued. Since the “cause of action” has been held to mean “every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse”, it does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. See Cook vs. Gill [1873] LR 8 Cp 107 at 114 and Read vs. Brown [1889] 22 QBD 128 at 131.”

8. In this case the plaintiff was acquitted on 27<sup>th</sup> August 2007. He filed this suit on 20<sup>th</sup> February 2015 this is eight years after his acquittal. He never sought leave to file the suit out of time. The plaintiff has submitted that he had sought to be given the typed proceedings from the trial court. The last records that shows his request for typed proceedings is dated 12<sup>th</sup> August 2008. The plaintiff admits that he received the typed proceedings after four years. The delay in filing the suit between 2011 and 2015 after the proceedings had been supplied is not explained by the applicant.

9. This Court is equally bound by the provisions of Section 27 and 28 of the limitation of actions act. The same does not provide for the extension of time in respect to malicious prosecution. In **Peter Gichuki Mwangi v Kenya Copyright Board & 3 others [2018] Eklr** the Court had this to say on an application for extension of time to file suit;

**“In the instant application, the Applicant’s claim would be seeking damages for malicious prosecution for which section 27 and 28 of the Limitation of Actions Act (Cap 22) Laws of Kenya, a claim for damages based on malicious prosecution is not included. The extension of time is limited to the nature of claims for damages limited under section 27 of the Limitation of Action Act and no other. This court cannot act beyond the express provisions of the law and extend the period of filing suit out of time for which the law do not allow or where the requirements which are specifically set out have not been satisfied. The reliance under section 3 and 3A of the Civil Procedure Act cannot in my view be used to grant what is not allowed by the relevant statute, in this case the Law of Limitation of Action Act. It is trite law that Equity follows the Law and Equity aids the vigilant and not the indolent. I find that the Applicant has failed to show or demonstrate that the material facts giving rise to his alleged claim were not within his knowledge within the Limitation period of three years as provided for under section 27 (2) of the Limitations of Action Act.**

10. The upshot of this Ruling is that the Preliminary Objection is meritorious. The suit has been filed out of time in contravention of the Public Authorities Limitations of Actions Act. It then follows that the suit herein is hereby struck out in its entirety.

**HON A. ONG’INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED THIS 26TH DAY OF SEPTEMBER 2019**

**IN THE PRESENCE OF:**

**CA: Mr Kinoti**

**PLAINTIFF:- Present in person. Mr Mugambi Laichena for Plaintiff – No appearance**

**1<sup>ST</sup> DEFENDANT:- No appearance**

**2<sup>ND</sup> DEFENDANT:-No appearance**

**HON A. ONG’INJO**

**JUDGE**