

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 161 OF 2012

RICHARD OMBUL.....PLAINTIFF

VERSUS

AMREF KENYA COUNTRY OFFICE.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL2ND DEFENDANT

RULING

On 6th February 2018 the main suit herein was listed for hearing. The advocates on record however informed the court that they had agreed to adjourn the matter so that they deal with the issue of limitation. The court acceded to the parties' request and ordered the filing of submissions within the set timetable. Subsequently, the parties complied but before a ruling was delivered, the plaintiff filed an application by way of Notice of Motion dated 25th May, 2018 to amend the plaint.

Once again parties were ordered to file submissions. On 10th April, 2019 the application dated 25th May, 2018 was determined and leave granted to the plaintiff to amend the plaint. The further amended plaint was filed on 11th April, 2019 within the time allowed by the court. The ruling allowed the defendants to file amended defences within 14 days of service of the amended plaint.

The attention of the court was subsequently drawn to the fact the preliminary objection had not been determined. On 30th October, 2019, upon consulting counsel on record, the court set the date for the delivery of the ruling on preliminary objection based on submissions already filed. Upon retiring to prepare the ruling based on submissions addressing the preliminary objection, I noted that the preliminary objection had been overshadowed by the application dated 25th May, 2018 which sought the amendment of the plaint.

It is instructive that the ruling on the amendment of the plaint has not been reviewed or appealed, yet the amendments now in place address the subject of limitation, which was the issue raised in the preliminary objection. Paragraphs 13 a,b,c,d and e, and 15a of the further amended plaint attest to that.

The foregoing being the case, limitation is now a triable issue and evidence shall be required to either uphold or dismiss the same. In that regard, I do not deem it necessary to make any determination on the preliminary objection raised in this matter.

The parties shall now comply with the relevant provisions of law leading to the hearing of the suit on merit. Considering this is a very old matter, parties shall endeavour to comply with the said provisions with a view to expediting the final determination. Costs in the cause.

Dated, signed and delivered at Nairobi this 19th Day of December, 2019.

A. MBOGHOLI MSAGHA

JUDGE