

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 374 OF 2013

GILBERT KUDOI.....PLAINTIFF

VERSUS

KENYATTA NATIONAL HOSPITAL..... DEFENDANT

RULING

This court delivered a ruling on 14th December, 2015 whereby the plaintiff's suit was found to be incompetent and therefore struck out with costs to the defendant. There is now before me an application dated 12th January, 2016 seeking an order to review the said ruling. It is brought under Order 45 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act. The grounds for seeking the said order are set out on the face of the application alongside an affidavit sworn by the plaintiff.

The thrust of the application is that, the ruling on the Preliminary Objection which led to the striking out of the plaint failed to take into account the presence of an application seeking to admit the plaint out of time. That application was filed on 5th November, 2015. The ruling was also said to have failed to take into account the provisions of the Limitation of Actions Act, and that a challenge on limitation could be made at the hearing of the main suit without any prejudice to the parties.

Both parties have made submissions herein which I have noted. I have noted the dates of the respective applications on record. The Preliminary Objection was dated and filed on 5th May, 2015. That is what was before the court leading to the ruling made on 14th December, 2015. The application seeking to extend time or file suit out of time was filed on 5th November, 2015.

One will be right to conclude that that application was triggered by the Preliminary Objection raised. The Preliminary Objection came up for hearing on 19th October, 2015 and the court record would show that, when the matter came up for confirmation whether or not parties had filed submissions by 2nd November 2015, the plaintiff had not complied until 16th November, 2015.

At that time, though the application dated 5th November, 2015 had been filed, counsel for the plaintiff did not raise this or rather draw the attention of the court.

Several options were available including an application to arrest the pending ruling. This was not done. The existence of the application to allow the plaintiff to file the suit out of time was always there. There is no discovery of a new or important matter. It cannot therefore be said that the plaintiff was not aware of it. It was his application. The provisions of Order 45 rule 1 (b) of the Civil Procedure Rules cannot come to the aid of the plaintiff at this stage

I have looked at the submissions made by counsel for the plaintiff. These are matters that belong to an appeal. I am being asked to sit on appeal from my own ruling. I decline to do so. The plaintiff has failed to persuade the court that the ruling of this court delivered on 14th December, 2015 should be reviewed. Accordingly, the application dated 12th January, 2016 is hereby dismissed.

The circumstances of this matter persuade me to order that each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 18th day of December, 2018.

A. MBOGHOLI MSAGHA

JUDGE