



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 55 OF 2014

PETER KINYANJUI..... APPELLANT

VERSUS

ANN WAMBUI NGUGI.....RESPONDENT

RULING

1. The Appellant herein, **Peter Kinyanjui** (who was plaintiff in the lower court), filed suit against the Respondent (defendant) by plaint dated 02/05/23014 seeking release of unspecified documents by the Respondent, general damages for breach of professional undertaking, costs and interest. The Respondent is an advocate of this court.

2. The Respondent entered appearance and filed defence. She denied the Appellant's allegations of fact and also raised the defences of *res judicata* and time-limitation. She also denied the court's jurisdiction to hear and determine the suit.

3. Together with his plaint the Appellant had filed before the lower court notice of motion dated 02/05/2014 in which he sought the main order that the Respondent be ordered "**to release my set of documents for onward transmission to the Office of Director of Public Prosecutions**". The application was opposed. In a considered ruling delivered on 02/07/2014 the lower court ruled that the Appellant's suit was both statute-barred by limitation and *res judicata*. The suit was dismissed with costs. That is the order that the Appellant appealed against in this appeal.

4. The Appellant, after filing the appeal in July 2014, filed a notice of motion dated 07/11/2014 in which he sought three main orders –

(i) That the Respondent be ordered "to deposit the disputed documents, namely Certificate of Lease of Plot Number 5556/097, Transfer Forms of the said Plot, Sale Agreement and the Deed Plan of the same Plot, into the custody of (the) court until (the) appeal is heard and determined".

(ii) That the Respondent be ordered to surrender "the filmed tapes she took the Applicant on 12/08/2014 as per the OB Number 20/12/8/201 at Thika Police Station at 9.45 a.m. to this...court".

(iii) That the Respondent be barred from representing any party in court "since the Disciplinary Committee has found her guilty in professional undertaking by holding the Applicant's money and the documents in question in Miscellaneous Cause No 104 of 2014 plus other Public Complaints on money related issues".

There is a supporting affidavit sworn by the Appellant.

5. Without prosecuting the aforesaid application, the Appellant filed another similar application seeking the same. This is the **notice of motion** dated 02/12/2014, which is the subject of this ruling. In a supplementary affidavit filed on 23/06/2015 the Appellant explained that he filed this latter application under the mistaken belief that the application of 07/11/2014 had been heard and dismissed! For purposes of an orderly record, the earlier application by notice of motion dated 07/11/2014 is hereby deemed to have been withdrawn with liberty to apply in respect to costs.

6. The Respondent opposed the application by grounds of objection dated 29/10/2015. Those grounds are –

(i) That the application “tends to introduce new matters which are not issues to be determined in this appeal”.

(ii) That the Appellant is “trying to circumvent the hearing of the appeal....” by the filing of this application.

(iii) That the Appellant should rather expeditiously prosecute his appeal.

7. I heard the notice of motion dated 02/12/2014 on 12/04/2016. I have considered the Appellant’s submissions and those of the Respondent’s learned counsel.

8. The issue involving video or film of the Appellant allegedly taken by the Respondent on 12/08/2014 is outside the ambit of the Appellant’s suit filed before the lower court. That is a matter that cannot be introduced at this late (appellate) stage. It ought, of its own, to found a new and separate cause of action.

9. The same applies to the prayer that the Respondent be barred from representing any party in court allegedly because the **Disciplinary Committee** of the **Law Society of Kenya** has found her “unfit and a threat to the public and clients”.

10. As for the main prayer that the Respondent be ordered to deposit the “disputed” documents, it is to be noted that the lower court dismissed the Appellant’s suit upon the grounds that it is both time-barred by limitation and **res judicata**. So, there is no suit pending. Should this court reinstate the suit, however, upon hearing the appeal, then there would be a proper cause to seek that order. It is therefore in the Appellant’s interest that he prosecutes his appeal as expeditiously as possible; in this connection I note that he filed the necessary record of appeal on 27/11/2014.

11. The upshot is that the Appellant’s application by notice of motion dated 02/12/2014 is refused. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED, SIGNED AT MURANG’A THIS 26TH DAY OF MAY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG’A THIS 27TH DAY OF MAY 2016