



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 3190 OF 1980

JOHN MUEMA MBEVI PLAINTIFF

VERSUS

CROMWELL KITANA (Substituted for)

SAMUEL KITANA MBATHA (Deceased) DEFENDANT

RULING

This is one of the oldest cases pending in the High Court. The record before me is awash with applications filed by the parties herein some of which have reached the Court of Appeal and some of which were determined in the High Court. Some of the parties also have passed on and their positions taken by their representatives and or relatives.

Before me is a Notice of Motion dated 4th June, 2014 by the defendant for two substantive orders,

1. That the execution proceedings herein be vacated on account of the fact that the judgment is time barred.
2. That the name of the applicant Cromwel Kitana be struck out/removed from these proceedings.

The application is opposed and both parties have filed written submissions. These I have read. The judgment sought to be executed is said to have been given on 13th May, 1981. While in the process of many proceedings, Cromwel Kitana came onto record as the legal representative of the late Samwel Kitana who is deceased.

The learned counsel on record has put tremendous effort in addressing the issues at hand. That notwithstanding, I consider the subject to be straight forward in view of the law applicable.

I shall first address the issue of whether or not Cromwel Kitana's name should be struck out. Although he has participated in the proceedings in the past, having been substituted for his father the late Samuel Kitana there is no evidence as far as the record before me can show, that he ever obtained letters of administration to take his late father's position in these proceedings.

The judgment creditor has pleaded estoppel and submitted that having been on record and participated in proceedings in the past, Cromwel Kitana cannot now opt out of these proceedings. I am unable to uphold that submission. There is no serious challenge by the judgment creditor that Cromwel Kitana does not have a legal authority to step into the shoes of his father.

On the second issue the law is also clear as provided under Section 4.(4) of the Limitation of Actions Act Cap 22 Laws of Kenya that an action may not be brought upon a judgment after the end of 12 years from the date on which the judgment was delivered. The process of execution is an action of that nature which is prohibited under that section. No reasons have been advanced by the judgment creditor why this was not done earlier yet he had all the opportunity to do so against the property of the deceased judgment debtor even without a legal representative being in place.

Litigation must come to an end and it is time now for this very old matter to be put to rest. The execution I find, is time barred and having found that the Cromwel Kitana has no capacity at all in this matter to step into the shoes of his late father there is no one to execute against. The application therefore succeeds. The circumstances of this case demand that each party shall bear his own costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 16th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE