

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 4409 OF 1988

NELSON ITEBA BIGOGO.....PLAINTIFF

VERSUS

PATRICK KIMELI CHEPNGOKDEFENDANT

RULING

After perusing the court record herein it is evident that the Plaintiff's claim here was in negligence. He sought damages for suffered in a road traffic accident on 26th June 1986. As the Defendant did not enter appearance or file defence, on 4th July 1991 interlocutory judgment was entered against him. The Plaintiff was heard on 27th July, 1992 and damages assessed. On 5th October 1992 final judgment was entered (Mwera, J). The Plaintiff was awarded a total of KShs 80,800/= in general and special damages. On 30th June 1994 the Plaintiff's costs were taxed at KShs. 15,941/00.

The record further discloses that between 1st November 1994 and 1st December 2000 there were efforts to execute the decree. On that later date the matter was stood over generally for non-attendance by the parties, and the Plaintiff/Decree-Holder was condemned to pay court adjournment fees. It would seem that these efforts at execution were unsuccessful.

The matter then went quiet until 26th August 2013 when a notice to show cause was issued for 8th October 2013. On that date Counsel for the Judgment Debtor raised a preliminary objection arguing that since the Judgment was over 18 years old at the time, having been entered in 1994, the Decree Holder was barred by Section 4(4) of the Limitation of Actions Act (Cap 22) from executing the same.

The Judgment Debtor subsequently raised a preliminary objection to the execution proceedings by **notice dated 24th October 2013**. In support of the preliminary objection the Defendant's learned advocates filed written submissions on 5th March 2014. They relied on those submissions fully at the hearing of the preliminary objection. The Plaintiff's learned counsel on the other hand made oral submissions. I have considered the submissions, including the cases cited by both sides.

Section 4(4) of the Limitation of Action Act provides –

“4.(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

As at 8th October 2013 when the Preliminary Objection was raised orally in court the judgment was over twenty two (22) years old. The latest proceedings taken by the Plaintiff in 2013 to enforce it were clearly forbidden by law as the judgment had stayed for over 12 years old since it was delivered.

The technical objection raised by the Plaintiff's learned counsel in his submissions regarding failure of the Defendant's counsel to file the notice of Preliminary Objection within the timelines allowed by the Court, will not salvage the matter from the serious legal objection upon limitation raised by the Defendant.

In the circumstances I must uphold the Defendants' preliminary objection. The Litigation herein has therefore come to an end. Parties will bear their own costs of this preliminary objection. It is so ordered.

Dated and delivered at Nairobi this 22nd Day of October, 2015.

A.MBOGHOLI MSAGHA

JUDGE