



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

The plaintiff sued the defendant vide a plaint dated and filed on 9th September, 2013. The plaintiff alleged negligence on the part of the defendant relating to delay in getting medical attention following a road traffic accident thereby leading to amputation of his right arm. This is said to have taken place on or about 16th April 2008.

As a result of the negligence, the plaintiff claims damages against the Defendant, interest and costs. Paragraph 5 of the plaint sets out particulars of negligence attributed to the Defendant.

The defendant filed amended defence denying the plaintiff's claim wherein it was averred that at the first hearing of the suit objection shall be raised against the entire suit on a point of law for having been filed out of the statutory time limit without first obtaining leave of Court. The defence was subsequently followed by notice of preliminary objection dated 5th May, 2015.

The defendant filed submissions in support of the preliminary objection submitting that the suit, should be struck out. The plaintiff on the other hand submitted that there is no basis for the preliminary objection and that the Defendant has not suffered any prejudice due to the delay in filing suit.

In one of the leading cases relating to preliminary objections, **Mukisa Biscuit Manufacturing Company Limited Vs Westend Distributors Limited (1969) EA 696**. Law, J.A. observed –

“..... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by contract giving rise to the suit to refer the dispute to arbitration”.

The Defendant contends that the plaintiff's suit is statute barred because it is based on an action founded on tort hence the plaintiff should not be allowed to go beyond pleadings. Section 4 (2) of the Limitation of Actions Act, Cap 22 Laws of Kenya aforesaid reads as follows,

“(2) An action founded on tort may not be brought after the end of three (3) years from the date on which the cause of action accrued: Provided that an action for libel or slander may not be brought after the end of 12 months from such date.”

I have observed hereinabove that the alleged negligence on the part of the Defendant upon the plaintiff is said to have taken place sometime in April 2008. This suit was filed in September, 2013 which is well over 5 years from the date of the alleged cause of action.

The plaintiff did not seek extension of time within which to file the claim. At the expiration of three years he was debarred from taking any action against the Defendant. There is sufficient authority on this subject to the effect that a plaint which is barred by limitation is a plaint barred by law and must be rejected. ***See Iga vs Makerere University [1972] E.A. 65*** where it was observed that, the Limitation Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought, and when a suit is time barred, the court cannot grant the remedy or relief.

Where a suit is time barred the court has no jurisdiction to entertain it. This is because jurisdiction is everything. In ***Owners of Motor Vessels Lillian S. Vs Caltex Oil (Kenya) Limited (1989) KLR 1*** Nyaragi J, said as follows –

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there will be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

Having found that the plaintiff’s suit is time barred, I have no jurisdiction to go even one step further. It follows therefore that the plaintiffs’ suit is incompetent and therefore must be struck out. Costs follow the event and the suit having been struck out, the Defendant is entitled to costs thereof. It is so ordered.

Dated and delivered at Nairobi this 14th day of December, 2015.

A.MBOGHOLI MSAGHA

JUDGE