



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. CIVIL APPLICATION NO. 41 OF 2013

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE SUIT OUT OF TIME

SAMUEL KATHURI MWONGERA.....APPLICANT

RULING

This application dated 22nd May, 2013 is predicated upon Order 37 Rule 6(1) of the Civil Procedure Rules 2010, Section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act and Sections 27 and 28 of the Limitation of Actions Act.

It seeks Orders:

1. **That this Honourable Court be pleased to grant leave to the applicant to file suit out of time against the said JOSEPH KIBITI M'RIMBERIA to claim Kshs.160,000/= being a refund of consideration paid by the applicant pursuant to a sale of land agreement dated 24th September, 1997.**
2. **The Costs for these proceedings be in the main cause.**

The applicant's case is that pursuant to a sale agreement dated 24th September, 1997, he paid one Joseph Kibiti M'Rimberia Kshs.160,000/=. He was supposed to transfer to him 2 acres of land out of Land Parcel No.KIBIRICHIA/625. The applicant has submitted that the intended defendant continued to promise that he would honour their agreement until recently when he made it clear that he would not transfer the land the subject of the agreement to the applicant. The applicant contends that the circumstances surrounding his predicament are in favour of the Court granting the orders being prayed for herein.

Section 4(1) of the Limitation of Actions Act covers the nature of the agreement the applicant and the intended defendant entered into. Section 27 of the Act allows extension of the limitation period in case of specified situations such as ignorance of material facts in actions for negligence etc.

This Court does not have to reinvent the wheel in determining if this application is merited. In **Devecon V. Samani (1995-1998) EA 48**, the Court of Appeal said:

“ ... the meaning of the wording of Section 4(1) ... is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The Corollary to this is that no court

may or shall have the right or power to entertain what can not be done namely, an action that is bought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action”

The Court of Appeal further said:

“A perusal of part 111 shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the superior Court did, that “the wording of Section 4(1) of the Limitation of Actions Act (Chapter 22), suggests a discretion can be invoked.”

I need not go any further. The nature of the cause of action for which extension of time is sought falls veritably within the types unequivocally circumscribed by Section 4(1) of the Limitation of Actions Act. In the circumstances, I have no hesitation in finding that I have no jurisdiction, and hence power, to grant the prayers sought.

The application is dismissed.

Delivered in Open Court at Meru this 25th day of September, 2013 in the presence

of:

Cc. Mwonjaru/Daniel

C. K. h/b Gikunda Anampiu for applicant

P. M. NJOROGE

JUDGE