



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 295 OF 2012

PETER REUBEN OREMO ODANGAPLAINTIFF

VERSUS

MICHAEL CHIRCHIR KORIR 1ST DEFENDANT

REV. FRANCIS MWANGI MWAURA2ND DEFENDANT

[CONSOLIDATED WITH CIVIL CASE NO. 164 OF 2012]

REV. FRANCIS MWANGI MWAURA PLAINTIFF

PETER REUBEN OREMO ODANGADEFENDANT

RULING

By a Notice of Motion dated 18/2/2013, Michael Chirchir Korir, the 1st Defendant/Applicant herein seeks the following orders:

1. That this court be pleased to strike out the plaintiff's suit with costs;
2. That costs of the application be provided for

The grounds which the application is premised are found in the body of the application and a supporting affidavit sworn by the applicant on 18/2/2013. The grounds are *inter alia*:

1. That the plaintiff (Peter Odanga) has no *locus standi* to institute the suit;
2. That the suit is time barred;
3. That the suit discloses no reasonable cause of action on law;
4. That the suit is an abuse of the court process.

On 29/4/2013, by consent, it was intimated to court that the two files i.e. Civil Case No. 295 of 2012 and 164 of 2012 be consolidated and that Civil Case no. 295 of 2012 be the lead file. The court adopted the said consent as recorded by the parties.

The Respondent (Peter Odanga) filed Grounds of Opposition dated 5/7/2013. He opposed the application on the grounds that it was vexatious, frivolous, brought in bad faith and that the prayers sought are draconian and contravenes the defense of the Applicant.

The brief facts of this case are that the Applicant, Michael Korir, is the registered owner of the land parcels, LR. No. 19915/1, 19915/2, 19915/3 and 19915/4. By a sale agreement dated 11/7/1995, he entered into a contract for the sale of the four parcels. The said sale agreement was executed by the

Respondent, Peter Odanga, who paid part of the consideration (Kshs. 250,000/-) to the Applicant. The balance of purchase price was to be paid in two installments. According to the Applicant, the Respondent failed to pay the full balance of the purchase price and the agreement was frustrated. He therefore sold the four parcels to the 2nd Defendant.

Having carefully considered the oral submissions made by Mr. Gai, learned counsel for the Applicant, Mr. Kipkoech learned counsel for the Respondent and Mr. Simiyu for the 2nd Defendant and pleadings filed by the parties to this application, I find the issues for determination by this court are;

1. Whether the Respondent has *locus standi*;
2. Whether the suit is time barred.

The principles of *locus standi* or standing determine whether a litigant is entitled to institute a particular dispute before the court. The purpose of ascertaining the legal standing of a litigant is among other reasons to ensure that the case is presented in the best way possible, by a person with real interest and to ensure that people do not meddle in affairs of others.

Mr. Gai, counsel for the applicant submitted that the Respondent did not have *locus standi* to institute the suit as the contract between the Applicant and Respondent was for sale of suit parcels to Jehova Witness Church through its trustees and not to the Respondent. It was his submission therefore that the Purchaser being the church, it is the church that has locus unless the Respondent has express authority from it.

I do not agree with this argument. The Agreement for Sale is between the Applicant and Respondent. According to the Agreement it describes the parties to the agreement as the applicant on one part and **“PETER R.O. ODANGA (and or his nominees)”** on the other part. The Respondent and or his nominees therefore have interest and a standing in this matter. The trustees under clause 6 of the agreement are nominees of the Respondent as the titles are to be registered in their names as trustees of the church and they have a beneficial interest. To this end, I do find that the Respondent has a real interest in this matter and not a busy body meddling in the affairs of others.

The second issue for determination is whether the suit is time barred. Mr. Gai submitted that it is. **Section 7 of the Limitation of Actions Act Cap 22** provides;

“An action may not be brought by any person to recover land after the end of twelve years from the date of which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

Counsel further submitted that **Section 4** of the Act provides that actions founded on contract may not be brought after the end of 6 years from the date on which the cause of action accrued.

Mr. Simiyu counsel for the 2nd respondent associated himself with the submissions by the applicant.

In reply, Mr. Kipkoech submitted that the Respondent continued to make payment which was acknowledged by the Applicant; as such this breathes life into the agreement. He relied on **sections 23 and 24 of the Limitation of Action Act Cap 22**. Counsel further submitted that despite the date of the agreement been 1995, the cause of action arose in 2012 when the Respondent entered into an agreement to sell the suit land to the 2nd Defendant.

The point of departure between the Applicant and Respondent is when the cause of action accrued. The applicant contends that time begun to run in 11/7/1995 when the parties entered into a contract. However, the Respondent submitted that the titles to the suit land were issued in 2011 thus requiring future performance to the contract. In his view, time begun running in 2011 because the parties had been chasing the issuance of the said titles at the lands office since 1995. I do not agree with this line of argument. The agreement between the parties is clear on the completion date. Clause 4 of the said agreement provides the completion date to be on or before 10/9/95 by which time the applicant was to

have obtained among other completion documents the titles deeds for each plot. There is no provision in the contract for future performance by either party. Therefore cause of action accrued from 11/7/1995 when the parties entered into an agreement.

Counsel further submitted that **Sections 23 and 24 of the Limitation of Actions Act Cap 22** breathes life to the case. Section 23 provides as follows;

where a right of action to recover land... has accrued, and the person in possession of the land or movable property acknowledges the title of the person to whom the right of action had accrued...the right accrues on and not before the date of acknowledgement or payment.

Section 24 provides;

Every acknowledgment of the kind mentioned in section 23 must be in writing and signed by the person making it.

Though this provision breathes reprieve to the Respondent, from the evidence, the last payment he made was on 21/10/1997. There is no other acknowledgment in writing by the Respondent and it is clear that it is over 6 years since the respondent made the last payment before filing this suit. The Respondent has not proved his alleged efforts to chase the titles nor has he completed his part of the contract by paying the full purchase price even after the titles were obtained in 2011. In my view, there is indolence on his part.

For the reasons stated, it is obvious that the Respondent's suit cannot be sustained. It is incompetent. I will allow the application by the Applicant and strike out the plaint filed by the Respondent herein with costs to the Applicant. The Respondent shall bear the costs of the suits to the Applicant.

Dated Signed and delivered in open court at Nakuru this 17th day of September 2013.

L N WAITHAKA

JUDGE

Present

Ms Ogutu holding brief for Mr Ghai for 1st Defendant

Mr Kipkoech for the plaintiff

N/A for the 2nd Defendant

Stephen Mwangi : Court Clerk.

L N WAITHAKA

JUDGE