



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Suit 190 of 2011

KAHINDI CHAI LEWA & 63

OTHERS.....PLAINTIFFS

VERSUS

KRYSTALINE SALT

LIMITED.....DEFENDANT

R U L I N G

1. A preliminary objection was filed by the defendant in response to the plaintiff's suit filed on 16th December, 2011, on grounds, primarily, that:

1. By virtue of the provisions of the Limitations of Actions Act the suit herein is time barred.
2. The suit filed does not raise any valid cause of action against the plaintiff, is bad in law and amounts to an abuse of the court process.

It was agreed to dispose of the objection by way of written submissions.

2. The gist of the submissions of the defendant is straight forward. They state that this suit is statute barred by virtue of the provisions of section 7 of the Limitations of Actions Act having been instituted over 40 years since the alleged cause of action arose. The defendants have cited the case of **MOSES LESIAMON OLE MPOE AND ANOTHER VS THE COMMISSIONER OF LANDS AND 4 OTHERS** in support of their arguments.

3. The plaintiffs in their response concede that under the Limitation of Actions Act, the suit is time barred. However, they argue that the matter is not that simple as this suit touches on the plaintiffs' right to own property under Article 40 of the 2010 Constitution. That by dint of Article 24(1) a right or fundamental freedom cannot be limited except by law "and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity..."

4. Mr. Angima for the applicants has urged the court to interpret the bill of rights in the manner that most favors the enforcement of the rights and fundamental freedoms. Referring to the alleged historical injustices visited upon his clients during their alleged eviction from their ancestral lands, Mr. Angima urged the court not to peremptorily dismiss the plaintiffs but to sustain the suit so that due inquiries can be made by the High Court or National Land Commission as contemplated under Article 67(e) of the

Constitution.

5. Having considered the respective submissions, I take the following view of the matter. It is beyond disputing that the cause of action pleaded in the plaint brings this suit within the operation of section 7 of the Limitation of Actions Act, which states:-

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

If it is Mr. Angima’s contention that the provisions of Section 7 constitute an unjustifiable limitation of the plaintiff’s right to own property or to seek redress I think that is a novel and substantial matter requiring a constitutional approach. A decision on an issue of such magnitude would have serious and far-reaching ramifications in the system of the administration of justice as well as impacting upon the rights of many persons in this jurisdiction and elsewhere in the country.

6. In my considered view, this suit is not the appropriate forum for canvassing such a matter. A party is bound by his own pleadings. The 64 plaintiffs chose to file an ordinary suit under the Civil Procedure Rules rather than a constitutional petition or to await the establishment of the National Land Commission. It is not proper for them to now ask this court to vest upon itself a jurisdiction that has not been invoked because it best suits their cause in light of the demurrer raised.

I am satisfied that the suit as framed before this court is statute barred and I will order it struck out with costs to the defendants.

Delivered and signed at Malindi this **12th** day of **June, 2012** in the presence of: Mr. Otara holding brief for Mr. Angima for plaintiffs, Mr. Matini for the defendant. Cc- Evans, Leah.

C. W. Meoli
JUDGE