



REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 124 of 2011

MESSEN SHISIA JUMA PLAINTIFF

VERSUS

BILHA OLINGO MULUKA 1ST DEFENDANT

SOPHIE AKOLA MULUKA 2ND DEFENDANT

RULING

The Preliminary Objection dated 21.9.12 was argued before me on 25.9.12. The Preliminary Objection is based on the following points of law:-

- “1. That the plaintiff’s suit is incompetent, bad in law and should be struck out with costs.**
- 2. That the plaintiff’s suit should be struck out for being statute barred.**
- 3. That the plaintiff’s suit is fatally defective, misconceived and the orders sought are untenable in law.**
- 4. That this court lacks jurisdiction over this matter.”**

Mr. Samba advocate for the defendants argued that the cause of action arose in the year 1996 and therefore the action herein which is based on fraud is time barred.

The plaintiff contended that he never sold the land but that it was sold to one MESSEN LUMATETE a stranger to him. According to the plaintiff the land was fraudulently transferred to the defendants.

I have considered the pleadings herein. The plaintiff instituted this case by way of the Plaint dated 22.9.2011 which was filed on the same date.

Paragraph No. 4 of the Plaint reads as follows:-

“That on or about the 6th day of August 1996 the 1st defendant wilfully, unlawfully without justifiable cause of action, permission, consent and/or otherwise fraudulently transferred and/or caused to be transferred to herself the plaintiff’s parcel of land better known as L.R. NO. BUTSOTSO/SHIKOTI/4329.”

The plaintiff then went ahead to give the particulars of fraud.

In Paragraph No. 2 and 3 of the defendant's joint statement of defence gave the year 1996 as the year the suit land was transferred to the 1st defendant.

The reply to the joint defence denies that there was any sale or transfer of the land.

It is therefore clear from the pleadings that the cause of action arose in the year 1996. The alleged fraudulent transactions took place in the year 1996. That is about fifteen years ago. The plaintiff's claim is therefore time barred.

Section 7 of the Limitation of Actions Act states as follows:-

“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 person through whom he claims, to that person.”

Consequently, I strike out the plaintiff's suit with costs to the defendants.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

**B. THURANIRA JADEN
J U D G E**