



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 279 OF 1994

CHARLES MAINA MWANGI

...PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL

DEFENDANT

RULING

This old matter was filed on 24th January, 1994. The suit originally was filed against two Defendants but eventually survived only as against the 2nd Defendant who is The Attorney General. The suit against the 1st Defendant was struck out on 9th November 1998.

It is averred in the Plaintiff that the cause of action, i.e. the motor vehicle accident arose on or about 25th December, 1992. The Plaintiff is apparently seeking the compensation for injuries to the Plaintiff and death of his son founded on tort.

The Attorney General (2nd Defendant) on 19th October, 2000 filed a Notice of Preliminary Objection and argued the same only in respect of point of law No. 1 namely –

“This suit is time barred by virtue of Public Authorities Act Cap 39 Laws of Kenya” (referred to as ‘The Act’).

Mr. Mwenda, the learned state counsel appearing for the Attorney General submitted that as per Sec. 3 (1) of The Act, the suit is evidently time barred. The said section stipulates viz:-

“No proceedings founded on tort shall be brought against the government or a local authority after the end of twelve months from the date on which the cause of action accrued.”

It is submitted that the claim of the Plaintiff arises from tortious liability and thus the suit is apparently time barred making it incompetent and liable to be dismissed.

Two authorities were relied upon:-

(1) ***Iga –vs- Makerere University (1972) E.A.C.A 65***

(2) ***Makau & Others –vs- A.G. & Another (1974) E.A.K. 534***

In the first authority it was found by Court of Appeal for East Africa that even if the Defence did not raise

Defence of Limitation, the Plaint having been filed out of limitation of time and not showing the grounds of exemption must be rejected by the court.

Similar was the holding by the High Court in the second case namely, action against the government officers under Fatal Accident Act must be brought within twelve months.

It was thus urged that the Plaint be dismissed with costs.

Mr. Ocholla, the learned counsel for the Plaintiff urged the court to consider that the Demand under Government Proceedings Act had been given within 12 months and not denied in the Defence. He urged to consider the said demand which made the government aware of the claim before the expiry of twelve months which is the intention of the Act.

I would definitely like to appreciate the tenacity of the submissions from the learned counsel, but the provision of the Act uses the words '*No proceedings founded on tort ...*'. The law has spoken and this court cannot, at least, in this case, make any other interpretation except the simple meaning of the word "proceedings" which is the filing of claim and reliefs before the court.

In the premises, I cannot disallow the preliminary point and do find that the suit as filed is incompetent having been filed out of limitation period and the same be dismissed.

Due to the delay in proceeding with the Preliminary Objection, I do not make any order on costs.

Dated, signed and delivered at Nairobi this 6th day of **June, 2011**

K. H. RAWAL
JUDGE
6.06.2011