



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Suit 348 of 2006**

**RUKAN LIMITED ..... PLAINTIFF**

**VERSUS**

**DUBAI BANK KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH MUNGAI GIKONYO T/A**

**GARAM AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**SIMON NYORO NGUGI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The notice of motion dated 2<sup>nd</sup> October 2009 was taken out by the 3<sup>rd</sup> defendant under the provisions of section 136 (1) and (2) of the Government Lands Act (Cap. 280), Order VI Rules 13 (1) (d) and Order L Rule 1 of the Civil Procedure Rules). The 3<sup>rd</sup> defendant seeks for an order that the plaintiff's suit be dismissed on the grounds that the suit is statute barred and it is an abuse of the court process. The application is supported by the affidavit of Simon Nyoro Ngugi sworn on 2<sup>nd</sup> October 2009.
2. The suit in this matter challenges the sale of three parcels of land known as Ruiru/Kiu Block 3/2635, Ruiru/Kiu Block 3/2636, and Ruiru/Kiu Block 3/2637 (hereinafter called the parcels of land). These parcels of land were sold pursuant to a public auction by the 1<sup>st</sup> defendant in exercise of its statutory power of sale granted by a charge registered over the three parcels of land. The sale was carried out by the 2<sup>nd</sup> defendant. The plaintiff's suit makes allegations against the 1<sup>st</sup> and 2<sup>nd</sup> defendants of acts of negligence, fraud, recklessness, malice and breach of duty or care especially by the 1<sup>st</sup> defendant. The plaintiff is also specifically seeking for declaratory orders declaring the sale of the parcels of land null and void in law.
3. The three parcels of land are registered in the name of the 3<sup>rd</sup> defendant. Counsel for the 3<sup>rd</sup> defendant submitted that although the certificate of title and the lease are issued as registered under the Registered Land Act, the three leases

are subject to the provisions of the Governments Lands Act. This is provided for in the lease especially under the special conditions. Under section 136 (1) of the Government Lands Act, all actions brought under the GLA are meant to be commenced within one year after the cause of action. The auction in this case took place sometimes in November 2003, and this suit was filed in June 2006 long after the statutory period had elapsed. Counsel urged the court to dismiss the suit for failure to comply with the mandatory provisions of the GLA.

4. This application was opposed. Counsel for the plaintiff relied on the grounds of objection. Firstly, it was argued that the three parcels of land are registered under the Registered Land Act. Further the registration to the 3<sup>rd</sup> defendant cannot be said to be the first registration as he purportedly bought the land in an auction. The certificate of title and lease are all issued under the Registered Land Act. Moreover the power to strike out a suit is discretionary and it is exercised sparingly in very clear cases where no cause of action at all cannot be demonstrated even by amendment of the pleadings. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendant also supported this motion although he did not file any papers.

5. This application seeks to strike out the plaint; it is brought under the provisions of the GLA, and the CPR. Under Order 6 r 13 (1) of the Civil Procedure Rules, the court is given discretion to strike out pleadings which do not disclose a reasonable cause of action. The order provides as follows:-

***“At any stage of the proceedings the court may order to be struck out or amended any pleading on the grounds that:***

- (a) It discloses no reasons cause of action or defence; or***
- (b) ...***
- (c) ...***
- (d) It is otherwise an abuse of the process of court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”***

5. The Court of Appeal in the case of **DT Dobbie and Company Limited vs. Muchina 1982 KLR, per Madan, JA** Their Lordships explained what constitutes a reasonable cause of action in the following words:-

***“The court should aim at sustaining rather than terminating a suit. A suit should only be struck out if it is so weak that it is beyond redemption and incurable by amendment. As long as a suit can be injected with life by amendment, it should not be struck out.”***

6. Bearing the above guidelines and principles in mind, the issue to determine is whether the plaintiff's case is time barred under the provisions of the GLA. It is not disputed that the 3<sup>rd</sup> defendant is the registered proprietor of the three parcels of land and that vests upon him absolute rights as provided for under section 28 of the RLA. However does the registration bar the plaintiff from filling a suit against the registered proprietor? There are grounds upon which a title to land can be challenged, although I do not wish to delve in those matters at this interlocutory stage. The applicant's main contention is that the suit should have been filled within one year after the property was sold.

7. The applicant's certificate of lease as well as a lease is issued under the provisions of RLA. Counsel for the

applicant argued that the lease is issued subject to the provisions of GLA. On the face of these certificates of lease and leases, they are clearly issued under the provisions of the RLA. I am not persuaded that the three parcels of land are registered under the provisions of GLA. The only reference to provisions of the GLA is in regard to the payment of the annual rents and the observance of the special conditions. Mere reference to the provisions of the GLA for the assessment of rent and special conditions cannot bring the leases within the realm of GLA. In any event this is a gray area which should be resolved substantively during the hearing. Accordingly for those reasons, the plaintiff's case cannot be said it is time barred. I disallow the application by the 3<sup>rd</sup> defendant which is hereby dismissed. Costs of the application will be in the cause.

RULING READ AND SINGED ON 29<sup>TH</sup> JANUARY 2010 AT NAIROBI.

**M.K. KOOME**  
**JUDGE**