



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 214 of 2008**

**ANE NDUNGE KITIVO .....**

**PLAINTIFF**

**VERSUS**

**SAVANNAH DEVELOPMENT CO. LTD. ....**  
**BARCLAYS BANK OF KENYA LTD. ....**  
**IRENE NYOKABI MWANGI .....**  
**HOUSING FINANCE COMPANY OF KENYA LTD. ....**

**1<sup>ST</sup> DEFENDANT**  
**2<sup>ND</sup> DEFENDANT**  
**3<sup>RD</sup> DEFENDANT**  
**4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Chamber Summons dated 2<sup>nd</sup> October 2009 is brought under the provisions of **Order VI rules 13 (1) (a) (b) & (d) and 16 of the Civil Procedure Rules** by the 4<sup>th</sup> defendant. The applicant seeks for orders that the amended plaint dated 29.9.08 be struck out with costs to the 4<sup>th</sup> defendant.
2. The application is premised on the grounds that the suit property known as Parcel Number **LR NAIROBI/BLOCK 82/5497 Phase IV No. 538** is registered in the name of the 3<sup>rd</sup> Defendant and is correctly charged to the 4<sup>th</sup> Defendant to secure a facility of Ksh.2.500,000/-. The plaintiff's cause of action is founded on a breach of contract for parcels of land. That contract was entered into in 1997 between the 1<sup>st</sup> defendant and the plaintiff which renders the plaintiff's suit statute barred.
3. The suit property was sold and transferred to the 3<sup>rd</sup> defendant by the 1<sup>st</sup> Defendant thus the plaintiff's cause of action

in the suit only be against the 1<sup>st</sup> Defendant. The above grounds are expounded in grater details by the matters deposed to in the supporting affidavit of **Joyce Njoroge** an Assistant Manger with the 4<sup>th</sup> defendant sworn on 2<sup>nd</sup> October 2009. They have annexed a copy of the certificate of lease which shows the 3<sup>rd</sup> defendant was registered as the

proprietor of the suit premises on 11.1.2008 and a charge is registered in favour of the 4<sup>th</sup> Defendant.

4. This application was opposed by the plaintiff who relied on the replying affidavit sworn on 28<sup>th</sup> December 2001. She contends that a cause of action which was based on contract is continuing and is no time barred. The application to strike the suit is also faulted as a mere technicality meant to defeat the whole suit. This application raises two issues for determination. Firstly, the suit against the 4<sup>th</sup> defendant is a non starter because the suit premises is registered in the name of the 3<sup>rd</sup> defendant. Secondly, whether the suit is statute barred.

5. The claim by the plaintiff as pleaded in the plaint in the following words:-

**“4. That on or around the 5<sup>th</sup> June 1997 the 1<sup>st</sup> defendant agreed to sell and plaintiff agreed to purchase Land Parcel No. LR. Nairobi/Block 82/5497 Phase IV House No. 538.**

**5. That in furtherance of the above stated the plaintiff and 1<sup>st</sup> defendant did enter into a sale agreement on or around the aforesated date and plaintiff proceeded to pay deposit of Ksh.250,000/- with reference to the suit premises.**

**6. That however having been given possession of the suit premises, the 1<sup>st</sup> defendant did not furnish the plaintiff with the title deed thereof and further all efforts by the plaintiff to complete payment of the purchase price balance have been unsuccessful as the 1<sup>st</sup> defendant has since refused, failed and/or neglected to accept payments thereof.”**

6. They claim this on contract ought to have been brought in court within six (6) years since the cause of action arose. Going by the prayers sought the plaintiff is basically seeking to compel the defendants to accept the balance of the purchase price and register the transfer of the suit premises in her favour. The transfer referred to is the transfer of land thus one can comfortably say that the suit ought to have been filed after 12 years from when the cause of action arose. I thus do not find the suit time barred. However the suit does not disclose any cause of action or any claim against the 4<sup>th</sup> defendant. For reasons that the plaintiffs has never been the registered proprietor of the suit premises. If she had a contract with the 1<sup>st</sup> defendant, the 4<sup>th</sup> defendant has absolutely no connection with that contract. The certificate of lease of this property shows that the suit premises was registered in the name of the 3<sup>rd</sup> defendant on 11<sup>th</sup> January 2008. The 3<sup>rd</sup> defendant charged the property to the 4<sup>th</sup> defendant. Accordingly

for the above reasons I find no difficulty in striking the suit against the 4<sup>th</sup> defendant with costs.

RULING READ AND SIGNED ON 12<sup>TH</sup> MARCH 2010 AT NAIROBI.

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