



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1406 of 2004

**DAVID GITHUMBI THANDE & ANR..... PLAINTIFFS
VERSUS
GITHUNGURI DAIRY FARMERS CO-OPERATIVE
SOCIETY LTD & 9 OTHERS.....DEFENDANTS**

Coram: Mwera, J

Mbigi for Applicant

Kamau for Respondents

RULING

Citing sections 3A, 80 Civil Procedure Act, Order 44 Rule 1, and Order 6 Rule 13 (1) (d) Civil procedure Rules the defendants' application dated 5/9/05 asked the court:

- a) to review and set aside the order of 29.4.05;
- b) to issue an order dismissing the application dated 12/1/05; and
- c) to strike out the entire suit herein for being an abuse of the court process.

It was stated in the body of the application that there was an error apparent on the face of the record in that the court that gave the orders to be reviewed did not have jurisdiction to do so. Further, that another error was that the applicant relied on a provision specifically enacted in aid of injury victims – all which was in error. And that the orders were obtained by misleading the court. The chairman of the 1st defendant swore an affidavit in support. It was therein deponed that the cause of action herein was in tort – defamation, which allegedly occurred on 11.3.03 yet the suit was brought on 30/12/04 – some 21 months later. That the Limitation of Actions Act section 4, herein the Act, limited the time within which to sue for defamation to 12 months only. So when the plaintiffs filed a chamber summons dated 29.4.05 and got time enlarged within which to bring this suit, all was in error because the Act only provided for such facility in the event of a claim for personal injury or death. Accordingly the orders of 29.4.05 permitting the filing of the suit herein ought to be reviewed. They should be set aside and the suit struck out.

The court file did not readily reveal presence of a replying affidavit to this motion but the parties submitted on it.

The plaintiffs' side held the view that the order to extend the limitation period was warranted even if the cause of action was based on a tort of defamation because the letter complained of dated 11.3.03 was based on an Enquiry Report in the management of the affairs of Kiambu Dairy & Pyrethrum Farmers Cooperative Society Ltd. The plaintiffs filed a judicial review case No. 480/2004 to quash that report and on 24.6.04 orders issued in their favour - after the limitation period ran out on 10.3.04. That the Inquiry Report afforded the defendants a

defence of justification to sue in a suit of defamation like the present one. In the circumstances the plaintiff waited for the judicial review outcome before bringing the suit and all that warranted the orders of 29.4.05. That in giving that order the court intended that the question of limitation be determined at the trial.

The defendants' position was that the court had no jurisdiction to grant extension of time to sue in defamation because section 4 of the Act states that no action for libel or slander may be brought after the end of twelve months while section 27 of the same Act only envisages extending the time to sue in matters of negligence, nuisance or breach of duty where damages are in respect of personal injuries of any person.

Having heard counsel, perused the law applicable and the circumstances of this case, this court is inclined to agree and it agrees with the defendants that the orders of 29.4.05 granting the plaintiffs time beyond the statutory 12 months to sue for damages in defamation be reviewed. Extending time to sue in tort matters is limited to negligence, nuisance, breach of duty where damages are confined to personal injuries of a personal nature. And to succeed in getting the orders to sue out of time, a party has to satisfy the court in accordance with section 28 of the Act. Defamation is not covered here and so the review sought is granted. It was in error to grant the orders of 29.4.05 when the law did not provide for such, i.e suing on account of defamation after the statutory 12 months. The application dated 12.1.05 ought to have been dismissed and the whole suit struck out.

It is so ordered with costs to the defendants.

Orders delivered on 29.4.10

J. W. MWERA
JUDGE
