



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.120 OF 2008

- 1. MARION GITAU.....
- 2. AGNES KAGIRA.....
- 3. BEATRICE KANYUU.....
- 4. ROLAND KIOGORA..... PLAINTIFFS
- 5. WANJIRU KIONGO.....
- 6. SYLVIA MUTHONI.....
- 7. LISA MWAKAZI.....

VERSUS

THE ATTORNEY GENERAL

FOR: THE COMMISSIONER OF LANDS.....1ST

DEFENDANT

KIPCHOGE KEINO

FRIDAH SHIROYA (jointly sued as the Trustees
of the) **NATIONAL OLYMPIC**

COMMITTEE – KENYA.....2ND

DEFENDANT

R U L I N G

1. By a preliminary objection filed on 24th March, 2010, the defendants have raised an objection to the plaintiffs’ suit on two grounds as follows:

(i) That by virtue of the provisions of Section 136 of the Government Lands Act (Chapter 280 of the Laws of Kenya) the plaintiffs’ suit is time barred incompetent and a gross abuse of the due process of this honourable court.

(ii) That by dint of the provisions of Section 8(1) of the Government Lands Act (Chapter 280 of the Laws of Kenya) the plaintiffs’ suit is grossly misconceived and incompetent as it has not been commenced against the name of the Commissioner of Lands.

2. In arguing the preliminary objection, counsel for the defendants abandoned the 2nd ground. In regard to the 1st ground, counsel referring to paragraph 11 of the plaint, contended that the plaintiffs’ cause of action arose in the year 2000, while the present suit was filed on 25th March, 2008, which is 8 years after the cause of action arose. Counsel pointed out that Section 136 of the Government Lands Act Cap 280 requires actions brought under that Act to be commenced within one year from the date the cause of action arose. Counsel urged the court to strike out the plaintiffs’ suit on this ground.

3. Counsel for the plaintiffs urged the court to overrule the preliminary objection maintaining that the matter before the court was not a straightforward issue that can be disposed off by way of a preliminary objection. Counsel maintained that an inquiry was necessary to enable the court determine at what point the cause of action arose against the Commissioner of Lands. Counsel for the plaintiffs contended that the information pleaded in paragraph 11 of the plaint was still subject to inquiry. He explained that evidence will be led at an appropriate time to show that as at the year 2000, the cause of action had not arisen as engagements with the Commissioner of Lands revealed assurances that there was no cause of alarm and that the plaintiffs’ interest was intact.

4. It was submitted that the plaintiffs’ cause of action arose when the Commissioner of Lands

refused to sign their title. It was argued that the cause of action remained alive as long as the certificate of title was not signed, hence the prayer that the Commissioner be ordered to sign the certificate of title. Counsel for the plaintiff further pointed out that the applicable Act was not the Government Lands Act, but the Registration of Titles Act.

5. In reply, counsel for the defendants maintained that the applicable Act remained the Government Lands Act as the title deeds had not been signed and registered, so as to bring the provisions of the Registration of Titles Act into play.

6. I have given due consideration to the preliminary objection, and the submissions made by counsel. I have also carefully perused the pleadings. I find that the preliminary objection has not been well taken as it is based on contentious facts. The contentious fact is when the cause of action arose. Contrary to the submissions made by the defence counsel, paragraph 11 of the plaint does not reveal that the cause of action arose in the year 2000. Nor does it reveal the date when the cause of action arose. I agree with the plaintiffs' counsel that the date of the cause of action does not come out from the pleadings and will therefore be dependent on the evidence to be adduced. As was stated by Sir Charles Newbold, P in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributor Ltd [1069] EA*:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

7. It is clear that the date the cause of action arose is yet to be ascertained and therefore the preliminary objection has not been well taken. Accordingly, I overrule the preliminary objection and order the hearing of the suit to proceed on a date to be fixed in the registry.

Dated and delivered this 4th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -

Mulanda H/B for Namada for the plaintiffs

Mutuli for the 2nd defendants

B. Kosgei - Court clerk