



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Civil Suit 61 of 2008

1. Civil Law
 2. TORT
 3. Subject of main suit
 - a) Male adult passenger aged 26 years old in February, 9th 1993
 - b) Vehicle – Kenya government.
 - c) Motor vehicle road accident between two vehicle
GK 4263 and KWE 114 Lorry.
d) Passenger dies 9th February, 1993.
 4. Suit filed against Municipality Council of Kericho and 2nd defendant 7.2.96.
 - b) Defence entered 27th May, 1996 admits jurisdiction of court (para 4)
 - c) Parties change advocates
 - d) Hearing set for 23rd May, 2006. (Defendant served through registered post)
- (6.6.06) Hearing exparte
- e) Hearing Koome J one witnesses exparte hearing set aside 6.6.06
 - f) 17.9.98 parties amend Plaintiff and defence respectively
 - g) 8.10.04 case dismissed Kimaru J on application 21.11.07
 - h) Case adjourned after hearing PW1.
 - i) Case transferred to Kericho Courts
5. Application dated 21st November, 2007 by 1st defendant/Applicant
 - i) Suit is dismissed with costs.
Order 6 r 13 sub rule 1(a) (d) and Section 3a.

ii) Suit had in law frivolous

iii) Failed to comply with Section 3(1) of The Public Authorities Act.

iv) Date Plaintiff filed question.

- a) Dated 17th January, 1996
- b) Filed 7th February, 1996
- c) Letter shows receipt filed (vide letter 24.10.07) 8th February, 1996
- d) Action occurred on 9.2.93 suit be filed 9th February, 1994. Suit filed out of time
- e) 1st defendant suit be dismissed.
- f) Suit delayed for 10 years

6. **Held** - Case against Defendant No.1 time barred and struck out.

7. **Case Law** - Nil

8. **Advocates**

S.K.SIGIRA advocate instructed by the firm of M/s. Siele Sigira & Co. Advocates

for the 1st defendant/Applicant-present

A.C. Bett Advocate from M/s. Bett & Co. Advocates instructed to hold brief by F.O. Orege Advocates, M/S Rodi Orege & Co. advocates for the Plaintiff/Respondent

SYLVESTER ODERE OMOIT (suing as father and administrator to the estate of

NICHOLAS WANDERA PLAINTIFF/RESPONDENT

VERSUS

MUNICIPAL COUNCIL OF KERICHO1ST DEFENDANT/APPLICANT

PHILEMON KIPNGENO KORIR 2ND DEFENDANT/APPLICANT

RULING

Application to dismiss suit Order VI rules 13 sub rules 1(a) (d) and Section 3A of the Civil Procedure Act. Laws of Kenya

1: Application dated 21st November, 2007

1. The 1st defendant herein the Municipal Council of Kericho filed this current application of 21st November, 2007 seeking orders to “dismiss with costs” the plaintiff’s suit.

2. The application was grounded on **order VI rule 13 sub rules 1(a) and Section 3A** of the Civil Procedure Act Laws of Kenya.

3. This section states that

“At any stage of the proceedings the Court may order to be struck out or amended any pleading on the ground that

a) *It discloses no reasonable cause of action or defence or*

b) *It is otherwise an abuse of the process of the court and my order the suit to be stayed or dismissed or judgment to be entered accordingly as the case may be”*

4. The applicant herein sought for this whole suit to be struck out. The grounds being that the suit had been filed out of time.

III: Background of the case briefly

5. The deceased was a male adult aged 26 years old in 1993. He was a passenger allegedly in a G.K. vehicle G.K. 4263 when it collided with motor vehicle KWE 114 belonging to the 1st defendant and driven by the 2nd defendant.

6. The deceased died on 9th February, 1993. It was therefore that his legal representative took out letters of grant and filed this suit on 7th February, 1996. It was thereafter that parties have been to the High court at Nakuru and at one time actually had the evidence of PW1 heard. Those proceedings were later set aside.

7. The matter had been pending before this courts and n 21st November, 2007 when it was that the defendant filed the application to have the suit dismissed. This they stated was due to the Government proceedings Act and the delay of ten(10) years where no action had taken place.

8. The applicant prayed the suit be dismissed.

9. In reply the respondents prayed that the suit proceeds to hearing as the defendant had admitted the jurisdiction of this court at Para 4 of the original defence.

III: Opinion

10. The issue that this suit had been pending for ten (10) years does not arise because the claim herein for dismissal is not under **order XVI** Civil Procedure Rules for want of prosecution. In fact within the ten (10) years this case has been active but regretted that it had never been heard.

11. The applicant relied on the **Authority Act Cap 39** which requires a case on TORT accrues and filed within twelve (12) months. The applicant stated this was not the case. He did not quote the Section in the holding of the application to state that he would rely on this section of this particular act thereby giving notice to the other side, that being the reasons why the suit be struck out at the instance of the court.

12. In this case the application herein is correct in stating that this suit was filed three (3) years after the cause of action accrued or arose instead of one year as stipulated in the **Authorities Act Cap 39** Laws of Kenya.

13. The Plaintiff should seek leave to file the suit out of time. As it stands the suit against the 1st defendant is struck out. Against the 2nd defendant it is accordingly pending. There will be no orders as to costs as the delay was inordinate in this matter.

DATED this 15th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

S.K.SIGIRA advocate instructed by the firm of M/s. Siele Sigira & Co. Advocates

for the 1st defendant/Applicant-present

A.C. Bett Advocate from M/s. Bett & Co. Advocates instructed to hold brief by F.O. Orege Advocates,

M/S Rodi Orege & Co. advocates for the Plaintiff/Respondent