

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

Civil Case 1085 of 2006

BOLI FESTUS ANDREW SIOPLAINTIFF

V E R S U S

BOARD OF GOVERNORS OF ST MARY'S SCHOOL.....DEFENDANT

R U L I N G

This is an application (chamber summons dated 16th February, 2007) by the Defendant essentially under Order 6, rule 13(1)(a) of the Civil Procedure Rules (the Rules), for orders to strike out the plaint dated 11th October, 2006 and to dismiss the suit upon the ground that no reasonable cause of action is disclosed. The same is opposed by the Plaintiff.

I have considered the submissions of the learned counsels appearing, including the one case cited. It is submitted for the Defendant that the cause of action, which arose on 21st November, 2000, is founded on tort. The suit should thus have been filed, under section 4(2) of the Limitation of Actions Act, Cap. 22, within 3 years, that is, on or before 20th November, 2003. The suit was filed on 12th October, 2006, nearly three years out of time, and without extension of time by the court.

For the Plaintiff it is submitted that the cause of action is based on both tort and contract as pleaded in paragraphs 4, 7 and 8 of the plaint; therefore the suit is not statute-barred.

I have looked at the plaint. It does appear that the claim is based on both tort and contract. See paragraphs 4, 5, 6, 7 and 8 of the plaint. Inasmuch as the suit is based on tort, it is clearly statute-barred under section 4(2) of Cap. 22 aforesaid and the same cannot be sustained. But inasmuch as it is based upon contract, the period of limitation under section 4(1) of Cap. 22 is six years. That means that the suit is good if filed on or before 20th November, 2006. It was filed on 12th October, 2006.

I must therefore refuse the application. It is hereby dismissed with costs to the Plaintiff.

DATED AT NAIROBI THIS 22ND DAY OF JANUARY, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 25TH DAY OF JANUARY, 2008