

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 527 of 2004

PETER NJERU GATIMU.....APPELLANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

J U D G M E N T

By a plaint filed on 17th June, 2003, in Milimani CMCC No. 5214 of 2003, Peter Njeru Gatimu (hereinafter referred to as the appellant), brought a suit against the Hon. Attorney General seeking to recover payment of his terminal dues from the Ministry of Agriculture, Livestock and Marketing. In the statement of defence filed 25th July, 2003, the Attorney General pleaded that the plaintiff's suit offended the Public Authorities Limitations Act and the Government Proceedings Act. Subsequently a preliminary objection was raised on behalf of the Attorney General contending that the mandatory provision of Section 13 of the Government Proceedings Act were not complied with. It was also contended that the appellant suit was statute barred having been filed outside the statutory period provided under section 3(2) of the Public Authorities Limitations Act.

For the appellant it was contended that this suit was based on contract and therefore the limitation period was six years as provided by the limitation of Actions Act. It was maintained that the appellant was not a government officer, and that the Public Authorities Limitation Act was superseded by the Limitation of Actions Act. In his ruling the trial magistrate ruled that the appellant's suit was a suit against the government and therefore the government proceedings Act applied to it. The trial magistrate further found that under the Public Authorities Limitation Act the appellant ought to have filed his suit within 3 years. The trial magistrate held that the suit having been filed after the 3 year period it was statute barred. It therefore upheld the preliminary objection and struck out the suit.

The appellant has raised three grounds of appeal contending first, the trial magistrate erred in finding the suit was statute barred and secondly trial magistrate erred in failing to appreciate that the suit is based on contract of employment with the government of Kenya and the limitation period on contract is six years. Thirdly the trial magistrate failed to appreciate and considered the submissions made by the appellant's counsel.

During his submissions before me, the appellant who was in person, reiterated that the suit having been founded on contract the limitation period was six years as provided under section 4(1)(a) of the Limitations of Actions Act. He maintained that the Limitation of Actions Act is not excluded by the Public Authorities Limitations Act. He therefore urged the court to allow his appeal.

Looking at the plaint that was filed by the appellant it is clear that the appellant's suit was brought against the Attorney General on behalf of the Ministry of Agriculture Livestock and Marketing. As per the statement of its object, the Public Authorities Limitation Act, is an act of Parliament providing for the limitation of proceedings against the government and local authority. Section 2(2) of Public Authorities Limitation Act provides as follows: -

“For the purposes of this Act, proceedings against the government includes the proceedings against

the Attorney General or any government department or any public officer as such”.

In my considered view, the proceedings initiated by the appellant were proceedings covered by the Public Authorities Limitation Act. Section 3(2) of the Public Authorities Limitations Act provides that: -

“No proceedings founded on contract shall be brought against the government or a local authority after the end of three years from the date on which the cause of action accrued”.

The submission that the limitation of actions Act supersedes the Public Authorities Limitation Act cannot hold. For Section 42(1)(e) of the Limitations of Actions Act clearly excludes the operation of the Limitation of Actions Act to proceedings to which the Public Authorities Limitation Act applies. The appellant suit having been brought outside the 3 year period, it was statute barred. Accordingly I uphold the ruling of the lower court. I do therefore dismiss this appeal.

Dated and delivered this 27th day of May, 2008

H. M. OKWENGU

JUDGE