

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

Civil Suit 230 of 2006

AJAY INDRAVADAN SHAHPLAINTIFF

VERSUS

HARBANS SINGH AMRITDEFENDANT

RULING

THE Application for my determination is Chamber Summons dated 2nd April, 2008 by the defendant seeking;

- (1) That paragraph 7, 8 and 9 of the plaint be struck out.
- (2) Such order as to costs may be made as may seem just to this Honourable court.

The application was argued before me by Mr. Satish Gautama assisted by Mr. Ramesh Manek for the applicant and Mr. Billing for the respondent. It was contended by Mr. Satish Gautama that the claim based on the said paragraphs is unsustainable as they disclose no reasonable cause of action against the defendant hence the allegations contained in the said paragraphs are scandalous, frivolous and vexatious and may ultimately prejudice, embarrass and delay fair trial of this suit. Secondly it was the submission of Mr. Satish Gautama that the claims of the plaintiff are based on alleged causes of action amounting to commission of torts and criminal offence which are barred by limitation under the Limitations of Action Act Cap 22 Laws of Kenya.

On his part Mr. Billing submitted that the application has been brought to derail the suit coming up for suit and the same is an abuse of the court process. He therefore urged me to dismiss the application with costs.

I have considered the application and the submissions by counsel for both sides and my view of the matter is that there is nothing to suggest the plaint as drafted would in any way interfere with the rights of the defendant. The plaint is dated 3rd May, 2006 and it was filed in court the same day. The defendant filed a defence dated 19th June, 2006 and in the said defence the defendant answered all the allegations set out in the plaint. And on 12th July, 2006 the plaintiff filed reply to defence which was served upon the defendant. The present application was filed on 4th April, 2008. It is clear that on 22nd October, 2007 the parties set down the suit for hearing on 19th February, 2008 and it is also clear that on 21st February, 2008 the parties before the Presiding Judge and set down the suit for hearing on 19th and 20th May, 2008. Mr. Billing contended that the purpose of filing this application is to derail the suit scheduled for hearing on 19th May, 2008.

Having considered all the submissions of the learned counsels for the parties and having gone through the plaint and the defence, I am satisfied that issues raised by the defendant can be addressed and determined during the hearing of this suit. The issue of limitation, for example, is a question of evidence and that can only be done at the trial. The court will then be called upon whether the plaintiff fabricated facts to suit

the issue of limitation. It is therefore my view that the issue of limitation and the validity of the paragraphs subject of this determination can be determined at the hearing of the suit.

In the premises I am in agreement with Mr. Billing, learned counsel for the plaintiff that the purpose of the application is to scuttle the hearing of the suit since it was made too late in the day and the issues raised therein can be sufficiently and comfortably be attended to by the trial Judge in this suit. I therefore see no reason why the present application was filed and it is hereby dismissed with costs to the plaintiff.

Dated, signed and delivered at Nairobi this 19th day of May, 2008.

M. A. WARSAME

JUDGE