



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

Civil Case 1618 of 1995

MUSA HERSI FAHIYE 1ST PLAINTIFF

MUHAMEMD OMAR 2ND PLAINTIFF

VERSUS

SULEIMAN RAHIMTULLA OMAR 1ST DEFEDANT

ZARINA SULEIMAN OMAR 2ND DEFENDANT

RULING

APPLICATION TO ENJOIN C0-PLAINTIFF

CHAMBER SUMMONS 9 MAY 2008

I: Background

1. In 1990, it is alleged that a former ambassador to Kenya to the then Somali Government sold the official Residence of the Embassy of Somalia – this presumably without the knowledge of the then Government to defendant 1 and 2 .

2. The plaintiffs 1 and 2, former officials of the embassy as 1st counselor and attache' filed this suit in 1995 for the recovery for the said property back to the Government of Somalia. The defendants 1 and 2 entered appearance filed defence and have since changed advocates to represent them several times.

3. The suit has had several application filed including one for an injunction in 1996 that was heard by Ole Keiwua J (as he then was). The injunction was to restrain the defendants 1 and 2 from disposing of the property till the determination of this suit.

4. Kuloba J heard the case part heard on 27 May 2003. For four years the suit was not heard thereafter, partly due to the Hon. Judges retirement from the bench.

5. The defendants applied for security of costs. This was granted to them (Osiemo J) on terms. Applications herein, for security of costs, withdrawal of the injunction orders and or transferring this suit to the court at Milimani were withdrawn.

6. A subsequent application to struck out the injunction (a second one) was subsequently withdrawn.

7. The only pending application was dated 9 May 2008 seeking orders to enjoin the Republic of Somalia as a co plaintiff. The subject of this ruling.

II: Application 9 May 2008.

8. The proposed plaintiff, the government of Somalia prays to be enjoined as a co-plaintiff. The reasons being when the incident of fraud is alleged to have occurred thereafter, the Government of Somalia ceased to exist. It was not recognized by the Kenya Government and as a result it had no legal entity to sue and be sued. The former officials of the Somali Government filed suit mainly to lay recovery claim on the residence of the ambassador that was later used as an office when the embassy were unable to use the premises in the city centre.

9. The enjoinder of the Government of Somalia was essential. The government has now formed and therefore it is imperative that they be enjoined.

III In opposition.

10. The respondent replied in opposition on grounds that the said co-plaintiff, so proposed, and was time barred by the Limitation of Actions Act Cap. 22 Laws of Kenya.

11. The time of suing a defendant and bringing such action was 12 years where the case is for contract the time limitation is 6 years. The defendant therefore notes the plaintiff is out of time bringing in this suit.

12. The procedure to court should further have been similar to Order XXXI r 1 and 2 Civil Procedure Rules, an application to discharge plaintiff.

IV) Finding

12. The case before court is based on fraud. Under the Limitation of Actions Act Cap.22 there is no limit in which one can bring an action to court.

13. A claim under fraud may be brought to court as soon as it is discovered. I therefore reject the defendants arguments.

14. As to the issue that the procedure of bringing this application be similar to Order XXXI Civil Procedure Rules, namely bringing a suit as a next of friend for a minor or a mentally ill person? The situation does not arise as the plaintiff are adults. The proposed co plaintiffs ceased to exist but is now functioning.

15. In order to determine this suit the parties to be enjoyed, whose interest be safe guarded is hereby granted with costs to the applicant to be paid by the respondent. That the application is granted and that the plaintiff to file amended plaint within 14 days and the defendant [an amended defence] within 14 days.

DATED THIS 3RD DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

I. Hassan instructed by Ahmed Issack & Co. Advocates for the plaintiff - present

S. Luseno instructed by Majana Luseno & Co. Advocates for the Respondent – present