

REPUBLIC OF KENYA

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

Civil Appeal 10 of 2002

GEORGE OKEYO ODIPO (Suing on behalf of the estate of ERIC ODIPO OKEYO
APPELLANT

VERSUS

NAIROBI CITY COUNCIL
RESPONDENT

*(An appeal from the Judgment and Decree of Principal Magistrate of Honourable R.E. Ougo
(Mrs) in Nairobi CMCC No. 11606 of 1999 dated 9th January, 2002)*

JUDGMENT

There is only one issue in this Appeal: whether the Appellant's suit in the Lower Court was time-barred and, therefore, incompetent.

The relevant portion of the Lower Court's Judgment speaks for itself. Here is what the learned Magistrate said:

“However, the suit before me is time barred. It is on record that the Plaintiff applied for leave to file this suit out of time. An order was given by the High Court on the 8th of December, 1999 that the plaint in this suit was to be filed within 14 days from the 8th December, 1999. The last date the plaintiff could have filed suit from 8th December, 1999 was 21.12.99. The court stamp on the plaint bears a stamp of 22.12.99 and there is a receipt dated 23.12.99. This suit was actually filed on the 23.12.99. Counsel has attempted to explain what happened but even if I were to take it that they paid on the 22.12.99, the suit was still time barred. As a court of law, I cannot deal with an incompetent suit. I must uphold the law at all times. I therefore find that this suit is incompetent. It is time barred. For this reason I dismiss the suit with costs to the defendants.”

Now, a simple arithmetical calculation of 14 days from 8th December, 1999 is actually 22nd December, 1999 – the day the suit was filed – not 21st December, 1999.

I believe the learned Magistrate misled herself in counting the 14 days from the date of the Order. In accordance with O.49 R.7 of the Civil Procedure Rules, in computing time, the first day is excluded and the last day included. Therefore, the Lower Court was clearly wrong in dismissing the suit on the ground that it was time-barred. It does not matter that the fees were paid on 23rd December, 1999. There was a good explanation why the receipt for fees showed the date of 23rd December, 1999. However, it is not when the receipt is issued, but when the documents are presented to the Registry, that determines the date of filing.

The Appeal is allowed with costs, both here and in the Lower Court, and the Lower Court's Judgment on liability and damages (that is determined in the event of a successful Appeal) is upheld.

Dated and delivered at Nairobi this 13th day of March, 2007.

ALNASHIR VISRAM

JUDGE