



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

Civil Case 617 of 2005

1. Land and Environmental Law Division
2. Subject of main suit sale agreement of house
 - i) Mara Savannah Estates No.137
LR Nairobi/Block/82/1761
 - ii) Unilateral increase of purchase price
 - iii) Plaintiff files suit for injunction not to evict him
 - iv) Application 23.5.05 struck out as being incompetent and time barred. Mugo J.17.6.05
 - v) Deputy Registrar draws decree “Suit dismissed.”
3. Application 27.6.07
 - i) To correct decree to read application dismissed and not suit dismissed
4. Held:
 - 1) Order 17 r 10 Civil Procedure Rules applies on the courts jurisdiction.
 - 2) Application granted
5. Case law – Nil
6. Advocates:

A.M. Mureithi for Wandabwa & Co. Advocates for the plaintiff/applicant
N.D. Ouko for A.N. Ngunjiri & Co. Advocates for the defendant/respondent

CHARLES A. OKELLO.....PLAINTIFF

VERSUS

KAIRU ENTEPRISES LTD.....DEFENDANT

RULING

I: Background of application 27 June 2007 to correct a decree of the court

1. This suit originally came before Mugo J for hearing inter-parties of an application for an injunction dated 23 May 05.

2. A brief back ground of the main suit according to the plaint is that the plaintiff alleges to have entered a sale agreement to purchase a house known as Mara Savannah Estate No.137 (LR Nairobi/Block/82/1761) sometime in 1991. The respondent/defendants allegedly increased the purchase price unilaterally. The plaintiff filed suit to restrain the defendants from evicting him from the said property on 23 May 2005.

3. No temporary injunction was issued but parties were ordered that the matters be heard inter – parties Ransely J (23 May 2005 and 6 June 2006). The file was placed before Mugo J. She dismissed the application on grounds that the contract was entered on 25 June 1991” and therefore the plaintiffs “ought to have applied for enlargement of time for filing suit.”

That “The application cannot be allowed in the circumstances and is hereby dismissed the suit being statute barred.”

4. A decree was drawn up. This decree read:-

“It is ordered

1. That this suit be and is hereby dismissed.”

5. The plaintiff applied to this court for the correction of that decree. The said application of 27 June 2007 is the subject of this ruling.

II: Application 27 June 2007

6. The plaintiff/applicant seeks the court to correct the orders to read that the application was dismissed. The main suit is still alive and was never dismissed though the Hon. Judge commented that it was statute barred.

7. The respondent filed a replying affidavit late though on the court file no such pleading had actually been filed to court.

8. The application would be taken as not being opposed.

III: Finding

9. The said orders of the judge is that the application for injunction was dismissed. The reasons given is that the main suit was in effect time barred. The decree would accordingly read as ordered by the Hon. Judge. This decree I understand is therefore to be subject of an appeal?

10. I would correct the decree to read as per the order of the Hon. Judge, namely

“ The application dated 23 May 2005 be and is hereby dismissed.”

IV) Costs

I award costs of this application to the applicant/plaintiff.

Dated this 18th day of September 2007 at Nairobi.

M.A. Ang'awa

Judge

A.M. Mureithi for Wandabwa & Co. Advocates for the plaintiff/applicant

N.D. Ouko for A.N. Ngunjiri & Co. Advocates for the defendant/respondent