

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 62 of 2005

MACHARIA MARIU.....

PLAINTIFF

VERSUS

JOSEPH NGUTHIRU KANG'ARU.....

.....DEFENDANT

RULING

The defendant brought this Chamber Summons under Order VI Rule 13 and Rule 16 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for orders that the defendant's defence be dismissed as it discloses no cause of action.

The application is based on the ground that the suit is time barred by virtue of the provisions of the Limitations of Actions Act Cap 22 Laws of Kenya.

The application is also supported by a sworn affidavit of the applicant in which he avers that this is based on a contractual Agreement and under Section 4(a) of the Limitation of Actions Act Cap 22 any actions founded on contract may not be brought after the end of 6 years. According to counsel for the applicant the cause of action arose on 9th August 1990 and therefore the suit is time barred.

The application is opposed by the plaintiff who has filed Replying Affidavit in which he avers that the suit should not be struck out as the same raises triable issues.

Counsel for the plaintiff submits that the claim falls under Section 7 of the Limitation of Actions Act Cap 22 and not under Section 4 of the statute Section 7 provides:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims to that person.”

It is clear from paragraph 8(e) of the plaint that what the plaintiff is seeking is Recovery of Land i.e retransfer of L.R. NO.IRIAINI/KAIRIA/106 back to him so that the claim falls under Section 7 of the Act.

The defendant's Chamber Summons dated 3rd March 2005 is therefore dismissed with costs.

Dated and delivered at Nairobi this 14th day of September 2006.

J.L.A. OSIEMO

JUDGE