

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1725 OF 2000

RULING

ON A PRELIMINARY OBJECTION

The advocate for the defendant raises a preliminary objection to this running down cause which involved the alleged personal injuries sustained by the plaintiff. The suit is in tort. The objection was also raised in the defence filed on the 7.12.00 Namely:-

“The defendant tenders its defence without prejudice to the right to raise and argue a preliminary point that this suit is statute barred for contravening the provisions of the Limitation of Actions Act (cap 22) Laws of Kenya.”

In reply to the defence the plaintiff stated:-

“that the claim is good in law.”

The defendants argument was that this suit was filed on 23.10.00 when the cause of action arose on the 22.1.96. This is a period of 4 years. The said law of Tort required that a suit be filed within 3 years. The defendant prayed for the defence to be struck out. The plaintiff advocates in reply stated that he had indeed filed an application for leave to file suit out of time granted by Aganyanya J. This leave was infact not served on the defendant and thus was an omission on the plaintiffs part.

I am quite clear with the Law under the Limitation of Action Act. There must indeed be a suit filed within 3 years in the case for Tort. This suit must be brought within the specified time. If it is the government or a government body, the period is within 1 year. Cases of defamation liable is also one year. The plaintiffs claims to have obtained the leave to file suit out of time. This is indeed permitted by way of an Originating Summons exparte before a judge. The issue of limitation would thereafter be raised in the trial. The law requires that once leave is obtained it is mandatory that such orders must be typed on the body of the plaint at the heading.

I therefore find that the defendant nor the court had no idea that such a leave was granted even after the defence raised this question. The reply to the defence should have disclosed this fact. In the absence of the discloser – if indeed there were such orders, I hereby allow the Preliminary Objection and struck out the suit with costs to the defendant.

Dated this 20th day of May 2004 at Nairobi.

M.A. ANG’AWA

JUDGE

C.N. Kihara & Co. Advocates for the plaintiff

L.G. Kimani & Co. Advocates for the defendant

