



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO 593 OF 2003**

**MURANG'A COUNTY COUNCIL ..... APPELLANT**

**VERSUS**

**JULIUS KAMAU RUGI ..... RESPONDENT**

**JUDGMENT**

The Appellant is a local authority. On 19th April, 2004, the Respondent filed a suit against it in the lower court in which he sought general damages and costs and interests on those awards at commercial rates. The Appellant later amended his Complaint and included a further claim for Kshs.149,260/=. The Respondent's case was that in 1999 the Appellant's officers arrested and detained his motor vehicle and arrested his employees and prosecuted his driver with "false and fabricated charges". According to the Respondent's Amended Complaint, the Appellant's actions aforesaid cost him great expense including legal fees, witness expenses and time. The Appellant's actions also caused the Respondent to relocate his business from the Appellant's jurisdiction at a further cost.

In its Amended Defence to the action, the Appellant admitted impounding the Respondent's motor vehicle but denied arresting his driver. The Appellant further averred that the Respondent's suit was contrary to the Public Authorities Limitation Act (Cap 39). The record of the lower court shows that before the trial commenced, counsel for the parties consented that the issues to be decided were "whether or not the claim is time barred in view of Limitation of Actions Act (and) whether the Defendant (Appellant) is liable to compensate the Plaintiff (Respondent)".

In his testimony in the lower court, the Respondent said that the Appellant detained his motor vehicle on 22nd October, 1999.

Although the Learned Magistrate referred to the Limitation of Actions Act in her Judgment, one can see from the written submissions filed by the Counsel for the contending parties that they were in agreement that a suit of this nature against the Appellant was required to be filed within one year of the accrual of the cause of action. The Trial Magistrate alluded to this fact in her Judgment. In fact, the governing Act in these matters is Section 3 (1) of the Public Authorities Limitation Act (Cap 39) which the Appellant raised in its Defence. That subsection provides as follows:

*"No proceeding founded on tort shall be brought against the government or a local authority after the end of twelve months from the date on which the cause of action accrued."*

I must repeat that the parties were in agreement that this action was required to be brought within one year of its accrual. The only point of departure was as to when the cause of action accrued. The

Appellant's position is that the cause of action accrued when the Respondent's motor vehicle was detained on 22nd October, 1999 so that the action had to be filed by 21st October, 2000. The Respondent's position was different. According to him, the cause of action accrued on 14th May, 2001 when the last of the criminal cases against his driver was concluded. According to his counsel, he could not bring this action until all the criminal cases (against his driver) were determined in his favour. The suit having been filed in April 2002, it was argued, was in time.

How did the Trial Magistrate deliver herself on that matter? She agreed with the Respondent's Counsel's submission in part in respect of claims based on the last criminal action. Unfortunately she did not establish on what basis she severed the claims but nothing substantial turns to that in this appeal.

The Appellant was aggrieved by the decision of the lower court and filed the present appeal. The Appeal is based on seven grounds set out in the Memorandum of Appeal. For reasons which will become apparent shortly I will consider only two Grounds. In one of the Grounds, the Appellant stated that the Respondent did not have locus standi to found an action on criminal charges which were brought against his driver who was not a party to the suit. In another, the Appellant stated that the Respondent's claim founded on loss of business was time barred.

Mr Ndichu for the Respondent did not proffer any authority to support his position that his client's cause of action accrued after the conclusion of the last criminal case against the Respondent's driver. Mr Mwaniki for the Appellant on his part referred me to the case of *Thuo vs The Attorney General (1977) KLR 89* where this court (SHERIDAN, J.) held that where a Plaintiff alleges that goods belonging to him have been unlawfully seized under the Imports, Exports and Essential Supplies Act and a demand for their return is refused, his cause of action accrues at the date of seizure not at the date of the subsequent refusal to return the goods. The same Judge went further and held that the position is not affected by abortive proceedings brought by the state under certain sections of the Act. I agree with him. The Respondent's action for detention of his motor vehicle accrued when it was detained by the Appellant. It did not depend on the result of criminal proceedings against his driver. The action for loss of business arising from the detention was therefore time barred and ought not to have been entertained by the Court below. That, in my view, was the basis of the whole claim. However, seeing the position taken by the Counsel and the Trial Magistrate, I will say further as follows.

The Respondent himself was not at any time arrested and prosecuted. It was his driver who was arrested and prosecuted. Whether those acts were lawful or not could only be agitated by the driver and not the Respondent. The Respondent was, therefore, not entitled to found any action on acts which were not visited on him personally but on his driver.

Having said the foregoing, I do not think that the Trial Magistrate properly guided herself when she entered Judgment for the Respondent as she did. The Respondent's claim was statute barred and in some respects based on a cause which was not his. On this conclusion alone, I do not find it necessary to go into the other matters raised by Counsel as none of them would affect the decision I have come to.

I, therefore, allow this appeal and set aside the Judgment and decree of the lower court and substitute the same with an order dismissing the said with costs to the Appellant. The Appellant will also have the costs of this appeal.

Dated and delivered at Nairobi this 24th day of June, 2004.

**ALNASHIR VISRAM**

**JUDGE**

