

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HCCC. NO 90 / 2000

FREDRICK KIBET CHESIRE

PLAINTIFF

VERSUS

RAYMOND W. BOMETT..... DEFENDANT

RULING

I have taken into account the issues raised in the preliminary objection that is now before me, and the submissions of both counsel and I do note that it was not very strenuously opposed, save that Mr. Ngeno for the defendant intimated that should the preliminary objection be upheld, then the court should find that all consent orders entered between, the parties should of essence be declared null and void as the defendants counsel might not have had an audience before the court. He also took issue with the timing of his objection and in the alternative urged this court to find that the plaintiffs are estopped to raise their objection at this stage.

It is common ground that this suit was commenced by way of a plaint on 10th January 2000. It is also common ground that since then, the plaint has been amended not only once, but twice. It is also on record that at no time did the plaintiff counsel raise the objections that he raises now, during the four years while the suit has been a waiting prosecution. Needless to say, the parties have entered consent without the plaintiff raising a finger on any one as the occasions. What I am leading to is a finding that it is rather late in the day, for the plaintiff's counsel to take a preliminary objection at this stage. It is trite law that preliminary objections should be taken at the earliest available opportunity. This one cannot be an objection that would qualify to fall within the ambit of preliminary objections that can be upheld in the circumstances. I do therefore dismiss it with costs.

Dated and delivered at Eldoret this 29th day of June 2004

JEANNE GACHECHE

JUDGE

Delivered in the presence of:-