

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1269 OF 2000

FRANCIS MUKUNGA WAWERU.....PLAINTIFF

VERSUS

ATTORNEY GENERAL.....DEFENDANT

RULING

There was a preliminary point raised by Mr. Okello and argued in Limine that the suit here is time barred and that the plaint is not accompanied by a verifying affidavit as required under Order 17 and therefore, defective and that because the affidavit is defective and does not comply with requirements of Order 18 of the Civil Procedure Rules in that it fails to distinguish between averments of knowledge and belief or grounds and source of the same, thirdly, that quashing the Commissioner's action ought to be by a Judicial Review application for certiorari and order for reinstatement.

Mr. Rakoro for Plaintiff opposes the application saying that while he was dismissed in 1990, he appealed in 1992 and appeal was dismissed in 1999 and result conveyed to him by letter of 23.03.2002 after when he sent notice of intention to sue on 29.03.2002 and suit was filed on 9.08.2000 which was within time under both the Public Authorities Act Cap 39 and the Limitation Act Cap 22 of the Kenya Laws. He also said that verification affidavit does not offend Order 18.

The preliminary objection here is in all the grounds cited cannot be sustained. They are not decisive in law. The first question of Limitation depends on the time calculated from the date the cause action arose. It is obvious the dates are not agreed neither is it agreed whether the cause of action arose after the appeal or on communication of the decision of that appeal to the Plaintiff. The objector has not stated which date is relied on, and as for verification affidavit, I have noted this to have been an affidavit of knowledge and there cannot be any doubt. The third issue does not arise as Plaintiff abandoned the last prayer.

The principle upon which the Court orders preliminary point is now trite following Court of Appeal decision in the case of MUKISA BISCUIT MANUFACTURING COMPANY LIMITED vs. WESTEND DISTRIBUTORS COMPANY LIMITED (1969) EA 696.

These points raised are not consonant and must fail. Preliminary objection refused.

DELIVERED this 26th day of September 2003.

A. I. HAYANGA

JUDGE

Read to Mary for Applicant