



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2646 OF 1993

JOSEPHAT MUREU GABIGUTA.....PLAINTIFF

VERSUS

HOWSE & MC GEORGE LTD.....DEFENDANT

RULING

Mr. Muiruri learned Counsel for 2nd defendant raised a preliminary objection to the suit. Plaintiffs suit is for general damages for unlawful arrest, false imprisonment and malicious prosecution.

Plaintiff pleads in paragraph 6 of the plaint that first defendant laid a false malicious claim to the police that plaintiff had stolen shs 20,000 from first, defendant as a result of which plaintiff was unlawful arrested falsely imprisoned and maliciously prosecuted in criminal case no. 424 of 1990. he pleads in para 7 of the plaint that he stood trial in criminal case no. 422 of 1990 and was eventually acquitted on 17.11.92.

The first objection is that the suit is time barred by virtue of s. 3(1) of the Public Authorities limitation Act. By that section a suit in tort against the Government has to be instituted within 12 months from the time the cause of action arose.

The 2nd defendants counsel contends that the cause of action arose on 17.1.90 and that suit was filed on 31.5.93 more than 3 years after the cause of action arose.

In an action for malicious prosecution the cause of action does not arise until the termination of the prosecution in favour of the plaintiff – Mbowa versus East Mengo Administration (1972) E.A 352.

So, in this case the action for damages for malicious prosecution is not time barred because the suit was filed within 12 months from the date of acquittal what about the claim for unlawful arrest and false imprisonment?

The 2nd defendants counsel submitted that cause of action for unlawful arrest and false imprisonment arises when the arrest and false imprisonment terminates or the person is committed to Judicial custody.

But this is not a case where plaintiff was arrested and detained and then released without a charge.

Had the plaintiff been arrested, detained and then released without a charge then the cause of action would have arisen when he was released in this case the plaintiff was prosecuted and acquitted on 17.11.92. Plaintiff is saying that first defendant made a false claim to police who without proper investigation prosecuted him. It is the fact of acquittal which according to the plaintiff makes the initial arrest and detention unlawful.

A cause of action means all facts which the plaintiff would have to prove to succeed - Mbova versus East Mengo Administration (supra). In this case in order to prove that the arrest and detention was unlawful plaintiff would have to prove that the fact of acquittal.

In my view the arrest, detention and prosecution consists of one transaction which has given rise to the plaintiff's claim. In the circumstances of this case the cause of action for damages for unlawful arrest and false imprisonment arose only when plaintiff was acquitted. I am satisfied that plaintiff's entire suit is not time barred.

The second objection is that the Notice to the Attorney General does not comply with section 13A(2) of the government proceedings Act. Plaintiff's counsel gave a Notice of intended suit dated 23.2.93 to the Attorney General.

The Notice shows that plaintiff intended to sue Attorney General on behalf of the Commissioner of Police.

The Notice also contains the circumstances giving rise to liability. As a result of the Notice the Attorney General by a letter dated 3.3.93 copied to plaintiff's advocates sought instructions from the Commissioner of Police. The Attorney General apparently obtained instruction because he filed a defence on 29.9.93.

The Attorney General does not in the Defence plead that the Notice is inadequate or a nullity. The Notice is defective in form but that defect cannot defeat the plaintiff's suit as no prejudice was caused to the Attorney General.

For the foregoing reasons I dismiss the preliminary objection with costs.

E. M. Githinji

Judge

8.5.2002

Mr. Rioba for 2nd Defendant present

Mr. Chacha absent