



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 90 OF 1999

JOHN KIMANI NJOROGE PLAINTIFF

VERSUS

SERAH NJERI MWABI DEFENDANT

RULING

The plaint in this suit was first filed on 8th February 1999. There are 2 amendments. By application dated 13.9.2000 the defendant filed a Notice of Motion under order VI rule 13 Civil Procedure Rules praying that the plaint be struck out as it discloses no cause of action and alternatively that the claim is time barred under Limitation of Actions Act and that the defendant be permitted to prosecute his counter claim.

In the argument counsel for the applicant simply said that the suit is time barred under our Limitations of Action Act. He referred to authority of Reeves v. Butcher 1891 2QB 589. This is an action for payment of money and it was held that time begun to run from the earliest time at which the plaintiff could have brought her action after default of payments. The other authority of Dismore v. Milton (1938) 3ALLER was in relation to a suit of Libel. It was held that where it appears from a statement of claim that the plaintiff's cause of action arose at a time before the period prescribed by the statute of Limitations, it is not possible for the defendant to have the statement of claim struck out on the ground that it shows no cause of action" These cases relate to English decisions and should not be lied upon heavily there being our statute and several cases decided on our statute. This case concerns sale of land. It is clear from pleadings that the plaintiff purchased the plot and paid the price and was put into possession. The issue of registration is a formality to be completed in respect of registered title. The contract is completed upon payment of price and taking of possession. This in my view is an issue to be decided at trial with evidence. Also the land here has been registered twice. There is no evidence from the defence as to what period he limitation of actions has taken effect. At this stage this court is unable to say that the suit is time barred. In any case there is a counterclaim pleaded by the defendant arising out of the same transaction. Justice of the case demands that the suit do proceed to the full hearing. I do not find that the plaint shows no cause of action or that here is sufficient evidence to show that the case is time barred.

I therefore find no merit in the application which is hereby dismissed with costs.

Dated this 24th day of June 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in presence of Mr. Nzili and Mr. Kimani

J. KHAMINWA

COMMISSIONER OF ASSIZE

Mr. Kimani: -

I apply for copies of pleadings and certified decree and leave to appeal.

Mr. Nzili: -

No objection.

Court: -

Orders granted as prayed. Payment of copying charges by applicant.

J. KHAMINWA

COMMISSIONER OF ASSIZE