



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 425 OF 2017

DR. EDGAR KADENYIPLAINTIFF/APPLICANT

VERSUS

THE ATTORNEY GENERAL

THE KAKAMEGA MUNICIPAL COUNCIL.....DEFENDANTS

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION..... INTERESTED PARTY

RULING

The application is dated 2nd May 2019 and is brought under Section 3A of the Civil Procedure Code, Order 22 Rule 18 (1) of the Civil Procedure rules, Article 159 of the Constitution, seeking the following orders:-

1. That the National Water Harvesting & Storage Authority, the interested party herein, do allow the Government Valuer to enter the suit land parcel No. Kakamega Town/Block 11/170 for the purpose of valuating the said land.
2. That the costs of this application be provided for.

It is premised on the following principal grounds that judgment was delivered in this matter on 4th February, 2000 by Hon, Justice B.K. Tanui, in favour of the plaintiff/applicant herein. That in the judgment, the court ordered that the plaintiff/applicant be paid the monetary value of his plot as on 1st May, 1982 and that the value is to attract an interest at the rate of 12% from the said date upto when the suit was filed, when it will be at the court's rate until it is paid. That further, the court ordered a valuation report of the said plot to be carried out by a firm of Valuers to be mutually agreed upon by parties. That subsequently, the parties herein agreed that the valuation of the suit land be carried out by the Government Valuer. That the said valuation was scheduled for 25th April, 2019 and all parties herein were in attendance, save for the Attorney General. That the valuation exercise however failed to take place as the interested party herein claimed inter alia, that it was not a party to this suit and hence could not allow the Government Valuer to conduct the valuation exercise on the suit land. That the plaintiff/applicant wishes to have the suit land valued and wishes to have this matter come to a fruitful end, and cannot do so as the interested party is stopping all efforts to have the valuation exercise, which was ordered by this court, to be conducted. That it is in the interest of justice that the prayers sought are granted, the plaintiff/applicant wishes to enjoy the fruits of the judgment and will suffer substantial loss if the orders sought are not granted, and further, the defendant/respondent and the interested party herein will suffer no harm if the orders sought herein are granted.

The interested party (National Water Conversation and Pipeline Conversation) herein objects and opposes the Notice of Motion dated 2nd May, 2019 on grounds that the Notice of Motion Application has no legal basis to found a cause of action against the interested party herein and should be dismissed. That the judgment sought to be executed by the plaintiff/applicant is statute time barred as per the provisions of section 4 (4) of the Limitation of Actions Act Cap 22 Laws of Kenya. That the plaintiff/applicant did not comply with Order 22 Rule 18 of the Civil Procedure Rules, 2010 (Order XXI Rule 18 pre-2010 procedures) on the procedure(s) of execution of the subject judgment. That the interested party is in adverse possession of the subject suit land in accordance with section 7 of the Limitation of Actions Act, Cap 22 Laws of Kenya. That the plaintiff/applicant did not seek any leave to execute the judgment out of time, and if the same was ever sought, the application was never served on the interested party. The application should be dismissed accordingly. The 1st defendant corroborated the interested party's submissions.

This court has considered the application and the submissions therein. The applicant submitted that, judgment was delivered in this matter on 4th February, 2000 by Hon, Justice B.K. Tanui, in favour of the plaintiff/applicant herein. That in the judgment, the court ordered that the plaintiff/applicant be paid the monetary value of his plot as on 1st May, 1982 and that the value is to attract an interest at the rate of 12% from the said date upto when the suit was filed, when it will be at the court's rate until it is paid. That further, the court ordered a valuation

report of the said plot to be carried out by a firm of Valuers to be mutually agreed upon by parties. That subsequently, the parties herein agreed that the valuation of the suit land be carried out by the Government Valuer. That the said valuation was scheduled for 25th April, 2019 and all parties herein were in attendance, save for the Attorney General. That the valuation exercise however failed to take place as the interested party herein claimed inter alia, that it was not a party to this suit and hence could not allow the Government Valuer to conduct the valuation exercise on the suit land. Section 4 (4) of the Limitation of Actions Act (Act) which provides:

“4. (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due”.

From the above provision, it is apparent that Section 4(4) of the Limitation of Actions Act is unclear as to what the term “an action” refers to. The term refers to the institution of a fresh action and/or to any sort of action taken in executing the judgment. The case of **Willis Onditi Odhiambo vs Gateway Insurance Co. Ltd (2014) eKLR** the court was clear that Section 4(4) of the Limitation of Actions Act covers execution of Judgments. In the case they stated that;

“In other words the appellant wanted to execute the said decree against the respondent out of time. Execution of judgments and/or decrees is governed by section 4(4) of the Limitation of Actions Act which is in the following terms-“4(4) an action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered”.

The judgment which the appellant sought to execute was passed on 26th August, 1996. The judgment should therefore have been executed on or before 27th August, 2008”.

Again also in the case of **Hudson Moffat Mbue –vs- Settlement Fund Trustees & 3 Others (unreported) ELC No 5704 of 1992(OS) Mutungi J.** while considering the application of Section 4(4) of the Limitation of Actions Act stated that;

“What I understand the law to be is that once a judgment has been rendered, execution of that judgment must be commenced within the 12 year period otherwise you cannot obtain a judgment and fail to do anything about it and after 12 years have expired seek to execute the same. Section 4(4) of the Limitation of Actions Act will bar you from carrying on with such execution”.

From the above authorities, it is therefore clear that the Section 4(4) of the Limitation of Actions Act, governs execution of Judgments and decrees. Judgement in this case was entered on the 4th February, 2000 the same expired on the 3rd February, 2012. Any attempt to execute the same in 2019 was void abinitio. I find this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23RD MARCH 2021.

N.A. MATHEKA

JUDGE