



REPUBLIC OF KENYA



Arai (Suing on behalf of herself and on behalf of Estate of Margaret Njeri Njuguna) v Attorney General & 2 others (Civil Case 4 of 2016) [2023] KEHC 17670 (KLR) (17 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE 4 OF 2016**

SM GITHINJI, J

MAY 17, 2023

BETWEEN

**MARIAM NJERI ARAI PLAINTIFF
SUING ON BEHALF OF HERSELF AND ON BEHALF OF ESTATE OF
MARGARET NJERI NJUGUNA**

AND

**ATTORNEY GENERAL 1ST DEFENDANT
NATIONAL POLICE SERVICE COMMISSION 2ND DEFENDANT
SALIM MOHAMED 3RD DEFENDANT**

RULING

1. This ruling is in respect to a notice of preliminary objection filed by the 1st Defendant on September 30, 2021. The Objection is dated 5th August 2021 and premised on the ground that this Court lacks jurisdiction to hear and determine the suit by virtue of section 3 of the [Public Authorities Limitation Act](#) (the Act), Cap 39, Laws of Kenya.
2. Following this court's direction that the Objection be canvassed by way of written submissions as opposed to dismissing the same for want of prosecution, the Plaintiff filed her submissions on 7th March 2023. There was nothing from the Defendants' side.

The Plaintiff's Submissions

3. To define the origin and extent of the High Court's jurisdiction, Counsel for the Plaintiff directed this court to Article 165(3) of the [Constitution](#) of Kenya and that the importance of a court's jurisdiction was illustrated in the cases of [Owners of Motor Vessels "Lillian S" v Caltex Oil Limited](#) [1989] KLR 1 and [Samuel Kamau Macharia and another v Kenya Commercial Bank Limited and 2 others](#) [2012] eKLR.



4. Counsel submitted that since the cause of action accrued on 17th February 2015, and the suit filed on 17th February 2016, the Plaintiff was well within the prescribed time limit under section 3 of the Act. Counsel took issue with the fact that the objection was filed several years upon institution of the suit and after the amended Plaintiff and Statement of Defence were filed. To the Plaintiff, the Objection was an afterthought. Counsel urged the court to dismiss the Objection and award costs to her.
5. Having considered the Preliminary Objection, submissions and authorities filed, I find that the sole issue for determination is whether the Preliminary Objection is sustainable.

Analysis and Determination

6. In considering preliminary objections, the locus classicus *Mukisa Biscuits v West End Distributors Limited* [1969] EA 696 definitely invites itself to the mind. Law JA and Newbold P in that case explained as follows; -

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

7. The Objection herein touches on the jurisdiction of this court on a plea of limitation, and the law or provision said to be breached is also clearly stated on the face of the Notice. It therefore qualifies as a pure and clear point of law. In other words, the objection fits the description of a preliminary objection. What follows then is the question, is the Preliminary Objection as raised sustainable?

Section 3(1) of the Act, cited by the 1st and 2nd Defendants reads; -

“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”

8. A cursory perusal of the Plaintiff and Amended Plaintiff, establishes that the Plaintiff relies on the tort of negligence. It is also clear that cause of action accrued on 17th January 2015 when the 3rd Defendant allegedly caused grievous injury to the deceased Margaret Njeri, causing her death on 28th February 2015. Time therefore started to run from 17th January 2015, when the 3rd Defendant shot the deceased. The present suit was first filed on 17th February 2016, obviously one month outside the 12 months limitation period stipulated under section 3 above.
9. In the case of *Haron Onyancha v National Police Service Commission & another* [2017] eKLR, the Court considered the effect of a statutory bar to a case and applied the case of *IGA v Makerere University* [1972] EA 65, where it was held: -

“A Plaintiff which is barred by limitation is a Plaintiff "barred by law". Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court "shall reject" his claim. The appellant was clearly out of time, and despite opportunity



afforded by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought. ”

Law, Ag. V. P in the same case inter alia stated thus: -

“...The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the pleadings, the suit must be rejected.”

10. The Court further relied on the case of *Mehta v Shah* [1965] EA 321, where Grabbie JA in his judgment stated as follows: -

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

11. The Defendants fall within the description of government and local authority described in the Act, and in the foregoing circumstances, there is no doubt that the Plaintiff was filed in contravention of Section 3(1) of the Act.

12. The plea of limitation as seen in the Mukisa Biscuit case [*supra*] goes into the jurisdiction of a court to entertain claims and therefore if a matter is statute barred, the court has no jurisdiction to entertain the same. In *Bosire Ogero v Royal Media Services* [2015] eKLR, the court had this to say:

“The law of limitation of actions is intended to bar the Plaintiffs from instituting claims that are stale and aimed at protecting Defendants against unreasonable delay in the bringing of suits against them. The issue of limitation goes to the jurisdiction of court to entertain claims and therefore if a Matter is statute barred, the court has no jurisdiction to entertain the same. And even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the court cannot entertain a suit which it has no jurisdiction over. See the case of *Pauline Wanjiru Thuo v David Mutegi Njuru* CA 2778 of 1998. It is for that reason that the issue of jurisdiction must be raised at the earliest opportunity. As has been severally held, jurisdiction is everything, without which, a court of law downs its tools in respect of a matter before it the moment it holds the opinion that it is without it. (see *Owners of Motor Vessel “Lillian S” v Caltex Oil (k) Ltd* (1989) KLR 1 Per Nyarangi JA. See also the Court of Appeal decision in *Owners and Masters of Motor Vessel “Joey” v Owners and Masters of the Motor Tugs “Barbara” and “Steve B.”* [2008]1 EA 367 where, echoing the decision in the case of *Owners of Motor Vessel “Lillian S”*, the Court of Appeal held, inter alia:

“The question of jurisdiction is threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything and without it, a court has no power to make one more step...”

13. Given the foregoing reasons, I find that the objection is sustainable. In the premises, I uphold the preliminary objection and dismiss the suit for want of jurisdiction. Given the circumstances of this matter and the parties in it, each party to bear own costs.



RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 17TH DAY OF MAY, 2023.

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S.M. GITHINJI

JUDGE

In the absence of; -

- 1. Mr Komora for the Plaintiff
- 2. Ali's representative

Parties be served.

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S.M. GITHINJI

JUDGE

