



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURT

ELC.NO.214 OF 2016

ATHI PAPER MILLS LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

DAKAWOU TRANSPORT LIMITED.....DEFENDANT/RESPONDENT

RULING

1. This is ruling in respect of a notice of preliminary objection by the Defendant which raises the following grounds:

1) That the suit dated 16th April 2016 is time barred contrary to the provisions of section 4 of the Limitations Actions Act Cap 22 Laws of Kenya.

2) That the court lacks jurisdiction to hear and determine this suit by virtue of the cause of action being time barred, having been filed after the lapse of the statutory period as set out in section 4 of the Limitations of Actions Act.

3) That the suit herein offends this Court's decision in Machakos ELC Misc No. 56 of 2018.

4) That in Machakos ELC Misc No. 56 of 2018, the title LR No. 337/1208 was declared illegal null and void ab initio.

5) That this court cannot enforce or assist an illegality and the suit herein offends the ex-turpi causa non oritur action doctrine.

2. The parties were directed to canvass the preliminary objection by way of written submissions. The Defendant filed submissions dated 7th June 2021. The Plaintiff filed submissions on 29th June 2021. The Defendant also filed further submissions dated 6th July 2021 without leave of the court.

3. I have considered the submissions by the parties herein. The only issue which qualifies as a preliminary point is the issue of limitation and this is what I will determine whether the suit herein is statute barred. The other point that this suit offends Machakos ELC Misc 56 of 2018 does not raise any point of law as what is alleged therein requires ascertainment of facts.

4. The Defendant argues that the contract was supposed to be completed within 120 days and that since this did not happen, the cause of action arose after the 120 days and that the filing of this suit in 2016 was outside the stipulated six years by over seven months.

5. There is no doubt that the completion date was 120 days from the date of execution. However still there were other clauses in the contract which the Plaintiff was at liberty to invoke but which it did not invoke. The Defendant had paid 10% of the purchase price and declined to pay the balance. This notwithstanding, the Plaintiff executed a transfer which it delivered to the Defendant's Advocate who registered it in favour of the Defendant on 31st July 2012.

6. From the pleadings particularly paragraph 10 to 13 of the Plaintiff, it is clear that the cause of action arose in May 2013 when the notice requiring the Defendant to pay the balance took effect. This suit was filed in 2016. The suit is therefore not statute barred.

7. This court is not assisting the Plaintiff to enforce an illegal contract. The Facts leading to the dismissal of Machakos ELC Misc 56 of 2018 are yet to be ascertained and cannot be ascertained through a copy of judgement in that suit. The National Land Commission's findings which were upheld by the judgement in Machakos Elc Misc 56 of 2018 are not known as at present and cannot be used to return a fact of illegality of title which was passed to the Defendant.

8. It is clear from the above analysis that the preliminary objection by the Defendant lacks merit. The same is dismissed with costs to the

Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF NOVEMBER 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Taib for Plaintiff/Respondent

Mr Noor for Defendant/Applicant

Court Assistant: Mercy

E.O. OBAGA

JUDGE