



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 49 OF 2017

DR. APOLLO BWONYA ORODHO.....PLAINTIFF

VERSUS

KENYA REVENUE AUTHORITY.....1ST DEFENDANT

NATIONAL TRANSPORT AND

SAFETY AUTHORITY.....2ND DEFENDANT

RULING

The plaintiff filed this case against the defendants jointly and severally for orders more particularly set out in the amended plaint dated 13th August, 2014 and filed on 15th August, 2014. His cause of action centres on a motor vehicle he purchased sometimes in the year 1997. The motor vehicle was then registered as No. 40 UN 402K. Subsequent thereto, he started the process of registering the motor vehicle after payment of duty due to the first defendant.

The motor vehicle was not registered until 10th January, 2017 going by the copy of the registration certificate contained in the documents forming the part of his claim. By then the plaintiff had filed his original plaint dated and filed on 25th June, 2014 and amended on 13th August, 2014 aforesaid.

The defendants filed their statements of defence on 7th November, 2014 by the 1st defendant and 3rd December, 2014 by the 2nd defendant. On 17th November, 2014 the 1st defendant filed a Notice of Preliminary Objection to the plaintiff's case urging the court to strike it out on the following grounds,

1. It fails to conform to the provisions of Section 3 (1) of the Public Authorities Limitations Act, Cap 39 Laws of Kenya.
2. It offends the provisions of Section 4 (2) of the Limitation of Actions Act, Cap 22 Laws of Kenya.
3. It also fails to recognize the commencement of National Transport and Safety Authority Act No. 33 of 2012 on 1st December, 2013.

The 2nd defendant on the other hand filed a Notice of Preliminary Objection on 26th November, 2014 urging the striking out of the plaintiff's case on the following grounds,

1. The plaint fails to conform to the provisions of Public Authorities Limitations Act, Cap 39 Laws of Kenya.
2. The plaint also goes against the provisions of Limitation of Actions Act, Cap 22 Laws of Kenya.
3. Other grounds to be adduced at the hearing.

Going by the pleadings the plaintiff's case is based on tort of delay of the registration and use of the motor vehicle for the intended purpose. The said motor vehicle was a lorry which the plaintiff intended to use for transport business and earn him income to supplement his retirement benefits.

As at the time of filing this suit, following his retirement on or about 19th September, 2001, the plaintiff had not put the subject vehicle to any use.

Section 3 (1) of the Public Authorities Limitations Act, Cap 39 Laws of Kenya provides as follows,

“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.”

Section 4 (2) of the Limitation of Actions, Act Cap 22 Laws of Kenya provides as follows,

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued....”

The plaintiff's suit will stand or fall on the date on which his cause of action accrued. Substantial correspondence has been annexed to his bundle of documents which clearly shows that there was consistent pressure from him, demanding the registration and transfer of the motor vehicle to his name. The consistency with which he followed the matter shows the legitimate desire that he complies with the set procedures so that the motor vehicle is registered in his name.

There is evidence that the log book could not be traced by the original owner for quite some time, and that limited the plaintiff's effort to register the said motor vehicle into his name. He was not in control of the documents which were in possession of the previous registered owner that is, Kenya Agricultural Research Institute.

It was not until 15th August, 2013 when final authority was given for the plaintiff to pay duty so that the vehicle transfer could be processed. Even then, the transfer was not effected until 10th January, 2017 as set out above. The current registration No. is KCK 865 L.

The plaintiff cannot be blamed for the delay in the registration of the motor vehicle in question, considering the efforts he made in writing especially to the 1st defendant to facilitate the registration. While it is acceptable that under normal circumstances deadlines are likely to be missed even by those who are observant, going by the dates in the correspondence and the final authority to effect registration, time started to run from 15th August, 2013.

The plaintiff filed his plaint on 25th June, 2014 and therefore was within time to file a suit against both defendants. The foregoing brings me to observations made over time on the practice of raising Preliminary Objections where in some cases, such objections are not necessary.

A Preliminary Objection should, if upheld, be capable of ending the proceedings without hearing the party against whom it is raised. The cause of action in favour of the plaintiff having arisen on 15th August, 2013, it was a misdirection to raise the two objections by the defendants.

In Civil Appeal No. 228 of 2002 Grace Ndegwa and Others vs. The Attorney General the Court of Appeal said in part as follows,

“The practise of applying guillotine to cases through Preliminary Objection before the full hearing should be discouraged and a court of justice should aim at sustaining a suit, rather than terminating it by summary dismissal as normally a suit is for pursuing it Although rules are there to allow for striking out a case by way of a preliminary objection or by way of a substantive application and Civil Procedure Rules and all other rules for ensuring orderly conduct of cases have to be complied with fully, in such cases, the court should ensure that where the spirit or purpose of the document is clear, a litigant should be allowed to pursue his substantive claim as long as no prejudice will be suffered by the other party.”

There are cases where preliminary objections will serve the purpose of ensuring that no judicial time or that of the parties is wasted. The development of the law however has tilted over time to upholding the right of a party to be heard and not be driven from the seat of justice. It is a balance that has to look at the interests of the parties. See Mehta vs Shah (1965) EA 321.

It is also important to observe the coming into force of The Constitution, 2010 has had the effect of breathing fresh air into the existing justice system to address some old statutes that appear to limit the rights of the parties.

The obvious desire is to amend such statutes so that they are in line with the spirit, tenor and context of the Constitution to ensure that access to justice is not a hollow platitude. These statutes may include the Limitation of Actions Act and the Public Authorities Limitations Act aforesaid. Having said so, I am persuaded that the Notices of Preliminary Objections raised by the defendants must fail. They are therefore dismissed with costs to the plaintiff.

The pleadings having been closed, the parties shall now comply with Order 11 of the Civil Procedure Rules so that this suit is listed for hearing.

Orders accordingly.

Dated, signed and delivered at Nairobi this 6th Day of March, 2018.

A. MBOGHOLI MSAGHA

JUDGE