



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 142 OF 2016

WILSON WAFULA KHAEMBA T/A Sipeto construction

Building Engineering & General Contractors.....PLAINTIFF

- V E R S U S -

GULF AFRICAN BANK LTD..... 1ST DEFENDANT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND DEFENDANT

INSPECTOR GENERAL OF POLICE.....3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

BENARD SIMIYU NAKITARE5TH DEFENDANT

RULING

1. This ruling is the outcome of the Notice of Preliminary Objection dated 15th August 2016 raised by Benard Simiyu Nakitare, the 5th defendant. The Preliminary Objection is premised on Section 3(1) of the Public Authorities Limitations Act Cap. 39 Laws of Kenya wherein Gulf African Bank Ltd argue that the plaintiff's suit is time-barred for being instituted after 12 months from the date the cause of action arose.

2. I think this is a good juncture to outline the history behind this suit. Wilson Wafula Khaemba T/A Sipeto Construction Buildings Engineering & General Contractors, the plaintiff herein, filed this action vide the plaint dated 27.5.2016 claiming damages for malicious arrest, detention and prosecution. He claimed he had been arraigned in court on 3.9.2014 and charged with the offence of forging documents, i.e passport no. A098612 in criminal case no. 1265 of 2014, Chief Magistrate's Court, Milimani. He denied committing the offence. The criminal charge was eventually withdrawn.

3. The plaintiff felt strongly aggrieved by the wrong arrest, detention and subsequent prosecution. He was of the view that the defendants acted with malice while preferring the charge against him.

4. It is the submission of the 1st defendant that the cause of action accrued on or about 13.4.2015 therefore the suit became time-barred by 13.4.2016 by virtue of Section 3(1) of the Public Authorities Limitations Act. The aforesaid section prohibits the filing of an action based on tort after the end of 12 months from the date on which the cause of action accrued. The 1st defendant further argued that the suit having been time-barred against any of the conjoined parties, is also time-barred against all the parties to the suit. The other defendants did not file any response nor submissions to the notice of preliminary objection despite

having been given a chance to respond.

5. The plaintiff filed a replying affidavit he swore to oppose the preliminary objection. The plaintiff also filed written submissions to oppose the motion. I have considered the averments in the replying affidavit and the submissions. The motion dated 15.8.2016 and the preliminary objection of the same date are premised on Section 3(1) of the Public Authorities Limitations Act. I have carefully perused the aforesaid provision and it is clear to me that the same provision applies to the government and local authorities. Therefore, as far as the provisions of Section 3(1) of the Public Authorities Limitation Act is concerned, it is only the D.P.P (2nd defendant) I.G. (3rd defendant) and A. G. (4th defendant) who can rely on the provision. With respect, I agree with the plaintiff that the provision does not apply to the claim between the plaintiff and Gulf Bank Ltd (1st defendant) and Benard Simiyu Nakitare (5th defendant). The applicable statute is the Limitations of Action Act (Cap, 22 Laws of Kenya) in which case the time limit is 3 years as opposed to 1 year under the Public Authorities Limitation Act. There is no evidence that the 2nd , 3rd and 4th defendants have filed a similar motion or preliminary objection. The 1st defendant's preliminary objection or motion cannot be relied upon by the aforesaid defendants.

6. In my humble view, the action of the plaintiff against the 1st and 5th defendants is not time-barred.

7. In the end, I find no merit in the motion and or preliminary objection dated 15.08.2016. The same is ordered dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant