



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
MISC. CIVIL APPLICATION NUMBER 83 OF 2014

DOROTHY WANJIRU NJUGUNA.....PLAINTIFF/APPLICANT

(suing as the next of kin and legal representative of the Estate of **SAMMIE SEKA BARAH**)

VERSUS

1. JAMES MWANGI MBUTHIA t/a PUPS PROPERTIES.....1ST DEFENDANT

2. CHARLES MUTURI GITHAE.....2ND DEFENDANT

RULING

1. The Applicant, Dorothy Wanjiru Njuguna obtained letters of Administration for the Estate of **Sammie Seka Barah** deceased, her biological mother vide Nakuru High Court Succession Cause No. 2997 of 2012 on the 12th June 2013.

The deceased was reported as a missing person since 26th July 1997. By a court order issued on the 4th August 2006 Seka Barah was declared dead and a death certificate was issued as confirmation of his death.

While in the process of collecting and administering the deceased's estate, the administrator became aware that her late son had purchased two **Plots No. 34 and 35** being part of **Land Parcel** known as **Naivasha/Maraigushu Block 1/1212 and 1/1213** pursuant to a sell agreement dated 27th May 1995 between the Vendor **Pups Properties** and the deceased for an agreed sum of Kshs.34,000/= whereof part thereof of Kshs.14,000/= had been paid as deposit at the time of execution of the sale agreement. One James Mwangi was the signatory to the Sale Agreement on behalf of the Vendor. The deceased never lived to take possession of the two plots.

2. Upon conducting an official Search of the two plots on the 29th August 2012 the applicant discovered that the plots were sold off to third parties, one **VERONICA WAMBUI GATHIRWA** and **CHRISTINE WANGARI MAINA** and both registered as proprietors on the 24th October 2003.

Upon such discovery, the applicant placed a caution upon both plots. She then made demands to the two proprietors to transfer the said plots to her as the administrator of the estate or refund the purchase price but that was not done.

At that time, the six years statutory period for bringing up a suit based on contract had expired.

3. By her Exparte Originating Summons taken out on the 11th April 2014 and filed on the 14th April

2014, and brought under the provisions of **Order 50 Rule 6 Order 51 Rule 37** of the **Civil Procedure Rules and Sections 27 and 28 of the Limitations of Actions Act Cap 22**, the applicant sought orders that:

That the court be pleased to extend the period within which to file a suit against James Mwangi Mbuthia t/a Pups Properties and Charles Muturi Githae, for damages for breach of agreement and fraud, and compensation and any other claim with regard to the suit properties pursuant to the agreement.

4. The applicant swore the affidavit in support of the application on the 11th April 2014. She annexed documents to prove her claim against the intended defendants. These are the

(1) Copy of Agreement

(2) Letters of Administration

(3) Court order declaring the said Sammie Seka Barah legally dead

(4) Official Searches among other documents.

In her submissions, Mr. Njuguna urged the court that due to the circumstances explained above, the applicant could not possibly bring the suit within the stipulated period of six years.

It was her submission that the delay was sufficiently explained in the applicants supporting affidavit and that though inordinate, the delay was excusable.

5. The court has considered the application, the affidavit evidence and submissions. **Section 26 of the Limitations of Actions Act, Cap 22 Laws of Kenya** provides:

Section 26:-*“Where in the case of an action for which period a limitation is prescribed either -*

(a) The action is based on fraud of the defendant or his agent, or of any person through whom he claims or his agent, or

(b) The right of action is concealed by the fraud of any such person as aforesaid, or

(c) The action is for relief from the consequences of mistake

The period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.

6. Upon consideration of the circumstances as stated by the applicant, the court is satisfied that the applicant has demonstrated a reasonable explanation to the delay in filing a suit within the stipulated time and as stated in **Section 26 of the Act**.

7. For these reasons, the application by originating summons taken out of the 11th April 2014 is allowed.

The applicant shall file the suit exhibited by the draft plaint annexed to the application within a period of 30 days of this order.

It is so ordered.

Dated, signed and delivered in open court this 15th day of September 2016

JANET MULWA

JUDGE