



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 209 OF 2014

APA INSURANCE LIMITED.....PLAINTIFF/ RESPONDENT

VERSUS

VEVET EPZ LIMITED.....1ST DEFENDANT/APPLICANT

LUCY NDUTA.....2ND DEFENDANT/APPLICANT

TITUS GETHI NDEGWA.....3RD DEFENDANT/APPLCIANT

RULING

1. The Plaintiff sued the Defendants jointly and severally vide the plaint dated 4th July, 2014 for a sum of Ksh. 14,042,557/= . The plaint alleges failure by the Defendants to honour their contractual obligations in respect of security bonds issued by the Plaintiff to the Commissioner of Customs Service for the benefit of the Defendants. The Defendants filed a statement of defence denying the Plaintiff's claim.

2. On 10th August, 2016 the Defendant's filed a Notice of Preliminary Objection. It is stated in the Preliminary Objection that the Plaintiff's suit has been filed out of time and is barred by Section 4 (1) of the Limitation of Actions Act Cap 22 Laws of Kenya as the Plaintiff's claim arose in the year 2006. It if further stated that the Plaintiff's case is an abuse of the process of the court and should be struck out.

3. The Preliminary Objection was canvassed by way of written submissions. In his submissions, the Defendants counsel referred the court to the following authorities:-

- Bosire Ogero v Royal Medial Services [2015] eKLR

- Stanley Ombeva & another v Nathan M Murugu & 5 others [2015] eKLR

4. The Plaintiff's counsel relied on the following case:

Dayalogix Limited v Kenya Pipeline Company Limited [2012] eKLR

5. Section 4 (1) of the Limitation of Action provides as follows:

“(1) The following actions may not be brought after the end of six years from the date on

which the cause of action accrued.

a. Actions founded on contract;

b.”

6. In order to determine whether the Plaintiff's suit was filed within the six year period provided by the law, it is necessary to establish when the cause of action accrued. On the said issue, the plaintiff simply states as follows:

“At all material times relevant to this suit” No date is stated in the Plaintiff's documents which have been filed herein, the said documents are yet to be produced as evidence. There is no material before this court at this stage of the case upon which the court can tell when the cause of action accrued in order to determine if the Plaintiff's suit is time barred or not.

7. As stated in the celebrated case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors (1969) EA 696**. At page 700, Law, JA stated that:

“...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.”

Sir Charles Newbold P. added as follows at page 701:

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 has to be ascertained or if what is sought is the exercise of judicial discretion.”

8. With the foregoing, I find no merits in the preliminary objection and dismiss the same with costs.

Dated, signed and delivered at Nairobi this 3rd day of Nov., 2016

B. THURANIRA JADEN,

JUDGE