



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 1619 OF 1993**

**DAVSON & WARD AND GEOMAX CONSULTING**

**ENGINEERS..... PLAINTIFF**

**VERSUS**

**EDON CONSULTANTS (*sued as a firm*)**

**JEREMIAH EDDY OBAR NDONG.....DEFENDANT**

**RULING**

1) The Plaintiffs herein, issued a notice to show cause why the execution of the decree by way of attachment of the defendants movable assets should not take place. When the notice was served upon the defendant, the defendant filed a notice of preliminary objection claiming that the decree sought to be executed was time barred under Section 4(4) of the Limitation of Actions Act. The preliminary objection was argued before the deputy registrar of this court who in the end dismissed the preliminary objection. Being dissatisfied, the defendant filed this appeal pursuant to the provisions of Order 49 rule 7 of the Civil Procedure Rules.

2) When the appeal came up for hearing the defendant was granted leave to proceed ex parte when the plaintiff's advocate failed to turn up at the time fixed for hearing.

3) The defendant listed 8 grounds of appeal in his memorandum. However those grounds revolve the question as to whether or not the decree sought to be executed was time-barred and whether the learned deputy registrar erred when he ruled otherwise. It is the submission of Mr. Odera learned advocate for the defendant, that the learned deputy registrar erred when he failed to appreciate sufficiently that in the circumstances of this case no interest upon the decretal sum is recoverable under section 4(4) of the Limitation of Actions Act.

4) I have re-evaluated the arguments which were presented before the deputy registrar. These arguments are similar to what are now being submitted before this court.

5) The learned deputy registrar, appreciated that the decree sought to be executed was actually issued in 1994 and reviewed in 1996. The learned deputy registrar stated that though the decree was over 12 years old he sought to explain the circumstances under which the decree cannot be regarded s time-barred. He pointed out that the plaintiff has not been anxious nor ready to execute the decree. He pointed out that

immediately the judgement was delivered a dispute on computation over the amount due arose.

6) It was also pointed out that when the issue was brought to the attention of Justice Khamoni, the learned judge made remarks which were to the effect that the defendant was hellbent to delay the plaintiff's acquisition of the fruits of the judgment in this suit. The deputy registrar formed the opinion that the defendants had the habit of placing road blocks in the plaintiff's quest to execute the decree hence he should not be allowed to benefit from the provisions of section 4(4) of the Limitations of Actions Act. The credibility of the defendant was brought to question in the saga.

7) After a careful consideration of the appeal, I am unable to fault the decision of the learned deputy registrar. There is no doubt that the defendant has made a plethora of applications before the court with the aim of reviewing the actual decretal amount remaining after deducting the initial instalments paid. This file has been very active, and although the decree is over 12 years old, the same could not be executed because the defendant had made the habit of filing various applications which are apparent on record to frustrate the execution process. Though there was no order for stay, the circumstances of this case militates against a decision to allow the defendant to benefit from his mischief. Section 4(4) of the Limitation of Actions Act, was not intended to aid a litigant who conducts himself in the manner the defendant has done in this case.

8) In the end I find no merit in the appeal. It is dismissed with costs to the plaintiff.

Dated Signed and Delivered in open court this 6<sup>th</sup> day of November, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant