



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
E AND L CASE O. 21 OF 2012

DANIEL NJUE KITHINJI.....PLAINTIFF

VERSUS

SOFIA NKUENE DOUGLAS.....DEFENDANT

R U L I N G

This ruling relates to a Notice of Preliminary Objection dated 11th July, 2013 filed in Court on 18th June, 2013. The defendant prays that the entire suit be struck out on the following grounds:

1. ***That the plaintiff's suit is bad in law and incurably defective.***
2. ***That the plaintiff's suit is time barred by dint of the provisions of the Limitation of Actions Act, laws of Kenya (sic).***
3. ***That the plaintiff's suit is untenable in law (sic) and an abuse of the court process thus should be dismissed with costs.***

The defendant submits that the parties entered into a sale agreement for the purchase of a portion of land from parcel No. Nyaki/Giaki1919 on 12th November, 2012. The defendant proffers that the plaintiff paid part of the consideration but did not settle the remaining balance. The defendant also states that she could not transfer the portion of land in issue to the plaintiff as it was subject to a succession cause that had not been determined when this suit was instituted. The defendant submits that as Section 4(a) of the Limitation of Actions Act provides that an action founded on contract may not be brought after the end of six years from the date on which the cause accrued, this suit is time barred and for that reason the plaint and the pleadings should be struck out. For the same reason, the defendant argues that the suit is vexatious, frivolous and an abuse of the Court process.

The defendant has proffered several authorities in support of her case.

The plaintiff has opposed the objection and noted that in her defence dated 15.2.2013 the defendant had admitted having entered into an agreement with the plaintiff and only denied receiving the purchase price. The plaintiff pointed out that the defendant had said that she had not refused to transfer the suit land but had added that the plaintiff had become unruly and tried to use unorthodox and unprocedural means to invade parcels of land that belonged to a third party. The plaintiff further observes that the defendant had argued that the suit land could not be transferred to the plaintiff as the land was still registered in the name of the defendant's deceased husband and that the Succession Cause was still pending in the High Court. The plaintiff submits that the issues raised by the defendant are not pure points of law and they need to be ascertained through evidence, which means adducing of facts.

I have examined the apposite pleadings and submissions. I have also taken into account the authorities proffered by the defendant.

An examination of the plaint and the agreement executed by the parties dated 12th November, 2002 suggests to me that the accrual of the cause of action in accordance with the provisions of the Limitation of Actions Act, may be one of the issues to be determined during the hearing and determination of the main suit. I also find that the framing of grounds 1 and 3 of the objection naturally attracts arguments which can only be proved or disproved through the parties tendering evidence. The way the 2 grounds are framed shows that they are incapable of raising pure points of law.

In the circumstances, this objection is dismissed.

Costs shall be in the cause.

Delivered in Open Court at Meru this 15th day of October, 2014 in the presence of

Cc Lilian/Daniel

Muthamia h/b Baithambi for Applicant

Firm of M. G. Kaume Absent for defendant

P. M. NJOROGE

JUDGE