



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC CASE NO. 32 OF 2012**

KELLEN KARIMI NDUMA NDAMBIRI .....1<sup>ST</sup> PLAINTIFF

NICHOLUS NJINE .....2<sup>ND</sup> PLAINTIFF

Suing as legal representative of the Estate of JAMES NDAMBIRI (DECEASED)

VERSUS

THE HON. ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT

PERMANENT SECRETARY `

MINISTRY OF WATER AND IRRIGATION ..... 2<sup>ND</sup> DEFENDANT

GENERAL MANAGER

NATIONAL IRRIGATION BOARD .....3<sup>RD</sup> DEFENDANT

**RULING**

This is in respect to the Preliminary Objection raised by the 3<sup>rd</sup> defendant herein that this suit is time barred since the cause of action arose on 8<sup>th</sup> June 1983 and therefore this suit offends the provisions of the **Limitation of Actions Act** and also the **Government Proceedings Act**.

Submissions have been filed by both Mr. Chomba for the plaintiffs and Mr. Ombachi for the 3<sup>rd</sup> defendant. I have considered those submissions together with the pleadings herein. Notice of the raising of this Preliminary Objection was given as far back as April 2012 when in its defence, the 3<sup>rd</sup> defendant pleaded that it would be raising this Preliminary Objection.

The suit herein was filed on 15<sup>th</sup> February 2012 though dated 2<sup>nd</sup> November 2011. In paragraph 7 of the plaint which is relevant for purposes of this ruling, it is pleaded as follows:

***“Subject of the manner of illegal termination of the said rice holding No.Tenant No. 4388 Wamumu Section, Unit W7 which was terminated irregularly on 8/6/1983 and upon which issue of the procedure and termination/confiscation and registration to Paul Njoroge who was at the time a member of staff of the Mwea Irrigation Settlement which the rules of the same prohibits a member of staff to pocess (sic) interest as a licensee otherwise the allocation of rice holding No. 4388 to Paul Njoroge was illegal abnitio”.***

The plaintiffs therefore sought to be compensated by an award of damages itemized in paragraph 9 of their plaint and a declaration that the said “..... **termination and confiscation of tenancy vide license No. 4388 Wamumu Section Unit 7 village W7 from the original licensee James Ndambiri and subsequent allocation to Paul Njoroge be confirmed illegal-----**“

The plaintiffs herein are suing as the legal representatives of the Estate of the late James Ndambiri whose licence for rice holding No. 4388 was terminated on 8<sup>th</sup> June 1983 and the same was allocated to another party. It would appear from the documents in the file that the licence of the deceased James Ndambiri over rice holding No. 4388 was terminated after several warnings from the 3<sup>rd</sup> defendant following failure to manage the said rice holding according to the Rules and Regulations laid down under the provisions of the **Irrigation Act Chapter 347 laws of Kenya**. That termination was pursuant to regulation **8 (3)** of the **Irrigation (National Irrigation Schemes) Regulations**. The subject matter therefore is that of a contract that the licence of the deceased was illegally terminated which averment the 3<sup>rd</sup> defendant has denied. The cause of action therefore arose in 1983 when the said licence was terminated. Under **Section 4 of the Limitation of Actions Act**, a claim founded on a contract has to be filed before the end of six years from the date when the cause of action occurred. That means therefore that this suit ought to have been filed not later than 1989. The deceased passed on in September 2011 as per the copy of the limited grant obtained on 25<sup>th</sup> October 2011 for purposes of filing this suit. It is not clear why this suit was not filed during the life time of the deceased or indeed before 1989. No leave to file the suit out of time was sought and it is un-likely that any such leave would have been granted even if it was sought – **DIVECON LTD VS SAMANI C.A CIVIL APPEAL NO. 1242 of 1997 NBI.**

In his submissions in opposition to this Preliminary Objection, Mr. Chomba for the plaintiffs has valiantly argued that this Court should invoke the provisions of **Article 159 of the Constitution** and do justice without undue regard to procedural technicalities and also invoke the national values under **Article 10 of the Constitution** as the matter involved is land. I have considered those submissions. The **Limitation of Actions Act** is a matter of substantive law and it cannot be considered as a mere procedural technicality. What it simply means is that no Court can entertain a suit that is filed outside the limitation period set by the law.

In the circumstances, I uphold the Preliminary Objection raised by the 3<sup>rd</sup> defendant herein and find that this suit is time barred. The same is accordingly dismissed with costs to the 3<sup>rd</sup> defendant.

**B.N. OLAO**

**JUDGE**

**3<sup>RD</sup> OCTOBER, 2014**

3/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Chomba for Plaintiff – present

Attorney General for 1<sup>st</sup> & 2<sup>nd</sup> Defendant – absent

Mr. Ombachi for 3<sup>rd</sup> Defendant - absent

COURT: Ruling delivered in open Court this 3<sup>rd</sup> day of October, 2014.

**B.N. OLAO**

**JUDGE**

**3<sup>RD</sup> OCTOBER, 2014**