



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 640 of 2008

CAROLINE WANJIRU NDERITU.....PLAINTIFF

- VERSUS -

PHOENIX PUBLISHERS LIMITED.....1ST DEFENDANT

GLAXOSMITHKLINE LIMITED.....2ND DEFENDANT

R U L I N G

1. The Notice of Motion before the court is dated 28th March 2012. It is filed under Section 4 (2) of the Limitation of Actions Act, Order 2 Rule 15 (1) (b) (c) and (d), Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act.

2. The application seeks an order that the suit herein be struck out against the 2nd Defendant. It is premised on the grounds namely:-

- a) The Plaintiff's suit is a nullity in law as it is statutorily time barred.
- b) The claim, which is based on a *tort* should have been instituted within 3 years from the date the cause of action arose as is provided under Section 4 (2) of the Limitations of Actions Act Chapter 22 Laws of Kenya.
- c) The cause of action in this matter arose on or about **23rd September 2004** when the Plaintiff became aware of the alleged breach of the copyright in her works. The present suit should therefore have been filed on or before the **23rd September 2007** but was filed in court on the **3rd of November 2008**.
- d) The Plaintiff did not move the court to enlarge time within which to file the present suit as provided for under **Section 27** of the **Limitation of Actions Act** and **Order 37** of the **Civil Procedure Rules**.
- e) The Plaintiff's pleadings disclose no claim against the 2nd Defendant since the nature of claim is tortious and should have been instituted within **3 years** from the time the Cause of Action arose.
- f) The Plaintiff's claim against the 2nd Defendant is therefore a nullity in law and ought to be struck out with costs to the 2nd Defendant.

3. The application supported by affidavit of **GRACE KIMOTHO** dated **28th March 2012**. The

affidavit merely expands the above grounds.

4. The Plaintiff has not filed any documents in respect to the application while the 1st Defendant does not oppose the same.
5. I have carefully considered the application. The claim is based on *tort* and it ought to have been filed within **3 (three) years** from the date the cause of action is alleged to have arisen i.e. on **23rd September 2004**. The suit was filed on **3rd of November 2008** more than one year later.
6. In the absence of this response from the Plaintiff I have no option but to allow the application as prayed, and herewith strike out the suit herein with respect to the 2nd Defendant **GLAXOSMITHKLINE LIMITED**.
7. The costs of this application shall be borne by the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 3RD DAY OF OCTOBER 2012

E. K. O. OGOLA

JUDGE
PRESENT:

N/A for the Plaintiff

Mshweshwe for the Defendant

Teresia – Court Clerk