



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO 3296 OF 1987

MBIJIWE..... PLAINTIFF

VERSUS

NAIROBI CITY COMMISSION.....DEFENDANT

JUDGMENT

On 20.8.87 the plaintiff, Mbiyiwe sued the defendant that on 22.2.86 the latter's driver drove its motor vehicle registration No KWE 046 along Jogoo Road Nairobi in such a negligent and careless manner etc that it collided with motor bike KXS 752 on which the plaintiff was a pillion rider. As a result he fell down and suffered injuries to the right side of the chest plus multiple fractures of the shoulder blade. He claimed costs and interest.

A defence was filed and therein it was pleaded that the plaintiff's action did not disclose any or any reasonable cause of action and that in any case it was time barred by virtue of the Public Authorities Limitation Act (cap 39) and that could constitute a preliminary point to be raised at the hearing. Agreed issues were filed and issue 4 stated:

“4. is the plaintiff's suit time barred?”

After hearing the plaintiff on 17.3.93 the defence chose to call no evidence but each side filed a written submission. The defendant raised the issue of the plaintiff's claim being time-barred. This is in order ie to raise such a preliminary point of law during the hearing for the Court to determine it when it deals with all other matters in the suit (see *Yunes Oruta & Anr vs Nyamato* Civil Appeal No 96/84 (Nri).

In the view of this Court the plaintiff's claim is time-barred in the light of s 3(1) of the Public Authorities Limitation Act (cap 39) which reads:

“s 3(1)

No pleadings founded on tort shall be brought against the Government or local authority after the end of twelve months from the date on which the cause of action occurred.”

The defendant is a local authority and that is common knowledge. The plaintiff's claim is based on negligence and therefore a tort. The incident complained of took place on 22.2.86 while the suit was filed on 20.8.87 ie some 6 months late. S 5 of the cited Act allows time – enlargement based on parties being under disability during the 12 month – period but that party should have been a minor, been detained lawfully or was mentally sick. The plaintiff in our case is / was neither of these. Or it was not so

contended. It was only said that he was unwell due to the injuries but that is not a disability under this Act.

An order by the Court dated 7.7.89 in Misc Application No 288/87 was exhibited evidencing the plaintiff's effort whereby he was allowed by the Court to file the plaint out of time. But it was not brought under the correct law at all. It was under s 22 of the Limitation of Actions Act (cap 22) The relevant law is this Act (cap 39). Thus even if the plaintiff was trying the best efforts, they were misdirected in that the wrong law was applied. All then came to naught.

Accordingly this suit is dismissed with costs on the basis it was time-barred when brought.

Dated and Delivered at Nairobi this 20th May, 1993

J.W. MWERA

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JUDGE