



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 46 OF 1995**

**STEPHEN MBONDO & 5 OTHERS.....PLAINTIFFS/RESPONDENTS**

**VERSUS**

**THE HEADMASTER, CHAIRMAN & COMMITTEE**

**MLOLONGO PRIMARY SCHOOL.....DEFENDANT/APPLICANT**

**RULING**

1. In the Notice of Motion dated 26<sup>th</sup> January, 2015, the Defendant is seeking for the following orders:

***a. The Honourable Court be pleased to lift the warrants of attachment as the same were obtained illegally since no leave was issued by the court to execute against the Government institution.***

***b. Costs of this Application be provided for.***

2. The Application is premised on the grounds that the Plaintiffs have commenced execution against the Defendant; that the Defendant is the custodian of proclaimed assets on behalf of the Ministry of Education Science and Technology and that the said properties have been purchased through public funds and belong to the National Government.

3. According to the Defendant, the attachment of the Defendant's goods is contrary to Order 29 Rule 2(2) (b) and Rule 4 of the Civil Procedure Rules; that the Plaintiffs are seeking to enforce an Award that was made twenty (20) years ago contrary to Sections 4(1) (c) and 4(4) of the Limitation of Actions Act and that the Application should be allowed.

4. In response, the Plaintiffs filed Grounds of Opposition in which they averred that the Defendant is a body corporate with perpetual succession and capable of suing and being sued; that the Government Proceedings Act do not apply to the Defendant and that the Plaintiff is executing the Decree of the court issued on 26<sup>th</sup> March, 2012.

5. The Defendant's advocate submitted that the Judgment in this matter was entered against the Defendant on 12<sup>th</sup> October, 1995 for the payment of costs; that the Plaintiff did not enforce the said Judgment until 22<sup>nd</sup> December, 2014 and that the Defendant is a public school.

6. Counsel submitted that under Order 22 Rule 2(2) (b) of the Civil Procedure Rules, no order against the Government may be made under Order 22 on execution of decrees and orders; that the Plaintiff cannot execute against a Government institution by way of attachment of its properties and that the Plaintiffs should have filed Judicial Review proceedings to enforce payment of costs.

7. On his part, the Plaintiffs' advocate submitted that the Defendant cannot be construed to be a Government; that the decree sought to be enforced was issued on 26<sup>th</sup> March, 2015 and that the Application should be dismissed.

8. The first issue for determination is whether the Decree that the Plaintiffs are seeking to enforce is time barred.

9. In the Amended Plaint dated 27<sup>th</sup> April, 1995, the Plaintiffs sought for a declaration that they are the proprietors of Land Reference number 20720, 20721, 20722, 20723, 20724 and 20725. The Plaintiffs further sought for a perpetual injunction restraining the Defendant from trespassing on the suit properties and the costs of the suit.

10. The record shows that on 12<sup>th</sup> October, 1995, Osiemo J. delivered a Judgment in favour of the Plaintiff. The court further held that the Defendant should pay the costs of the suit. Although the Judgment of the court was delivered on 12<sup>th</sup> October, 1995, it was not until 26<sup>th</sup> March, 2012 that the Decree of the court was issued.

11. The Plaintiffs did not file their Bill of Costs for Taxation until 28<sup>th</sup> March, 2014. After Taxation, the Taxing Officer issued to the Plaintiffs the Certificate of Costs on 30<sup>th</sup> June, 2014. The Application for execution in respect of the taxed costs was filed in court on 9<sup>th</sup> October, 2014. Section 4(4) of the Limitation of Actions Act provides as follows:

***“(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”***

12. The Plaintiffs were awarded costs in this matter by the court on 12<sup>th</sup> October, 1995 and not on any other date. Indeed, the subsequent action of the Taxing officer was in furtherance for the Judgment of the court, and not a separate Judgment. The execution for the costs as taxed by the Taxing officer is therefore an execution of the Decree of the court whose date is 12<sup>th</sup> October, 1995.

13. For purposes of execution, whether in respect of costs or the other limbs of the Judgment, time started running on 12<sup>th</sup> October, 1995, which was the date when Judgment was delivered, and not any other date. That being the case, the Plaintiffs were required to execute the Judgment in its entirety, including the order for costs, within twelve (12) years from the date of the Judgment, and not at a later date. However, it was not until the year 2014 that the Plaintiffs purported to execute for the taxed costs.

14. By the time the Plaintiffs filed an Application for execution for costs *“by way of attachment and sale of movable properties of the Judgment debtor’s to be executed by Eastern Kenya Auctioneers”*, a period of nineteen (19) years had lapsed. The Plaintiffs could not therefore execute the Judgment whose limitation period is twelve (12) years.

15. Consequently, and in view of the provisions of section 4(4) of the Limitation of Actions Act, the purported execution of the Judgment of 12<sup>th</sup> October, 1995 without an order enlarging time is null and void.

16. Having found that the execution of the Judgment and Decree of the court after the lapse of twelve (12) years is a nullity, I will not go into the issue of whether the Plaintiffs can attach the movable assets of the Defendant.

17. For the reasons I have given above, I allow the Defendant’s Application dated 26<sup>th</sup> January, 2015 as follows:

***a. The Warrants of Attachment issued by this court in execution of the Decree of the court are null and void.***

***b. Unless ordered by this court or the appellate court, this file is marked as closed.***

***c. Each party to bear his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14<sup>TH</sup> DAY OF JUNE, 2019.**

**O.A. ANGOTE**

**JUDGE**