



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO 298 OF 2017**

**KAMONGO FARMERS CO-OPERATIVE SOCIETY LTD...PLAINTIFF**

**-VERSUS-**

**CHIEF LAND REGISTRAR & 9 OTHERS.....DEFENDANTS**

**RULING**

The 5<sup>th</sup> Respondent has by a Notice of Preliminary Objection stated that the claim against him is bad in law and misconceived and prayed that the suit as relates to him should be dismissed with costs.

When the Notice came up for hearing the parties consented that the Application be disposed of by way of written submissions. The 5<sup>th</sup> Respondent who raised the objection had filed his submissions but the Plaintiff despite having been given the chance have failed to file their submissions on the preliminary objection on points of law.

The 5<sup>th</sup> Respondent contended that the claim against him related to recovery of land which is statutorily time barred. He relied on the provisions of section 7 of the limitations of Actions Act and section 26 of the same Act.

The 5<sup>th</sup> Defendant contends that the claim against him is alleged to be that he exhibited professional negligence which gave rise to the case. He states that the plaintiff contends that the said negligence occurred in 1996 and that a claim based on negligence can't be brought after the lapse of 3 years and therefore the suit is statutorily time bared.

I have read the Notice of Preliminary Objection and submissions filed by the 5<sup>th</sup> Defendant as stated before the court and not have the benefit of reading any submission by the plaintiff.

Section 7 of the Limitation of Actions act provides:-

**“An action may not be brought by any person to recover any land after the end of 12 years from the date when the cause of action accrued”.**

In the instant case the cause of action which is albeit that of professional negligence lapsed in 1999.

The effect of delay in bringing suit as stated in the court of Appeal in **CIVIL APPEAL NO. 142 OF 2016 CMW -VERSUS- JPM** where the Appellant lost a claim in matrimonial property on ground that she brought the claim after a long time and the court found no merit in the appeal.

In **RAWAL -VERSUS- RAWAL 1990 KLR 275 BOSIRE J** as he then was stated that:-

**“The object of any limitation enactment is to prevent a plaintiff from prosecuting state claims on the one hand and to protect a defendant being disturbed after a long lapse of time. It is not to extinguish claims”.**

The delay in bringing the claim against the Defendant was inordinate and in any event the plaintiff can get remedy elsewhere where the same is based on a professional negligence such as the 5<sup>th</sup> Defendant.

In view of the above I find that the suit herein as against the 5<sup>th</sup> defendant is time barred and I therefore uphold the preliminary objection on the ground of limitation and I thus struck out the suit against the 5<sup>th</sup> Defendant with costs.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 11<sup>th</sup> day of APRIL, 2018**

**MOHAMMED NOOR KULLOW**

**JUDGE**

**11/4/2018**

In the presence of:

CA:Chuma

Ms Cheptoo holding brief for Mr Kibue for the 5<sup>th</sup> Defendant

N/A for the Applicant

**MOHAMMED NOOR KULLOW**

**JUDGE**

**11/4/2018**