



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 42 OF 2017

FORMERLY NAKURU HCC NO. 109 OF 2010

KAANA KARUME CO. LTD.....PLAINTIFF

-VERSUS-

SAMSON KARINO OLE NAMPASO.....DEFENDANT

RULING

By an Application dated 10th July, 2017 the Applicant sought the suit herein be dismissed and/or struck out. The Application was based on the grounds that the suit does not disclose any cause of action, it is frivolous, vexatious and an abuse of the court process and that the suit offends the mandates provisions of Sections 34 of the Civil Procedure Act.

The Application was supported by the Affidavit of Samson Karino Ole Nampaso who deponed that the Plaintiff herein breached the terms of contract for the sale of a piece of land measuring 150 acres at a consideration of kshs. 20,000/- per acre totaling to kshs. 3,000,000.

That subsequent to the breach, the plaintiff filed suit being Nakuru HCCC No. 195 of 2004 now Narok 273 of 2017 after 21 years since the agreement was drawn. He stated the suit proceeded exparte and judgement entered in the plaintiff's favour however, an appeal on the same was set aside.

The Applicant further deponed that while the above suit was subsisting the plaintiff filed another suit being Narok ELC No. 42 of 2017 to enforce the judgement and he deponed that a suit brought 27 years after the sell transaction is bad in law and that there is no cause of action.

The Application was opposed by the Respondent by way of a replying affidavit. He deponed that the Application has no merit and that he confirms that the instant suit was filed to execute the decree in Narok HCCC No. 195 of 2004 without filing the instant suit.

I have read the Application, supporting affidavit and the submissions. The issue for determination is whether the suit is status barred pursuant to the provisions of Limitations of Actions Act. The law provides that all suit for recovery of any land must be instituted within a period of 12 years when the cause of action arose.

In the instant case the initial suit between the parties was determined on 28th September, 2007 however, the judgment and the resultant decree were set aside by the court of Appeal in Nakuru Civil Appeal No. 291 of 2010 on 14th July, 2016.

Since the instant suit related to recovery and enforcement of a decree pursuant to the judgement of the 28th September, 2007 and the same having been set aside, I find that the suit is unstable as there is no decree to enforce and in the circumstances I order that the suit be struck out and the same is dismissed with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 27th day of September, 2018.

Mohammed Noor Kullow

Judge

27/9/18

In the presence of:-

CA:timothy/Kimiriny

Ms Adala holding brief for Njuguna for the plaintiff/respondent

Mr Morintat for the Defendant/applicant