



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**MISC E.L.C. CASE NO. 45 OF 2014**

**JOSEPHINE WANJIKU MUNYUA** (*Suing in her capacity as the Legal*

*Representative of the Estate of MUNYUA GICHUTHU*).....**APPLICANT**

**VERSUS**

**NGUNGI CUBITU**.....**RESPONDENT**

**RULING**

1. The Applicant herein filed an *ex-parte* originating summons dated 14<sup>th</sup> November 2014 seeking the following orders;

*a. Leave be granted to the Applicant to file suit against the Respondent for breach of contract out of time.*

*b. The costs of the application be borne by the Respondent.*

2. The said application was expressed to be brought under the provisions of the **Limitation of Actions Act (Cap 22)** generally and all other **enabling provisions of the law**. The said application was based upon the several grounds shown on the face of the summons the gist of which was that the Applicant wanted to file suit for remedies for alleged breach of contract by the Respondent with respect to an agreement for the sale of land.

3. The said application was supported by an affidavit sworn by the Applicant in which it was stated that she desired to sue the Respondent for specific performance of the alleged contract for sale but that since the claim was statute-barred, leave of court to file suit out of time was necessary. It was further stated that the said agreement was for the sale of 3 acres out of *Title No. Mavuria/Mbita/2058* and that her late husband had already paid half of the purchase price.

4. The said application was canvassed by the Applicant before the Hon Justice Momanyi Bwonwonga on 23<sup>rd</sup> March 2015 and the matter fixed for ruling on 30<sup>th</sup> March 2015. However, for reasons which were beyond the control of the court, the ruling was never delivered on that date or at all.

5. The matter was later on mentioned before me for directions on 28<sup>th</sup> June 2018 when the matter was fixed for ruling on 6<sup>th</sup> December 2018.

6. The Applicant's said application speaks for itself. The Applicant simply wants leave to file a suit out of time for specific performance with respect to alleged breach of contract for the sale of land. The only provisions which empower the court to consider and grant such application for extension to file suit out of time are to be founded in **sections 26, 27, and 30 of the Limitation of Actions Act (Cap 22)**.

7. **Section 26** of the said **Act** provides for extension of time in cases of fraud or mistake whereas the **section 27** provides for extension of time in cases of ignorance of material facts in actions for negligence, nuisance or breach of duty in respect of claims for damages for personal injuries to the person. The window for extension of time does not extend to claims for breach of contract for the sale of land.

8. The Court of Appeal of Kenya had occasion to consider an appeal relating to extension of time under **section 27 of the Act** in the case of **Mary Osundwa Vs Mumias Sugar Co. Ltd [2002] eKLR**. The court held, *inter alia*, that;

**“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of statutory duty and the damages claimed are in respect of personal injuries to the Plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time in cases involving contract or any other cases other than those in tort. Accordingly, Osiemo J had no jurisdiction to extend time as he purported to do on 28<sup>th</sup> May 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent...”** (Emphasis added).

9. Similarly, in the case of **Divecon Ltd Vs Samani [1995 – 1998] 1 EA 48** the Court of Appeal of Kenya reached a similar conclusion while dealing with an appeal relating to a suit for breach of contract filed out of time.

10. The court is of the opinion that the Applicant's originating summons for extension of time to file suit out of time for breach of contract does not lie. The court has no jurisdiction to grant such extension. The court, therefore, finds no merit in the originating summons dated 14<sup>th</sup> November 2014 and the same is consequently dismissed. There shall be no order as to costs since the Respondent did not participate in the proceedings.

11. It is so decided.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 22<sup>nd</sup> day of NOVEMBER, 2018.**

In the absence of the parties.

Court clerk Muinde.

**Y.M. ANGIMA**

**JUDGE**

**22.11.18**