



**REPUBLIC OF KENYA**

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

**ELC NO. 124 OF 2015**

**KAHAMA PROPERTIES AGENCIES..... PLAINTIFF**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....1<sup>ST</sup> DEFENDANT**

**OCPD JOMO KENYATTA INTERNATIONAL**

**AIRPORT POLICE STATION.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiff brought this suit on 13<sup>th</sup> February, 2015 seeking;

- (a) A declaration that the Plaintiff is entitled to the exclusive right of possession and occupation of all those pieces of land known as L.R No. 9042/798 and L.R No. 9042/799 (hereinafter “the suit properties”).
- (b) A permanent injunction to restrain the Defendants from entering, remaining on, disposing, trespassing or in any way whatsoever dealing with the suit properties.

In its plaint dated 13<sup>th</sup> February, 2015, the Plaintiff averred that it was the registered owner of the suit properties which it acquired in the year 1997 and that in the month of May, 2013 the Plaintiff was prevented from fencing the suit properties by the Defendants who accused the Plaintiff of trespassing on and grabbing the 1<sup>st</sup> Defendant’s land. The Plaintiff averred that since the year 2013 the Defendants had unlawfully and illegally prevented the Plaintiff from developing the suit properties. It is on account of the foregoing that the Plaintiff brought this suit against the Defendants for the relief set out above.

Together with the plaint, the Plaintiff brought an application by way of Notice of Motion dated 13<sup>th</sup> February, 2015 seeking interlocutory reliefs. The 1<sup>st</sup> Defendant entered appearance and filed Notice of Preliminary Objection dated 27<sup>th</sup> March 2015. From the record, the 1<sup>st</sup> Defendant seems not to have filed a defence. In its preliminary objection, the 1<sup>st</sup> Defendant contended that the Plaintiffs suit is time barred by dint of Section 34 (b) of the Kenya Airports Authority Act and that the Verifying Affidavit which accompanied the plaint and the affidavit filed in support of the Plaintiff’s Notice of Motion dated 13<sup>th</sup> February, 2015 were defective. The 1<sup>st</sup> Defendant urged the court to strike out the suit and/or the said application.

The 1<sup>st</sup> Defendants preliminary objection was heard by way of written submissions. I have considered the objection together with the submissions made in support of and in opposition thereto. I am of the view

that the 1<sup>st</sup> Defendant's preliminary objection has no merit. Section 34 of the Airports Authority Act, Chapter 395 Laws of Kenya (hereinafter "the Act") provides for a time limit of 12 months for legal proceedings brought against the 1<sup>st</sup> Defendant for "any act done in pursuance or execution or intended execution of the Act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or any such duty or authority...". At the begging of this ruling, I have set out the Plaintiff's case against the Defendants.

The Plaintiff's complaint against the Defendants is that they have prevented it from developing the suit properties which are registered in its name and that the act is continuing. The reliefs which the Plaintiff has sought are a declaration and injunction to restrain the illegal acts complained of. In my view, the Plaintiff's claim does not concern any act done by the 1<sup>st</sup> Defendant in pursuance of or in execution of its objectives or functions under the Act or of any public duty or authority. I do not think that the Act allows the 1<sup>st</sup> Defendant to trespass on the Plaintiff's land. In any event, the 1<sup>st</sup> Defendant has not filed a defence or a replying affidavit in response to the Plaintiff's application dated 13<sup>th</sup> February, 2015. It is therefore not yet clear as to the justification which the 1<sup>st</sup> Defendant has for the acts complained of by the Plaintiff. There is no material from which this court can conclude that the acts complained of by the Plaintiff were being undertaken by the 1<sup>st</sup> Defendant in pursuance of its mandate under the Act. In the circumstances, the 1<sup>st</sup> Defendants time bar plea has no basis. Even if the acts complained of fall under Section 34 of the Act, I do not agree that this suit is time barred. The acts complained of started in May, 2013 and are continuing. The limitation period cannot therefore be reckoned from May, 2013 since the cause of action is renewed by each fresh act of trespass. The Plaintiff's suit is not therefore time barred as claimed by the 1<sup>st</sup> Defendant.

The limb of the preliminary objection based on the alleged defects in the verifying affidavit and affidavit in support of the Notice of Motion dated 13<sup>rd</sup> February, 2015 must also fail. I have perused the two affidavits. I am unable to decipher any defect in the same which would render the suit herein and the pending application incompetent. Even if there is any such defects, the same are on the form of the affidavits which do go to the substance of two affidavits and which this court is enjoined to ignore under Article 159(2) (d) of the Constitution, 2010.

The upshot of the foregoing is that the 1<sup>st</sup> Defendants Preliminary Objection fails wholly and the same is dismissed with costs to the Plaintiff.

**Delivered and Signed at Nairobi this 31<sup>st</sup> day of March, 2017**

**S. OKONG'O**

**JUDGE**

**In the presence of**

Mr. Munyororo      for the Plaintiff

Mr. Makori              for the Defendant

Kajuju                  Court Assistant