



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 168 OF 2016

HARON ONYANCHA PLAINTIFF

VERSUS

THE NATIONAL POLICE SERVICE COMMISSION.....1ST DEFENDANT

HON. ATTORNEY GENERAL 2ND DEFENDANT

R U L I N G

1. The plaintiff filed the instant suit vide a plaint dated 20th June 2016. The plaintiff claims that officers of the 1st defendant on or about the year 2000 occupied the plaintiff's land parcel known as **LR No. Majoge/Magenche/ 1578** where the officers took possession of and started residing in several structures thereon which the plaintiff had erected. The plaintiff states the said officers have occupied and resided in the said structures ever since without any payment of rent and that they have refused to vacate from the premises. The plaintiff asserts the occupation is unlawful and amounts to forcible detainer and seeks payment of mesne profits and general damages and order of eviction of the officers from the suit land.

2. The 2nd defendant, the Attorney General entered appearance and filed a defence where he denies the contents of the plaint and avers that the Attorney General is a stranger to all the averments contained in the plaint and specifically pleads that no notice of intention to sue the 2nd defendant was served. The 2nd defendant simultaneously with the statement of defence filed a Notice of Preliminary Objection on the following grounds:-

1. The suit is statute barred by the provisions of the Public Authorities Limitation Act, Cap 39 Laws of Kenya, Section 3(1) and (2).

2. The suit herein is statute barred by the provisions of the Limitation of Actions Act, Cap 22 Laws of Kenya, Section 4, 7 and 8 thereof.

The court directed that the preliminary objection be argued by way of written submissions and both parties have filed their submissions. The 2nd defendant filed its submissions dated 26th January 2017 on 27th January 2017 while the plaintiff filed his response submissions dated 20th March 2017 on 29th March 2017.

3. The 2nd defendant submits that the plaintiff's action to recover land and recover mesne profits is statute barred by reason of Sections 7 and 8 of the **Limitation of Actions Act**, Cap 22 Laws of Kenya.

Section 7 of the Act provides:-

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims to that person.

Section 8 of the Act provides:-

An action may not be brought, and distress may not be made, to recover arrears of rent, or damages in respect thereof, after the end of six years from the date on which the arrears became due.

4. The 2nd defendant further in the preliminary objection places reliance on Section 3(1) and (2) of the **Public Authorities Limitation Act**, Cap 39 Laws of Kenya which provides thus:

3(1) No proceedings founded on tort shall be brought against the government or a local authority after the end of twelve months from the date on which the cause of action accrued.

3(2) No proceedings founded on contract shall be brought against the government or a local authority after the end of three years from the date on which the cause of action accrued.

5. The plaintiff's claim is that police officers of the 1st defendant without any formal agreement with the plaintiff entered onto his parcel of land in the year 2000 and occupied part of his land where he had built some structures and have not paid any rent for the said occupation since they took occupation. The 2nd defendant submits the plaintiff's claim is statute barred and is unsustainable. The 2nd defendant in support of their submission relied on the case of **IGA –vs- Makerere University [1972] E.A 65** where **Mustafa, J.A** held as follows:-

“A plaint which is barred by limitation is a plaint “barred by law”. Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the court “shall reject” his claim. The appellant was clearly out of time, and despite the opportunity afforded him by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The Limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the court cannot grant the remedy or relief sought.”

Law, Ag. V. P in the same case inter alia stated thus:-

“...The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, the plaint must be rejected.”

6. In the case of **Gathoni –vs- Kenya Co-operative Creameries Ltd, [1982] KLR 104** the Court of Appeal while dismissing an appeal arising from an application for extension of time to bring a suit after the period of limitation had expired which the High Court had rejected Potter, J. A stated thus:-

“...The Law of Limitation of Actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. Special provision is made for infants and for the mentally unsound. But, rightly or wrongly, the Act does not help persons like the applicant who whether through dilatoriness or ignorance, do not do what the informed citizen would reasonably have done.”

7. In the case of **Mehta –vs- Shah [1965] E.A 321, Grabbie J.A** in his judgment stated as follows:-

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, protect a defendant after he has lost evidence for his defence from being

disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

The plaintiff in his response submissions stated that the Public Authorities Limitation Act, Cap 39 Laws of Kenya Sections 3(1) and (2) has no application since the officers in charge had assured him that rent would be paid and he accepted their word in good faith. The plaintiff has further sought refuge under Article 159 (2) (d) of the Constitution which provides:-

“Justice shall be administered without undue regard to procedural technicalities.”

The plaintiff further submits that the Limitation of Actions Act, Cap 22 Laws of Kenya would have no application in regard to matters that fall to be construed under the Public Authorities Limitation Act, Cap 39 Laws of Kenya by virtue of Section 42 (1) (e) of the Limitation of Actions Act and Section 6 of the Public Authorities Limitation Act.

8. Section 42 (1) (e) of the **Limitation of Actions Act**, of Cap 22 Laws of Kenya provides:-

“this Act does not apply to proceedings to which the Public Authorities Act applies.”

Section 6 of the Public Authorities Act, Cap 39 nonetheless provides for the application of the Limitation of Actions Act, Cap 22 in given circumstances and provides as follows:-

Notwithstanding the provisions of Section 31 of the Limitation of Actions Act, Section 22 of that Act shall not apply in respect of the provisions of this Act; and in Section 27 of the Limitation of Actions Act the reference to Section 4 (2) of that Act shall be read and construed as a reference to Section 3(1) of this Act; but subject thereto and notwithstanding Section 42 of the Limitation of Actions Act, Part III of that Act shall apply to this Act.

9. The plaintiff has further argued that the defendant would not be entitled to acquire property through the doctrine of adverse possession as they are public entities. Further the plaintiff submits the acts of defendants would constitute a deprivation of the plaintiff of his property contrary to the provisions of the Constitution if the court fails to redress the plaintiff respecting the defendants’ wrongful and unlawful acts.

10. I have considered the pleadings and the rival submissions of the parties. The submission by the plaintiff that the Limitation of Actions Act, Cap 22 Laws of Kenya does not apply to matters in regard to which the Public Authorities Limitation Act, Cap 39 Laws of Kenya has application is not entirely correct. As noted above Section 6 of the Public Authorities Limitation Act, Cap 39 Laws of Kenya clearly provides that Part III of the Limitation of Actions Act applies to the Public Authorities Limitation Act. The Limitation of Actions Act further provides under Section 43 that subject to-

a. Section 33 of the Kenya Regiment (Territorial Forces) Act.

b. Section 136 of the Government Lands Act (as amended by this Act); and

c. Section 41 and 42 of this Act, this Act applies to proceedings by and against the Government as it applies to proceedings between private persons.

11. There is no dispute that the cause of action upon which the plaintiff’s suit is founded arose in the year 2000 when it is alleged that officers of the 1st defendant took occupation of a portion of and/or occupied structures on the suit property belonging to the plaintiff. The plaintiff is unclear as to whether or not the plaintiff is relying on contract and/or the tort of trespass. By the plaintiff however, the plaintiff expected to be paid rent as pleaded under paragraphs 5, 6 and 7 of the plaintiff. As the rent was not paid, the plaintiff claims the defendants are in unlawful occupation and are therefore in forcible detainer of the plaintiff’s parcel of land and seeks damages and an order of eviction.

12. The suit as is clear from the plaint is directed against the government and it is in that context that the Attorney General has been made a party. That being the case the plaintiff's suit, definitely, is one in respect of which the Public Authorities Act, Cap 39 Laws of Kenya would have application to and to that end is brought in contravention of Section 3(1) and (2) of the Act. The cause(s) of action is barred by limitation as set out in the provisions thereof. Even as against the 1st defendant in its capacity as an independent commission, the suit would be barred by limitation under the provisions of Section 4(1) (a) and (2) of the Limitation of Actions Act, Cap 22 Laws of Kenya.

13. In the premises, I uphold the 2nd defendant's preliminary objection and I hereby order the plaintiff's suit struck out. I however make no order for costs and each party will bear their own costs of the suit.

14. Orders accordingly.

Ruling dated, signed and delivered at Kisii this 28th day of April, 2017.

J. MUTUNGI

JUDGE

In the presence of:

N/A for the plaintiff

Mireri for Ochwal for the 1st and 2nd defendant

Milcent court assistant

J. MUTUNGI

JUDGE