

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L MISCELLANEOUS CIVIL APPLICATION NO. 13 OF 2017

GRACE IMARI JAHAVA.....
....APPLICANT

VERSUS

SIMON KIMANI MWANGI.....1ST
RESPONDENT

UASIN GISHU COUNTY EXECUTIVE IN-CHARGE OF LAND, HOUSING,

URBAN DEVELOPMENT & PLANNING.....2ND
RESPONDENT

RULING

The application herein is brought under Section 1A, 3, 3A, 63E OF THE Civil Procedure Act, Article 48 of the Constitution 2010, Order 12, Rule 7 of the Civil Procedure Rules and Section 22 of the Limitation of Acts Act and all other entitling legislation. The applicant seeks leave to file suit out of time. The cause of action is based on contract. It is admitted the suit is time barred unless leave is granted. According to the applicant, the cause of action is based on contract. The agreement is dated 9.9.1988. The 1st respondent does state that the application does not disclose any cause of action against him.

I have considered the application and do find that the agreement in issue was made on 9th September, 1988 between Florence Wambui Kibuku and Grace Jahava and not the 1st respondent and therefore the plaintiff has no cause of action against the 1st respondent. Part III of the **Limitation of Actions Act Cap 22 Laws of Kenya** provides for extension of the limitation period in three instances;

Thus: -

a) as provided in section 22, in the case of disability

b) as provided in section 26, in the case of fraud or mistake.

c) As provided in section 27, in the case of ignorance of material facts in an action for negligence

Although section 22 and 26 of the Limitation of Actions Act refer to extension of the limitation period in case of disability or fraud or mistake respectively, it seems to me that these sections do not envisage an application for leave to extend the limitation period and an application based on those sections would be incompetent. Rather these provisions empower a party to file a suit despite the expiry of the limitation period prescribed for the action and give the court jurisdiction to disregard the limitation period prescribed for the action if the suit falls within the scope of section 22 and 26 of the Limitation of Actions Act. If it was intended that applications under section 22 and 26 of the Limitation of Actions be made in court, then enabling rules similar to order XXXVI rule 3C providing for application for extension of limitation period under section 27 of Limitation of Actions Act could have been made.

I do find that Article 159 of the Constitution cannot assist the applicant in this matter as he has not demonstrated any grants for extension of time as envisaged by section 26 of the Limitation of Actions

Act. Moreover, the application is not based on fraud, misrepresentation or mistake and therefore the same is not envisaged under section 26 of the Act. Application is dismissed with no order as to costs.

DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF AUGUST, 2017.

A. OMBWAYO

JUDGE