

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CIVIL SUIT NO. 295 OF 2017

SAMEDY TRADING COMPANY LIMITED.....PLAINTIFF

VERSUS

KIGWOR COMPANY LIMITED.....DEFENDANT

RULING

The Defendant has raised an objection challenging the jurisdiction of this court to hear this suit based on Section 7 of the Limitation of Actions Act; which sets the limitation period for recovery of land at 12 years from the date the action accrued. The Defendant claims it was issued with a title in 1996 and has been in possession for 21 years. It contends that the suit was filed this year without leave of court and should be struck out.

The Plaintiff on its part argues that the preliminary objection is misplaced since the cause of action arose in 2015 when the Plaintiff learnt of the Defendant's encroachment on its land, which is L.R. No. 4144 I. R. No. 69479 Lower Kabete. The Defendant claims to be in possession of the suit property. It also claims that the suit properties are different. The Plaintiff also challenges the Defendant's title which it claims was issued before the Defendant was incorporated as a company.

A preliminary objection should raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained. (See **Mukisa Biscuits Manufacturing Company Ltd V. West End Distributors Ltd** (1969) EA 696)

The facts in this case are not clear and straight forward. The issue as to who is in possession and whether the Plaintiff and Defendant both claim the same piece of land will have to be determined at the trial.

The court dismisses the preliminary objection with costs to the Plaintiff.

Dated and delivered at Nairobi on 14th December 2017.

K. BOR

JUDGE

Read in open court in the presence of: -

Mr. Karuga for the Plaintiff

Mr. Baragu for the Defendant

Mr. V. Owuor- Court Assistant