



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KERICHO.

CIVIL CASE NO. 6 OF 2000.

JOHN KIPROTICH LANGAT.....PLAINTIFF

VERSUS

SAMUEL K. MAIYWA.....DEFENDANT

RULING

The Defendant, Samwel K. Maywa, has raised a Preliminary objection to the Plaintiff's suit and has prayed that the Plaintiff's suit be dismissed with costs on the ground that it was barred by the provisions of the **Limitations of Actions Act**. The Defendant, through his Counsel, Mr. Mutai submitted that the cause of action in this suit arose in the year 1972 and the Plaintiff did not file this suit until the year 2000, twenty eight years after the cause of action had arisen. The Defendant submitted that by the time the Plaintiff filed his suit twelve years had already expired. Mr. Matwere, Learned Counsel for the Plaintiff, opposed the Preliminary objection. He submitted that the Plaintiff's suit was for specific performance of the agreement for sale of land entered between the Plaintiff and the Defendant. Mr. Matwere admitted that even though the sale agreement was entered in 1972, the Defendant had validated the agreement when he attended the Land Control Board in the 7th of April, 1995 and gave consent under the **Land Control Act** to the said Land Sale Agreement. The Plaintiff averred that the only issue for determination by this court was the specific performance of the said agreement whereby the Plaintiff was seeking the transfer of the said parcel of land to him. The Plaintiff urged this court to dismiss the preliminary objection. In reply, Mr. Mutai for the Defendant submitted that the Defendant did not attend the alleged Land Control Board in 1995 and neither did he sign any documents of the said Land Control Board.

I have considered the rival arguments made by the parties to this suit. According to paragraph 2 of the Plaintiff's application, the Plaintiff has stated that he has been in continuous and exclusive occupation of the suit land since the year 1972 when he purchased the same from the Defendant. The Plaintiff has further averred in paragraph 4 of the Application that the Defendant attended the Belgut Land control Board on the 7th of April, 1995 and sought and was granted consent to transfer the suit land to him. In his defence the Defendant denied that he attended the Land Control Board which granted the consent to transfer in issue.

I have considered the averments made by the parties to this suit. **Section 7 of the Limitation of Actions Act** provides that:

***“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 9(1) of the said Act provides that

*“Where a person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action accrues in the date of the dispossession or discontinuance.”*

The plain reading of the above quoted sections show that a person in possession of land cannot be barred by the provisions of the **Limitation of Actions Act** from bringing a suit in Court. The Plaintiff claims that he has been in possession of the land from 1972. The Defendant denies this fact. The Plaintiff further claims that he was granted the requisite consent of the land control board in 1995. The Defendant denies this. Those two disputes are matters in issue which can only be determined after the court has heard evidence adduced by the parties. To successfully plead limitation, the pleadings must clearly show the fact that the period which the suit ought to have been filed is not in dispute. In this case, the issue of whether the Plaintiff is or is not in possession is in dispute.

In the circumstances of this case this court is not prepared to find that the Plaintiff's suit has been barred by limitation. There is no evidence at this point to support the Preliminary objection raised by the Defendant. The Preliminary objection is consequently disallowed with costs to the Plaintiff. The Defendant is however not barred from adducing evidence during the hearing of this case to establish the fact that the Plaintiff's suit was indeed barred by the Provisions of the **Limitation of Actions Act**. It is so ordered.

**DATED at KERICHO this 29th day of October 2004**

**L. KIMARU**

**AG JUDGE**



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