



**Criticos v Trust Bank Limited (In Liquidation) & another (Civil Suit E202 of 2023)
[2024] KEHC 7846 (KLR) (Commercial and Tax) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7846 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E202 OF 2023
JWW MONG'ARE, J
JUNE 24, 2024**

BETWEEN

BASIL CRITICOS PLAINTIFF

AND

TRUST BANK LIMITED (IN LIQUIDATION) 1ST DEFENDANT

METROPOL CREDIT REFERENCE BUREAU LIMITED 2ND DEFENDANT

RULING

1. Before the Court is the Plaintiff's Notice of Motion application dated 10/5/2023 filed pursuant to Section 3A and 63 of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, Section 4 of the *Limitation of Actions Act*, Regulation 34(2) of the Banking (Credit Reference Bureau) Regulations 2020 and Article 47 of *the Constitution* of Kenya.
2. The Plaintiff has by its application sought an order for a Mandatory Injunction, pending determination of this suit, to compel the Defendants to delete and expunge the adverse listing relating to account 5435595400429000 in his name contained in the customer credit report maintained with the 2nd Defendant.
3. The grounds of the application were stated in its body and the supporting affidavit of the Plaintiff sworn on 10/5/2023.
4. The grounds were that sometime in September 2017, the Plaintiff applied for a loan from Kenya Commercial Bank (KCB Bank) but the application was rejected by the Bank on the basis that he had an unfavourable credit rating and was listed with the 2nd Defendant.



5. The Plaintiff's case was that the listing of his name with the 2nd Defendant had exceeded a period of 5 years and was contrary to the provisions of the Banking (Credit Reference Bureau) Regulations 2020 and that any claim by the Bank was time barred under section 4(4) of the Limitations of Actions Act.
6. That the Defendants refused to delist the Plaintiff from the credit listing with the 2nd Defendant causing him damages as he has been unable to obtain loan facilities from other Banks. The Plaintiff further contended that the Defendants breached their statutory obligations by continuing to maintain the negative listing despite numerous demands and have also defied the directives of the office of the Ombudsman directing them to remove the negative listing of the Plaintiff.
7. In opposition to the instant application, the 1st Defendant filed a Preliminary Objection dated 29/6/2023 and a replying affidavit sworn on 10/7/2023. The 2nd Defendant filed a replying affidavit sworn on 12/6/2023. The Plaintiff filed a supplementary affidavit sworn on 18/7/2023.
8. The Court will consider the Preliminary Objection first as it raises points of law which may dispose of the instant application and suit in limine, as held by the Court in the celebrated case on Preliminary Objections of Mukisa Biscuit Manufacturing Co.Ltd v.West End Distributors Ltd (1969) E.A 696.
9. In the Preliminary Objection, the 1st Defendant contended that this Court lacked the requisite jurisdiction to hear and determine this suit and application by dint of section 4(2) of the *Limitation of Actions Act* and that this suit was time barred having been filed on 11/5/2023, a period of over 9 years since the alleged breach of statutory duty occurred on 1/10/2013.
10. Further that on 15/9/2017 the Plaintiff admitted to being having been informed about the Credit Bureau's adverse listing as a loan defaulter by Kenya Commercial Bank and therefore this suit was still time barred on the Plaintiff's own admission as the three-year limitation period within which the suit could be filed lapsed on 15/9/2020.
11. Based on the foregoing reasons, the 1st Defendant prayed to have the instant application and plaint dated 10/5/2023 struck out and dismissed with costs granted to it.
12. The 1st Defendant submitted that the Plaintiff's claim as against the 1st and 2nd Defendants was based on an alleged breach of statutory duty on their part in listing his account details to a credit reference bureau which is an alleged tortious act and under the *Limitation of Actions Act*, ought to have been filed within three (3) years from the date of the listing on 1/10/2013.
13. The 2nd Defendant supported the submissions of the 1st Defendant on the issue of limitation of the claim by operation of the law.
14. On his part, the Plaintiff submitted that he was not aware that the 1st Defendant had instructed the 2nd Defendant to adversely list him and that he only became aware on 4/4/2022 therefore the 1st Defendant cannot raise the issue of limitation of time to defeat this suit.
15. The question that the Court must answer is whether the Plaintiff's claim and suit is time barred.
16. Section 4(2) of the *Limitation of Actions Act* Cap 22 states:

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.”
17. In the Plaintiff's claim as set out in the plaint dated 10/5/2023 against the Defendants, the Plaintiff accused the Defendants of being negligent and breaching their statutory obligations by maintaining the negative credit listing despite numerous demands to remove the same.



18. In the Court of Appeal case of Kenya Airways Corporation Ltd V Tobias Oganya Auma & 5 Others [2007] eKLR, the Court cited the case of Robin Cahill & 9 Others v. T.S. Nandhra & 3 Others – Civil Appeal No. 57 of 2002 (unreported), another Court of Appeal case which held as follows:-

“The claim in the present suit sounds in tort contrary to the opinion of the Plaintiffs’ counsel. Breach of statutory duty of care is to my mind a claim in tort essentially, so is the claim in negligence and fraud.”

19. Having considered the arguments put forward by the parties, I am persuaded that the Plaintiff’s claim is founded on tort as the same relates to a breach of a statutory duty, which is indeed a tort. This means that the claim falls within the purview of section 4(1) of the Limitations of Actions Act which states that an action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.

20. In this case, the Plaintiff in his plaint and supporting affidavit, stated that he applied for a loan sometime in 2017 from Kenya Commercial Bank(KCB) which application was rejected and he was at that time informed by KCB that he had a negative listing in the Credit Reference Bureau.

21. From the record, the court notes that KCB sent a letter dated 15/9/2017 to the Plaintiff, annexed on page 1 of the Plaintiff’s exhibit marked as ‘BC1’. Vide the said letter the Bank informed the Plaintiff that his loan application could not be acceded to as his current credit rating was not favourable. The Bank attached the Credit Reference Bureau Report in the letter.

22. Although the record indicates that the Plaintiff was listed sometime in 2013 which meant that the suit ought to have been filed in 2016, it is possible that the Plaintiff only discovered his negative credit listing in 2017, when notified by Kenya Commercial Bank, and not in 2013 when he was initially listed. However, even if that is the case, it is clear that the Plaintiff was informed of his credit listing in 2017 by Kenya Commercial Bank. If we assume that time started running in 2017, the Plaintiff had up to 2020 to file a claim against the Defendants for breach of statutory duty.

23. The Plaintiff only filed this suit in 2023, three years after the statutory limitation period had lapsed, if the Plaintiff only became aware in 2017, and in violation of section 4(3) of the Limitations of Actions Act. It goes without saying that the Plaintiff’s claim and suit are time barred. This Court therefore lacks the jurisdiction to hear and determine this suit and application, by dint of section 4(2) of the Limitation of Actions Act.

24. I find merit in the 1st Defendant’s Preliminary Objection dated 29/6/2023 and strike out this suit with costs awarded to the 1st and 2nd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JUNE, 2024.

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J.W.W. MONG’ARE

JUDGE

In the Presence of:-

Mr. Ogeri for the Plaintiff/Applicant.

N/A for the 1st Defendant.

Mr. Ondigi for the 2nd Defendant.

Amos - Court Assistant

