



**Mwangi v Maina (Civil Appeal E281 of 2021)  
[2022] KEHC 15712 (KLR) (Civ) (28 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15712 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E281 OF 2021**

**JN MULWA, J**

**NOVEMBER 28, 2022**

**BETWEEN**

**JANE WANJIRU MWANGI ..... APPELLANT**

**AND**

**DAVID MAINA ALIAS KABIRU ..... RESPONDENT**

*(Being an appeal against the Ruling and Order of the Chief Magistrate's Court at Milimani in Civil Suit No. 4447 of 2014 delivered by Hon. K. I. Orange (SRM) on 22nd May 2020)*

**JUDGMENT**

1. On August 4, 2015, the appellant filed Milimani Civil Suit No 4447 of 2014 in the lower court seeking for damages arising from injuries sustained in a road traffic accident that occurred on August 3, 2011.
2. Subsequently, the respondent raised a preliminary objection dated January 9, 2020 against the appellant's suit. The main ground of the preliminary objection was that the suit was time barred and offended the provisions of section 4(2) of the *Limitation of Actions Act*.
3. The preliminary objection was allowed in a ruling delivered on May 22, 2020 and the appellant's suit was struck out with costs. Aggrieved by the said decision, the appellant preferred the instant appeal *vide* a memorandum of appeal dated May 25, 2021. The appeal is based on the following grounds:
  - a. That the learned magistrate erred in fact and in law in finding that the appellant's suit was time barred in accordance with the provision of section 4(2) of the *Limitation of Actions Act* cap 22 Laws of Kenya.
  - b. That the learned magistrate erred in fact and in law in failing to consider the provisions of order 50 rule (1) of the *Civil Procedure Rules* and article 159 (2)(d) of the *Constitution* of Kenya on the need to do substantive justice and eschew undue regards to procedural technicalities.



- c. That the learned magistrate erred in fact and in law failing to find that in civil matters, the day on which the cause of action arose was not to be considered for the purpose of reckoning time within which a claim should be filed.
  - d. That the learned magistrate erred in fact and in law in failing to find that a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens according to section 57 of the *Interpretation and General Provision Act*.
  - e. That the learned magistrate erred in fact and in law by failing to find where the last day of filing suit is an excluded day in accordance to section 57(b) of the *Interpretation ad General Provision Act*, the period shall include the next following day, not being an excluded day.
  - f. That the learned magistrate erred in fact and in law in failing to consider that the last day of filing suit clearly fell on a Sunday and was therefore an excluded day and even if the plaintiff had her pleadings ready, she was disentitled from filing them on the said day.
  - g. That the learned magistrate failed to address herself to the calendar attached by the appellant and find that the suit was filed on the next working day.
  - h. That the learned magistrate erred in fact and in law in failing to consider the appellant's submissions and authorities annexed thereto.
4. The appeal was canvassed by written submissions.

The appellant submits that the date on which a cause of action arose is not counted when computing time under section 57(a) of the *Interpretation and General Provisions Act*. Rather, the computations begins on the day after the material day which in this case should be August 4, 2011. Further, the appellant contends that under section 57(b) of the same act, weekends and public holidays are not considered in the computation of the time for the purposes of a written law. She relied on the case of *Simon Towett Maritim v Jotham Muiruri Kibaru [2010] eKLR*, to support this position. It was her contention that since the last day for filing the suit fell on a Sunday August 3, 2014, it was impossible for her to file her claim on the said date.

5. On the other hand, the respondent maintained that the suit was statute time-barred and could not proceed as filed. He submitted that under section 4(2) of the *Limitation of Actions Act*, time starts running from the date the cause of action arose which in this case was August 3, 2011. He relied on the case of *Haron Onyancha v National Police Service Commission & another [2017] eKLR* in which the court quoted with approval the case of *IGA v Makerere University (1972) EA 65* where Mustafa, JA 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.”



6. The respondent also cited the cases of *Gathoni v Kenya Co-operative Creameries Ltd, [1982] KLR 104* and *Mehta v Shah [1965] EA 321* where courts highlighted the objectives of limitation of actions. He thus urged that the appeal be dismissed with costs.
7. The only issue for determination is whether the learned magistrate erred in law and fact in striking out the appellant's suit for being time barred by virtue of section 4(2) of the *Limitation of Actions Act*. The said provision stipulates 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;

Provided that an action for libel or slander may not be brought after the end of twelve months from such date”.
8. It is not in dispute that the cause of action arose in the instant case accrued on August 3, 2011 when the appellant got involved in a road traffic accident and suffered injuries as a consequence. In my view therefore, time started running on that day and strictly speaking, the three year period lapsed on August 3, 2014. However and as submitted by the appellant, in computing time for the purposes of a written law (except the *Constitution*), regard must be had to the provisions of the *Interpretation and General Provisions Act*, cap 2 of the Laws of Kenya (See *Simon Towett Maritim v Jotham Muiruri Kibaru (supra)*). Section 57 of the said statute states as follows:

“57. Computation of time In computing time for the purposes of a written law, unless the contrary intention appears—

  - a. A period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
  - b. If the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;
  - c. Where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
  - d. Where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.”
9. August 3, 2014 fell on a Sunday which is an excluded day by virtue of section 57(b) of the *Interpretation and General Provisions Act*. This automatically pushed the last date for filing of the suit to Monday August 4, 2014 which is when the suit in the lower court was filed. In the premises, I find and hold that the suit in the lower court was properly filed.
10. Accordingly, the appeal is hereby allowed in the following terms:
  1. I set aside the ruling and order of the lower court given on May 22, 2020 and substitute it with an order dismissing the respondent's preliminary objection dated January 9, 2020 with costs to the appellant.



2. In the result, the appellant's suit being Milimani CMCC No 4447 of 2014 is hereby reinstated.
3. The appellant is also awarded the costs of the appeal.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 28TH NOVEMBER 2022.**

**J N MULWA**

**JUDGE.**

