



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gakuru v Kenya Commercial Bank (Miscellaneous Application  
E020 of 2022) [2022] KEELC 15711 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15711 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION E020 OF 2022**

**BM EBOSO, J**

**JULY 27, 2022**

**BETWEEN**

**JAMES KARANJA GAKURU ..... APPLICANT**

**AND**

**KENYA COMMERCIAL BANK ..... RESPONDENT**

**RULING**

1. Through a notice of motion dated 18/3/2022, the applicant, James Karanja Gakuru, seeks an order under section 27 of the *Limitation of Actions Act*, enlarging the time within which to file a suit against the respondent. The application is supported by the applicant's affidavit sworn on 18/3/2022. The application was canvassed through written submissions dated 12/7/2022, filed by the firm of Wairagu & Wairagu Advocates.
2. The applicant's case is that in 1992, he used Title Number Kiambaa/Thimbigua/2007 as a collateral to secure a loan facility advanced to him by Kenya Commercial Bank Limited. He finished repaying the loan in 2013. The Bank did not, however, release to him the title. The Bank contended at the time that the original title had been misplaced and/or lost. Despite numerous trips to the Offices of the Bank, the Bank did not give him his title. On 22/9/2016, through M/s J. W Ngetho & Co Advocates, he wrote to the Bank demanding his title. On 15/12/2016, the Bank wrote to him, forwarding to him his original title. He thereafter instructed his advocate to pursue a claim for damages against the Bank. His advocates did not, however, initiate appropriate proceedings for damages. As a result of his advocate's failure to initiate a suit for proceedings, his claim became statute-barred.
3. The Bank opposed the application through grounds of opposition dated 13/6/2022. They contended that this court lacked jurisdiction to grant the order sought as the dispute in the intended suit fell within the mandate of a commercial court. They added that no good reason had been advanced to "sway the discretion of the court" to grant the order. Lastly, they contended that the applicant had failed to display a draft plaint.



4. I have read and considered the rival submissions filed in support and against the application. I have also considered the relevant constitutional and statutory frameworks. Further, I have considered the prevailing jurisprudence on the issues that fall for determination in the application. The two issues that fall for determination are: (i) Whether this court has jurisdiction to entertain or grant the order sought in the application; and (ii) Whether the applicant has satisfied the criteria for grant of an order extending the limitation period for bringing an action under section 27 of the [Limitation of Actions Act](#).
5. The respondent objected to the applicant's plea on the ground that under the law, this court is not the proper court vested with jurisdiction to entertain the present application. The plaintiff seeks to file a suit out of time to ventilate a claim for damages he contends were occasioned to him due to the respondent's misplacement of his title. He contends that the title was ultimately traced and given to him. It is clear from the above facts that there is no dispute or contestation about environment or the use, occupation or title to land. It is a civil claim for damages resulting out of the respondent's alleged failure to release the collateral it held as security. It is not a dispute about the applicant's entitlement to land or to the title. It therefore falls outside the purview of article 162(2)(b) of the [Constitution](#).
6. In my view, the intended claim is an ordinary civil claim which would be ventilated in an ordinary civil court and not the Environment and Land Court as contemplated under article 162(2)(b) of the [Constitution](#).
7. Secondly, even assuming that the contemplated claim fell under the ambit of article 162(2)(b) of the [Constitution](#), would this court have jurisdiction to extend limitation period under the [Limitation of Actions Act](#)? My answer to the above question is in the negative. Section 27 of the [Limitation of Actions Act](#) grants courts limited jurisdiction to extend the limitation period for bringing actions. Secondly, there is enough jurisprudence on the question of jurisdiction of courts to extend limitation period under the [Limitation of Actions Act](#). The Court of Appeal rendered itself on this jurisdiction in [Willis Onditi Odhiambo v Gateway Insurance Company Ltd](#) [2014] eKLR as follows:

“Under Section 27, as can be gleaned from the provisions cited above, time to file suit can only be extended where the action is founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed should be in respect of personal injuries to the plaintiff as a result of the tort. The section clearly does not give jurisdiction to the court to extend time for filing suit in case involving execution decrees.”
8. Prior to the above pronouncement, the Court of Appeal stated the following in [Mary Osundwa v Nzoia Sugar Company Limited](#) [2002] eKLR regarding the court's powers to extend limitation period under section 27 of the [Limitation of Actions Act](#):

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly Osiero, J had no jurisdiction to extend time as he purported to do on 28/5/1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent.”
9. It is therefore clear from the frameworks in article 162(2)(b) of the [Constitution](#) and from the above jurisprudence on the jurisdiction of courts under section 27 of the [Limitation of Actions Act](#) that this



court does not have jurisdiction to entertain the application or grant the order sought by the applicant. That is my finding on the first issue.

1. In the absence of jurisdiction, I will down my tools in tandem with the following principle in *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited* (1989) KLR 1:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it at the moment it holds the opinion that it is without jurisdiction.”

10. The result is that the application dated 18/3/2022 is struck out with costs for lack of jurisdiction on part of this court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF JULY 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Waithanji for the Applicant

Ms Waigwa for the Respondent

Court Assistant: Ms Lucy Muthoni

