



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Civil Case 34 of 2007**

**JIM MATIA BANDI.....PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LIMITED.....1<sup>ST</sup> DEFENDANT**  
**THE MADISON INSURANCE COMPANY.....2<sup>ND</sup> DEFENDANT**

**RULING**

**PRELIMINARY OBJECTION**

**I. Background**

1. In this Commercial Law matter the plaintiff filed suit in person on 5<sup>th</sup> March 2007. He made claims against a bank 1<sup>st</sup> defendant and an Insurance Company 2<sup>nd</sup> defendant whereby he claims that he had been deprived of his standing ordered premiums that he had ordered the bank to remit to the 2<sup>nd</sup> defendant.
2. The bank and Insurance Company's action was irregular. He prays for compensation loss and damages.

**II. Preliminary Objection**

3. Both the 1<sup>st</sup> and 2<sup>nd</sup> defendant separately sought for the striking out of the plaintiffs, plaint by the 1<sup>st</sup> defendant, that the suit is time barred by the 2<sup>nd</sup> defendant. By the 2<sup>nd</sup> defendant, that the particularization of the claims made was not done according to order VI r 8 Civil Procedure Rules (The 1<sup>st</sup> defendant was absent from these proceeding.)
4. In reply, the advocate for the plaintiff who has come on record stated that we cannot go into the issue of technicalities under order XLIV r 6 Civil Procedure Rules

**III. Findings:**

5. Jurisdiction goes to the root of a case. The claim has been filed for matters in the early 1990's. These claims are time barred but the plaintiff had an opportunity to seek leave to file the said suit out of time.
6. The plaint required to be particularized. This was not fatal and an amendment could have been taken.
7. This court herein rules that the preliminary objection be and is hereby upheld on the issue of limitation of action.
8. This suit is time barred. It is struck out. I make no orders as to costs because the issue was raised in 2008 about a year later. The delay was inordinate.
9. Costs to the defendant No. 2 but not defendant No 1 as they are absent.

Dated this 29<sup>th</sup> day of April, 2010 at Eldoret

**M. A. ANG'AWA**  
**JUDGE**

**22/04/2010**

**Advocate: -**

Angu Kitigin advocate instructed by the Firm of M/s Angu Kitigin & Company Advocates for the Plaintiff

W.M. Simiyu advocate instructed by the Firm of M/s W.M. Simiyu & Company Advocates for 2<sup>nd</sup> Defendant,

A. Yano advocate instructed by the Firm of M/s Yano & Company Advocates for the 1<sup>st</sup> Defendant.