



**Dasahe Investments Limited v Mugo (Environment & Land Case
1020 of 2016) [2022] KEELC 4832 (KLR) (19 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1020 OF 2016
EK WABWOTO, J
SEPTEMBER 19, 2022**

BETWEEN

DASAHE INVESTMENTS LIMITED PLAINTIFF

AND

EDITOR IRIMA MUGO DEFENDANT

RULING

1. The application is premised on the preliminary objection dated October 13, 2016. The preliminary objection is raised on the grounds that the suit is fatally defective, as the same is statute barred by virtue of section 4(1) of the Limitation of Action Act chapter 22 law of Kenya. Section 4(1) of the Limitation of Actions Act states that:

The following action may not be brought after the end of six years from the date when the cause of action accrued -
 - a. actions found on contract [Emphasis mine]
2. The facts of the case are that on October 14, 2009, the plaintiff entered into a sale agreement with the defendant for purchase of land at a consideration of Kenya shillings one million five hundred thousand shillings only (Kshs 1,500,000/-). Following the refusal of the defendant to execute the required documents and finalize the transfer process, the plaintiff *vide* a plaint dated August 22, 2016 sought for an order of specific performance based on the sale agreement dated, for the defendant to transfer all parcel of land known as land reference number 9084-Nairobi.
3. The defendant submitted that the cause of action arose on October 14, 2009 and was enforceable until October 14, 2015. Furthermore, it was submitted that the plaintiff pleaded that the cause of action arose on October 14, 2009 in essence giving life to section 4(1) of Limitation of Action Act. Thus, the question of when the cause action arose is pleaded, and not to be ascertained.



4. In submissions dated August 15, 2022, the plaintiff submitted that the cause of action accrued after issuance of the completion notice dated January 20, 2016 and not upon the lapse of the 90 day period as stated by the defendant.
5. Having perused the written submissions, it is evident that the issues for determination before this court are;
 - i. Whether the threshold to raise a preliminary objection has been met?
 - ii. Whether the preliminary objection is merited?
6. It is trite law that a preliminary objection must be raised on a point of law as reiterated in the case of *Mukisa Biscuits Manufacturing Co. Ltd V West-End Distributors Limited* (1969). E.A 696. Having raised the objection on a specific provision of the law, the preliminary objection would be alive and within the jurisdiction of this court.
7. In the case of *Gathoni vs Kenya Co-operative Creameries Ltd* (1982) KLR 104 Potter, JA stated the rationale of the law of limitation as follows: -

“The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
8. The question before this court is to determine when the cause of action accrued. In *B Mathayo Obonyo v South Nyanza Sugar Company Ltd*, Majanja J. was guided by the *Black’s Law Dictionary* (10th Edition) and stated as follows:

“The word “accrue” means ‘to come into existence as an enforceable claim or right’...To hold that the cause of action accrues at the end of the contract period is inconsistent with the meaning of the legislative language and in particular the ordinary meaning of the term, “accrue...It is the breach that gives rise to the cause of action. Thus under the outgrowers cane agreement, such as the one subject to the suit, the right to sue for breach of contract arose when one of the parties failed to meet its obligations under the contract”
9. In line with the sentiments of the learned judge, the cause of action in this instance would have accrued at the time when the defendant failed to complete his obligations under the sale agreement on or about January 20, 2016. This would mean that the by initiating the suit in August of the same year, the plaintiff was well within time.
10. For this reason, I find the preliminary objection is unmerited and the same is hereby dismissed with costs to the plaintiff.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Anami for the Plaintiff.



Mr. Mwangi Ndegwa for the defendant.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE

