

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 258 OF 1997

**KENYA NATIONAL TRADING CORPORATIONPLAINTIFF
V E R S U S
BAWAZIR & COMPANY (1993) LTD.DEFENDANT**

RULING

I am told by parties herein that paragraph 3a of the plaint as amended says the cause of action arose in these words ; -

“In or about 1990, the Plaintiff in the course of its business, approached the Defendant to source for rice to import and which the Defendant agreed and obtained a quotation from Rice Import Corporation of Pakistan, the particulars whereof are well within the Defendant’s knowledge.”

The matter seems to be a question of interpretation and it is whether those words constitute a contract or a cause of action. I do know, that in a case based on contract, there must be contract made and a breach of it, that is when there is a cause of action in a breach of contract. Act Cap 22 provides for time limit to run from when the cause of action arises not when the contract is made. Here parties have argued exclusively and at length on when the contract was made and not when cause of action arose. Nobody has told me when the contract was breached. Hence the issue of cause of action has not been even touched.

However, whichever point is argued here, it is evident that there are no facts agreed. Preliminary point cannot be argued on points of fact disputed by parties and not agreed. This preliminary objection cannot succeed and I disallow it with cost.

DATED this 6th day of June 2003

A.I. HAYANGA

JUDGE