



Onsare v Acco Limited & another (Environment & Land Miscellaneous Case E030 of 2022) [2023] KEELC 748 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E030 OF 2022
EK WABWOTO, J
FEBRUARY 9, 2023**

BETWEEN

CHILLION BOSIRE ONSARE PLAINTIFF

AND

ACCO LIMITED 1ST DEFENDANT

PARLIAMENTARY SERVICE COMMISSION 2ND DEFENDANT

RULING

1. This ruling in respect to the Preliminary Objections dated June 6, 2022 and 2nd August 2022.
2. The 1st Defendant raised a Preliminary Objection dated June 6, 2022 in the following terms:
 - i. That the jurisdiction of this Honorable Court is limited to the areas specified under Article 162 of the *Constitution*, Section 13 of the *Environment and Land Court Act* and Section 150 of the *Land Act*; none of which concern the determination of accounting questions arising from a contractual relationship;
 - ii. That in the circumstances, this Honorable Court would be usurping the jurisdiction of the High Court in dealing with matters of accounting if it entertains this Suit.
3. The 2nd Defendant raised a Preliminary Objection dated August 2, 2022 in the following terms:
 - i. That the Court lacks jurisdiction to hear and determine this suit being time barred, having been filed after the lapse of the statutory period as set out in Section 4 of the *Limitation of Actions Act*.
 - ii. The suit is incompetent, bad in law and that the same should be struck out with costs to the 2nd Defendant.



4. The 1st Defendant filed submissions dated October 11, 2022 in which it was submitted that the Plaintiff's case does not capture any of the provisions warranting the jurisdiction of the Court. In support of the 2nd Defendant's objection, it was submitted that the Court should consider that although the Plaintiff pleaded fraud, the suit would still be time barred and fall outside the purview of the Court's jurisdiction
5. In submissions by the 2nd Defendant dated October 21, 2022, it was submitted that the Plaintiff has not demonstrated any registered interest over the suit property being Land reference No 209/4311. It was averred that the cause of action arose on October 22, 2015 when a notice of termination was issued and consequently the suit should have been filed on or before October 23, 2021.
6. In opposition to the Preliminary Objection, the Plaintiff filed submissions dated November 21, 2022 where it was submitted that the court has jurisdiction to hear and determine matters of land use, occupation among other issues. Furthermore, it was argued that the issue of payment is an administrative issue which could be dealt with by the Court under Section 96 of the [Civil Procedure Act](#) if so required.
7. I have considered the preliminary objections and the written submissions the authorities cited and filed by the parties. The issue for determination is whether the preliminary objections filed herein are merited.
8. It is trite law that a Preliminary Objection must be raised on a point of law as reiterated in the case of *Mukbisa 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.
9. The Court of Appeal in [Nitin Properties Ltd v Singh Kalsi & another](#) [1995] eKLR highlighted the principle when it stated:

“...A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”.
10. On the issue of whether the Plaintiff has an interest over land, this Court is guided by Section 38 of the [Land Act 2012](#):

No suit shall be brought upon a contract for the disposition of an interest in land unless—

 - (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested to by a witness who was present when the contract was assigned by such party.
11. Furthermore, disposition of Land under Section 2 of the [Land Act](#) enumerates that:

“disposition” means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer or the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other



act by the owner of land or under a lease where the owner's rights over that land or lease are affected or an agreement to undertake any of the dispositions;[Emphasis Mine]

12. In addition to Article 162 2(b) of the *Constitution*, Section 13 2(e) of the *ELC Act* envisions the latitude and discretion of the Court where its jurisdiction includes any other dispute relating to environment and land. In this instance, the parties are in agreement as to existence of lease agreements involving LR No 209/4311. This admission therefore duly settles that this Court has jurisdiction to hear and determine the suit. It also extinguishes the claim that the Plaintiff has no interest over the land.

13. 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 - Actions found on contract [Emphasis mine]

12. In the case of *Gathoni v 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.”

12. 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”

12. In this instance, the cause of action accrued when the extended term on the notice lapsed and the consequent action of enforcing the notice occurred. This would be sometime in early February 2016.

13. For this reason, I find the preliminary objections dated June 6, 2022 and August 2, 2022 are unmerited and the same are hereby dismissed with no orders as to costs.

14. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF FEBRUARY 2023

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Moriasi for the Plaintiff.

Mr. Obura for the 1st Defendant.

Ms. Mwaura h/b for Mr. Mwinyi for the 2nd Defendant.

Court Assistant; Caroline Nafuna and Philomena Mwangi.



E. K. WABWOTO
JUDGE

