



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Mahee Flowers Limited & another (Civil Appeal E004 of 2024)
[2025] KEHC 2152 (KLR) (Civ) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL E004 OF 2024
CM KARIUKI, J
FEBRUARY 6, 2025**

BETWEEN

JEFF MWANGI CHEGE APPELLANT

AND

MAHEE FLOWERS LIMITED 1ST RESPONDENT

EAST AFRICAN GROWERS LIMITED 2ND RESPONDENT

*(Being an appeal against the ruling of honourable R.Yator(S.P.M)delivered
on 01/02/2024 in Ol Kalou SPMCC No. E045 of 2023)*

JUDGMENT

Impugned ruling

1. The appeal subject of this judgment arose from a ruling on a Notice of Preliminary Objection. The objection, which was allowed and the suit struck out, was premised on limitation of actions.
2. Being dissatisfied with the said ruling, the appellant has appealed to this court vide memorandum of appeal dated 21/02/2024. The appellant has cited 5 grounds of appeal as follows;
 - I. The honourable magistrate erred in law and fact by allowing a preliminary objection that was unfounded and that issues raised required argument and submissions before a determination could be made.
 - II. The learned magistrate erred in law and in fact by being swayed by the respondent to calculate the date from when the cause of action accrued to be 07/12/2016 instead of 14/09/2017 when the criminal charges were withdrawn against the appellant and after doing a demand letter the respondent formally stated that he could not release the contested items or repay the amounts



paid until the pending criminal case was concluded, effectively crystallizing the cause of action date as the stated 14/09/2017.

- III. The learned magistrate erred in law and fact by finding that the preliminary objection raised pure points of law when the matters of fact would have easily explained the discrepancies of dates when the cause of action could be said to have accrued.
- IV. The honourable magistrate erred in law and fact by adopting an extremely narrow view of the provisions of section 4(1) of the Limitations of Actions Act.
- V. The honourable magistrate erred in law and in fact by misapplying the existing case law on the subject of preliminary objections and jurisdiction of a court of law.

Background of the case

3. On or about 07/12/2016 the appellant and the 1st respondent entered into an agreement to take a specified lot of discarded/ disused/scrap metal from the 1st respondent's premises.
4. After the material had been identified physically as a lot, the appellant made full payment of Kshs. 300,000/= and on 26/12/2016 the appellant procured transportation for the same from the 1st respondent's yard to a destination of his choice. The mode of transportation was by trucks and several of them were loaded. One of the trucks was given a leave-out chit by the 1st respondent's security personnel on inspection and exited the compound. As the other trucks neared the gate, they were stopped and the security personnel made allegations that the appellant and his crew were thieves. Within no time the trucks and the already purchased cargo were impounded and escorted to the Ol Kalou Police Station where they were detained.
5. The appellant together with others was charged with theft of escorted greenhouse pipes of the 1st respondent valued at Kshs. 200,000/=.
6. The appellant was charged in Ol Kalou Criminal Case No. 2971 of 2016 which case proceeded until 14/09/2017 when the prosecution applied to withdraw the case against the appellant and made him a state witness.
7. The case was eventually concluded that there was no evidence that there were any materials that were stolen by any party and the accused persons were set free.
8. The 1st respondent and the 2nd respondent to whom the 1st respondent is a subsidiary continued to retain the Kshs. 300,000 paid for the material that the court later adjudged was not stolen.
9. The appellant vide plaint dated 08/06/2023 sought special damages of Kshs. 400,500/=, general damages for malicious prosecution and damages to reputation and costs and interest at court rates.
10. In the ruling delivered on 01/02/2024, the trial court found that 6 years ended in December 2022 from the time the cause of action accrued on 07/12/2016, and as such, the suit is time-barred by section 4 of the *Limitation of Actions Act*. The trial court also found that the suit was statute-barred and struck it out entirely.
11. It is that ruling that prompted the appeal subject of this judgment.

Analysis and Determination.

12. The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein (Section 78(2) of the *Civil Procedure Act*).



13. The first Appellate Court should, therefore, evaluate the evidence afresh and make any of its conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –Vs- Associate Motor Boat Co.Ltd* 1968 EA 123.
14. The central issue for determination in this appeal is when time started running for purposes of limitation. Putting it differently, when the cause of action accrued.
15. The *Limitation of Actions Act* is an Act of Parliament enacted to inter alia prescribe periods for the limitation for actions and arbitrations. The idea behind this statute is to prevent parties from being condemned with having to live with a dispute hanging over their heads many years after the cause of action arose. This law, hence, has a bearing on the old adage that litigation must come to an end.
16. Section 4 (1) of the *Limitation of Actions Act*, under which the preliminary objection was founded upon, provides that actions founded on contract may not be brought after the end of six (6) years from the date on which the cause of action accrued.
17. There is no dispute that the subject matter is a contract. That contract is bound by the said provision. As said, the point of departure is when the cause of action arose.
18. According to the respondents, and who the trial court concurred with, time started running on 07/12/2016.
19. On his part, the appellant conversely stated that time started running when the criminal proceedings were determined on 14/09/2017.
20. The Black's Law Dictionary 11th Edition defines "accrue" to mean "to come into existence as an enforceable claim or right."
21. The Court of Appeal in *Diana Katumbi Kii vs. Reuben Musyoki Muli* [2018] eKLR held that a cause of action in contract arises from breach of the contract and not at the time it is executed. The court relied on the exposition of the author in the *Journal of International Banking and Financial Law*: "What's the Limit" (2007) 11 JIBFL 642 where it was stated thus: -

.... In contract the cause of action accrues when the breach occurs, but in tort the cause of action accrues when damage is first sustained. The cause of action, whether in tort or contract, arises regardless of whether or not the claimant could have known about the damage.
22. Flowing from the definitions, it is settled that in contracts the cause of action arises when a breach of the contract occurs.
23. In the present matter, it cannot be gainsaid that the appellant was arrested and charged in relation to the theft of assorted greenhouse pipes in 2016. That followed a complaint lodged by 1st respondent. As stated before, the charges against the appellant were withdrawn on 14/09/2017.
24. The matter did not, however, end with the withdrawal of the charges against the appellant, he was made a state witness and the matter proceeded to full trial. The trial court found no evidence that any materials were stolen by any party and the accused persons were set free.
25. Had the trial court found that the greenhouse pipes were stolen, the suit, the subject of the instant appeal proceedings would have been superfluous. In other words, had the trial court in the criminal case found that the greenhouse pipes had been stolen by the appellant, the appellant would not have instituted the suit.



26. In light of the foregoing, it can be only reasonably and logically held that the cause of action accrued when the charges against the appellant were withdrawn on 14/09/2017. I say so because it was at this point that the appellant could claim for his purchased goods.
27. This court, hence, finds and holds that the cause of action arose upon the withdrawal of the charges on 14/09/2017 and not before. As such, the suit was still not barred by limitation when it was instituted on 08/06/2023.
28. Having so held, it, therefore, follows that the objection was allowed in error. The court ought to have instead allowed the suit to be heard and determined on its merit.

Disposition

29. Consequently, the appeal is hereby determined in the following manner: -
 - i. The appeal is hereby allowed.
 - ii. The ruling dated 01/02/2024 rendered in Ol Kalou Senior Principal Magistrate's Civil Case No. E045 of 2023 and the resultant order striking out the suit be and are hereby set aside.
 - iii. The suit, Ol Kalou Senior Principal Magistrate's Civil Case No. E045 of 2023, is hereby reinstated and shall be accordingly heard.
 - iv. The Notice of Preliminary Objection dated 03/08/2023 is hereby dismissed with costs.
 - v. The respondents shall bear the costs of the appeal.
30. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 6th DAY OF FEBRUARY, 2025.

CHARLES KARIUKI

JUDGE

