



Synergy Industrial Credit Limited v Tron Enterprises Limited & 2 others (Civil Case E306 of 2024) [2025] KEHC 4610 (KLR) (Commercial and Tax) (10 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E306 OF 2024
BK NJOROGE, J
APRIL 10, 2025**

BETWEEN

SYNERGY INDUSTRIAL CREDIT LIMITED PLAINTIFF

AND

TRON ENTERPRISES LIMITED 1ST DEFENDANT

BENSON SANDE NDETA 2ND DEFENDANT

YVONNE KATUSIME NDETA 3RD DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Preliminary Objection dated 1st July, 2024. It is filed by the Defendants. It seeks that the Plaintiff's suit be struck for want of jurisdiction on the following grounds:
-
 - a. That the suit is incompetent, misconceived and otherwise an abuse of the due process of this Honourable Court.
 - b. That this Honourable Court lacks requisite jurisdiction to entertain this suit as it has been filed outside the six (6) year period.
 - c. That the suit is fatally defective and filed in contravention.
2. The Notice of Preliminary Objection is opposed. The Plaintiff has filed grounds of opposition dated 22nd July, 2024. The Plaintiff objects to the reasons advanced for striking out of the suit for the following reasons: -
 - a. That whereas the plaintiff's claim is premised on the Hire Purchase Agreements reference numbers 2015/10/3264; 2015/11/2566, 2015/12/2517; 2015/12/3279 and 2016/02/2577



which was rescheduled/restructured as per the Defendant's request contained in the letter dated 2nd June, 2020 to form a distinct Hire Purchase Agreement reference number 2020/08/2630 made on the 8th June, 2020. The Plaintiff's cause of action accrued on or about the 8th August, 2023 when the defendants made that last admission of indebtedness to the Plaintiff vide a letter dated 8th August, 2023.

- b. That the Plaintiff's suit is properly filed before this Court and this Court has requisite jurisdiction to hear and determine the same.
 - c. That the Notice of Preliminary Objection dated 1st July, 2024 has no merit, bad in law, incurably defective and is an abuse of the due process of Court, only fit for dismissal.
3. Directions were issued that the Notice of Preliminary Objection be disposed of by way of written submissions.
 4. The Court has seen and read the Defendant's submissions dated 22nd October, 2025 with attached authorities, in support of the Notice of Preliminary Objection.
 5. The Court has also seen and read the Plaintiff's submissions dated 17th October, 2024 in opposition to the Notice of Preliminary Objection.

Issues for Determination

6. Having read the Notice of Preliminary Objection, the Grounds of Opposition and the Submissions filed herein, the Court frames a single issue for determination.

a. Whether the Notice of Preliminary Objection is merited.

Analysis

7. The leading decision on preliminary objections is the case of Mukisa Biscuit Manufacturing Co Ltd – vs. - West End Distributors (1969) EA 696. It states as follows;

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....a preliminary objection is in the nature of what used to be a demurrer. It 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”.

8. On the efficacy and purpose of Preliminary Objections, the Court refers to the Supreme Court decision in Independent Electoral & Boundaries Commission v Cheperenger & 2 others (Civil Application 36 of 2014) [2015] KESC 2 (KLR) (15 December 2015) (Ruling. It was stated as follows; -

“The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection— against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection



as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits... In the instant matter, we consider the objector to have moved her motion, more as a sword than a shield. Such a course is not to be permitted, as it is apt to occasion an injustice to the applicant, and indeed, to the wider public interest.”

9. The Court notes that the Notice of Preliminary Objection challenges the jurisdiction of this Honourable Court. The Court refers to the case of the Owners of the Motor Vessel “Lillian S v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment). The Court of Appeal stated as follows;

“A question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter was then obliged to decide the issue right away on the material before it. Jurisdiction was everything. Without it, a court had no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downed tools in respect of the matter before it the moment it held the opinion that it was without jurisdiction.

A question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It was immaterial whether the evidence was scanty or limited. Scanty or limited facts constituted the evidence before the court. A party who failed to question the jurisdiction of a court may not be heard to raise the issue after the matter was heard and determined. There were no grounds as to why a question of jurisdiction could not be raised during the proceedings. As soon as that was done, the court should hear and dispose of that issue without further ado.”

10. It has also been pronounced by the courts that jurisdiction is everything. The court cannot move even an iota, without jurisdiction. Therefore, once the issue of jurisdiction is raised, it falls upon the court to detain it at the earliest. See the case of Benjamin Leonard Mcfoy v United Africa Company Limited (1961) ALL ER 1169

“if an act is void then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad. There is no need for an order to set aside. It is automatically null and void and without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.....”

a. Whether the Notice of Preliminary Objection is Merited

11. The objection is stated to be based on the limitation period set out for contracts. The relevant section being Section 4 of the Limitation of Action Act which states as follows;

4. Actions of contract and tort and certain other actions

- (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
- (a) actions founded on contract;
 - (b) actions to enforce a recognizance;
 - (c) actions to enforce an award;



- (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
 - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
12. The Defendant's submissions are that the Hire Purchase Agreements were executed in the years 2015 and 2016. That any acts of default pursuant to those Hire Purchase Contracts, initiated the cause of action. That the six (6) year limitation period lapsed in the year 2021. That any suit filed in the year 2024 was outside the limitation period hence the suit is caught up by laches.
13. The Plaintiff's submission is that its claim is based upon a Hire Purchase Agreement reference number 2020/08/2630 made on 8th June, 2020. That the suit was initiated on 6th June, 2024. That only a period of three years and Eleven months had expired. Hence contrary to the allegations by the Defendants, a period of six (6) years had not expired from 8th June, 2020.
14. It is also submitted that by a letter dated 8th August, 2023, the Defendants admitted and acknowledged being indebted to the Plaintiff and requested for time to settle the debt. That letter is said to be item number 324 of the Plaintiff's list and bundle of documents located at page 848.
15. It is further submitted that an acknowledgement of debts has the effect of creating a fresh cause of action. The Court was referred to Section 23 (3) of the *Limitation of Actions Act* which states as follows;
23. Fresh accrual of right of action on acknowledgement or part payment
- (1) Where—
 - (a) a right of action (including a foreclosure action) to recover land; or
 - (b) a right of a mortgagee of movable property to bring a foreclosure action in respect of the property, has accrued, and—
 - (i) the person in possession of the land or movable property acknowledges the title of the person to whom the right of action has accrued; or
 - (ii) in the case of a foreclosure or other action by a mortgagee, the person in possession of the land or movable property or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest, the right accrues on and not before the date of the acknowledgement or payment.
 - (2) Where a mortgagee is, by virtue of the mortgage, in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the titles of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the end of twelve years from the date of the payment or acknowledgement.
 - (3) Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or



accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:

Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt.

16. Further Section 24 (1) of the *Limitation of Actions Act* states as follows;
 24. Formalities as to acknowledgements and part payments
 - (1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.
17. On whether an acknowledgement of debt creates a fresh cause of action, the Court follows the decision in *Nicholas Mahihu Muriithi v Barclays Bank Kenya Limited* [2018] KECA 606 (KLR)

“The appellant acknowledged his indebtedness on 3rd October 1996 when time began to run. Debits were made from the appellant’s prestige account on 23rd October 2006 which was 20 days later to set off the debt. This was well within the limitation period as was rightly observed by the learned Judge.

There is authority for saying that every time interest is debited on a defaulting borrower’s account, a new cause of action arises. In the case of *Shire V. Thabiti Finance* [2000] LLR 1455 (CAK), this Court stressed that the effect of acknowledgment of a debt is to give rise to “fresh accrual of the right of action” in computation of limitation; that,

“ [These words] leave no doubt that the legislature intended that any acknowledgement or part-payment not only extends the limitation period but also revives an otherwise statute-barred action falling within that provision.”

The respondent was at liberty to recover the amount owed to it by the appellant.”
18. The Court notes that the Plaintiff submits that its action is based on a Hire Purchase Agreement No. 2020/08/2630 made on 8th June, 2020. If that be so, by the time this suit was filed on 6th June, 2024, the limitation period of six years had not lapsed.
19. As to whether there was an acknowledgement of debt, the Court notes that this issue calls for evidence. It ceases to be a pure point of law. Once the Court is called upon to look at evidence and factual contestations to determine a Preliminary Objection, it ceases to be a pure point of law. See *Independent Electoral & Boundaries Commission v Cheperenger & 2 others* (Civil Application 36 of 2014) [2015] KESC 2 (KLR) (15 December 2015) (Ruling).
20. If indeed there was an acknowledgement of debt, then the acknowledgement had the effect of creating a fresh cause of action. The Court refers to the case of *Nicholas Mahihu Muriithi v Barclays Bank Kenya Limited* [2018] KECA 606 (KLR) above.
21. The Court notes that this suit is still pending at the pre-trial stage. The Court warns itself to refrain from saying much about the case. This is because it may prejudice the manner in which the suit will be prosecuted by the parties. The Court must strive at all times to be an objective and impartial arbiter of disputes before it.
22. For now, all the Court will state it that it is not persuaded that the Notice of Preliminary Objection is well taken.



23. As to costs, the same follow the event. The same are awarded to the Plaintiff.

Determination

24. The Notice of Preliminary Objection dated 1st July, 2024 is dismissed with costs awarded to the Plaintiff.

25. It is so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF APRIL, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Meeme for the Plaintiff

Mr. Ochieng for the Defendants

Mr. Luyai – Court Assistant

