



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge v Wakarindi (Commercial Appeal E166 of 2024)  
[2025] KEHC 9629 (KLR) (Commercial and Tax) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9629 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E166 OF 2024**

**MA OTIENO, J**

**JULY 3, 2025**

**BETWEEN**

**EDWIN NJENGA NJOROGE ..... APPELLANT**

**AND**

**SUSAN WANGUI WAKARINDI ..... RESPONDENT**

*(Being an appeal against the Judgment and Decree of Hon. J.W. Nasimiyu (Resident Magistrate/ Adjudicator) delivered on 20th May 2024 in the Small Claims Court at Milimani in SCCCOMM. NO. E9825 of 2023: Edwin Njenga Njoroge versus Susan Wangui Wakarindi)*

**JUDGMENT**

1. The Appellant instituted a claim against the Respondent in the Small Claims Court in SCCCOMM No.E9825 of 2023, whereby he sought judgment against the Respondent in the sum of Kshs. 339,000.00 plus costs and interest.
2. Upon hearing the parties, Honourable J.W. Nasimiyu (Resident Magistrate/Adjudicator) found that the claim was time-barred as it was filed 6 years after the cause of action of breach of contract arose, which was in breach of section 4(1) of the Limitations of Actions Act Cap 22. The Court went on to find that it did not have the jurisdiction to determine the claim as it fell outside the limitations period and struck out the claim altogether.
3. The Appellant being dissatisfied with the judgement of the lower court appealed to this court on the following grounds: -

- “ 1. 1. THAT the Learned Trial Magistrate erred in law in finding and holding that the Appellant’s claim was time-barred under Section 4(1)(a) of the Limitation of Actions Act Cap 22, Laws of Kenya.



2. That the Learned Trial Magistrate erred in law in failing to find and hold that a cause of action on breach of contract can only be brought at the time the actual breach occurs and that is when time starts running.
  3. That the Learned Trial Magistrate erred in law in failing to analyse or otherwise engage with the testimonies and evidence of the Appellant's witnesses in order to come to a conclusion on when breach of contract actually occurred.
  4. That the Learned Trial Magistrate erred in law in failing to sufficiently address herself to the principles that govern breach of contract claims and hence misdirected herself in the exercise of her judicial discretion while addressing the issue of time limitation.
  5. That the Learned Trial Magistrate erred in law in completely misapprehending the principles governing breach of contract thereby arriving at a wrong decision on jurisdiction.
  6. That the Learned Trial Magistrate grossly misdirected herself in failing to properly and fully consider the evidence and submissions filed by the Appellant consequently coming to a wrong conclusion on the same.
  7. That the Learned Trial Magistrate erred in law in striking out the Appellant's claim based on a wrong finding that the Court lacked jurisdiction to entertain the same."
4. In support of the appeal, the Appellant filed a record of appeal dated 27/9/2024 and written submissions dated 13/11/2024.
  5. The Respondent did not file any submissions in opposition to the instant appeal neither did she participate in these proceedings despite proof of service.

#### **Analysis and determination**

6. The Appellant raised 7 grounds, which I believe can be condensed to the following issue for determination:  

Whether the Appellant's claim was time-barred by the [Limitation of Actions Act](#).
7. The Appellant submitted that the trial magistrate erred in law in finding and holding that the Appellant's claim was time-barred under Section 4(1)(a) of the [Limitation of Actions Act](#).
8. The Appellant's case in the lower court was that he entered into an oral contract with the Respondent to construct a fence on the Respondent's property which is adjacent to his property. The Appellant stated that the Respondent breached their oral agreement by refusing to pay him the sum of Kshs. 339,000/= which he expended in the said exercise.
9. In the claim, the Appellant particularized the claim of Kshs.339,000/ into the costs of the items used to fence off the Appellant's property.
10. The trial court considered the receipts produced by the Appellant to prove the expenses he incurred in carrying out the task. The court noted the Appellant incurred costs on 15/2/2017, 18/2/2017, 21/2/2017, and 16/3/2017 and found that the cause of action accrued upon issuance of the last receipt, which was on 16/3/2017.



11. Section 4(1) (a) of the Limitation of Action Act states:
  - “(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...”
12. In *South Nyanza Sugar Company Limited v Charles M. Nyantahe* [2022] KEHC 688 (KLR), it was held:
13. In the case of *South Nyanza Sugar Company Limited in Dickson Aoro Owuor* [2017] eKLR, the Court held as follows in regard to when a cause of action is deemed to have arisen: -
  - “(17) There is no doubt in this matter that the parties entered into a contract and which contract was allegedly breached. What is for determination is when exactly the cause of action accrued since from that time the limitation period of 6 years starts running? I do not find that issue difficult to decide on. I say so because when a party enters into a contract for a specific period of time, it does so in the understanding and belief that each of the parties to the contract will observe its part thereof until full execution of the contract. It is only when one of the parties happens to be in breach of the contract that a possible cause of action arises as at that date of the alleged breach and not at the end of the contract period”. [emphasis added]
14. Upon careful review of the record of appeal, it is evident that the receipts in question were issued to the Appellant between 15th February 2017 and 16th March 2017. The record also includes a demand letter dated 29th June 2022. However, there is no evidence indicating when the Respondent was expected to refund the said amounts to the Appellant. Since a cause of action accrues upon the occurrence of a breach, the critical issue for determination is the actual date of breach in this matter—was it the date of the last payment, being 16th March 2017, or the date of the demand letter? The Appellant argues in favour of the latter.
15. Having examined the receipts produced before the trial court, I find no indication on their face of any agreed timeline for the refund by the Respondent. I am also not persuaded by the Appellant’s contention that the cause of action arose upon expiry of the ten (10) days stipulated in the demand letter dated 29th June 2022. It is inconceivable that the refund was expected to be made more than five years after the expenditure was incurred, absent any express agreement to that effect.
16. In the absence of credible and cogent evidence from the Appellant establishing a specific date when the Respondent was expected to have made the refunds, I find no reason to depart from the trial court’s finding that the breach, if any, occurred on or about 16th March 2017.
17. Consequently, this Court concurs with the trial court’s finding that the Appellant’s suit, having been brought on 19<sup>th</sup> December 2023, was statute-barred under Section 4(1) of the *Limitation of Actions Act*. On this ground alone, the appeal is devoid of merit and is hereby dismissed.
18. Additionally, I have examined the receipts produced by the Appellant as evidence of costs allegedly incurred in fencing the Respondent’s land. However, there is nothing on the face of the receipts that links the expenses directly to the Respondent’s parcel. No reference or indication has been made to suggest that the costs were wholly and exclusively related to fencing the Respondent’s land.



19. It is trite law that a claim for special damages must not only be specifically pleaded but also strictly proved. In the present case, the receipts tendered by the Appellant fail to meet the required threshold of strict proof for special damages.
20. The result is that the appeal is without merit and is accordingly dismissed.
21. On the issue of costs, noting that the Respondent failed to file submissions within the timelines set by the Court, I direct that each party shall bear their own costs of the appeal.
22. It is so ordered.

**SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**ADO MOSES**

**JUDGE**

In the presence of: -

C/A – Moses.

.....for the Appellant.

.....for the Respondent.

