



**County Government of Trans-Nzoia v Medix East Africa Limited (Civil Appeal E009 of 2025) [2025] KEHC 12948 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12948 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL E009 OF 2025**

**RK LIMO, J**

**SEPTEMBER 22, 2025**

**BETWEEN**

**COUNTY GOVERNMENT OF TRANS-NZIOIA ..... APPELLANT**

**AND**

**MEDIX EAST AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This appeal arose from the ruling of Honourable M.M. Nafula Principal Magistrate dated 22/1/25. The subject of that ruling was an application by the respondent herein dated 15/7/24 brought by way of originating summons seeking for extension of time to file suit against the appellant herein out of time.
2. The respondent's case before the subordinate court was that its former counsel on record let it down by filing the case in the wrong court and failing to pay filing fees. It therefore sought trial court's discretion arguing that mistake of counsel should not be visited on it.
3. The appellant on the other hand urged the trial court to disallow the application. According to them the provisions of Section 3(2) of the *Public Authorities Limitation Act* Cap 39 (Laws of Kenya) barred any action based on contract to be brought against the Government or Local Authority after the end of 3 years from the date on which the cause of action arose. It further submitted the Statute does not give jurisdiction for extension of time save for cases of disability as provided under Section 5 of the cited Statute and that the respondent herein had not pleaded disability.
4. The trial court considered the application and the opposition made and found the objection raised by the appellant herein amounted to a technicality and that under Article 159(2) (d) the court was guided by the principle of administering justice without regard to technicality and that the right to be heard overrode the technicality. The respondent was then granted leave to file suit out to time.



5. The appellant felt aggrieved by the said ruling and filed this appeal raising the following grounds namely:-
  - i. That the learned magistrate erred in law and fact in extending time to file the suit in the absence of legal provision permitting such extension.
  - ii. That the learned magistrate erred in law and fact by extending time to file suit in absence of satisfactory evidence justifying an extension of time.
  - iii. That the learned magistrate erred in law and fact by making an assumption and finding that Kitale CMCC 5890/20 the suit initially filed by the respondent pertained the same set of facts as the instant case.
  - iv. That the learned magistrate erred in law and fact by finding that the respondent had initially filed the suit in the Small Claims Courts, a fact the respondent did not depone or give evidence.
6. In its written submissions dated 27/5/25 made through learned counsel M/S Kemunto Moenga & Co Advocates the appellant submits that the Statute and in particular section 3(2) of *Public Authorities Limitation Act* (Cap 39 Laws of Kenya) does not confer jurisdiction upon the court to extend time on suits based on contracts except where disability is pleaded. The appellant contends that the respondent did not plead or demonstrate existence of any disability.
7. The appellant cites an advisory opinion of the Supreme Court in the matter of the Interim Independent Electoral Commission (Applicant) Constitutional Application No.2 of 2011) (2011) KESC 1(KLR) 20 December 2011) Ruling where the court held that where the wording of legislation is clear and there is no ambiguity, a court may not arrogate to itself jurisdiction through craft of interpretation.
8. The appellant further relies on Nation Media Group Ltd –vs- J.A. Abuodha & Co Advocates & 2 others (Civil Appeal 129 of 2011) (2023) KEHC 18624 (KLR) (15 MAY 2023) JUDGEMENT where the court observed that extension of time applies only to certain torts mainly arising out of negligence or fraud and that contracts and defamation are not covered under extension of time.
9. The appellant further cites the provisions of section 27(1) of *Limitation of Actions Act* where the Statute provides that a time to file suit can only be extended where the action is founded on tort and must relate to torts of negligence, nuisance or breach of duty and damages sought must be in respect to personal injury to the plaintiff as a result of tort.
10. The appellant further submits that the trial magistrate erred by finding that the suit had initially been filed in the wrong court when the record shows that the matter was properly placed before the magistrate's court.
11. The appellant submits that the respondent could not rely on mistake of counsel as justification for the delay in filing suit and that, that reason cannot salvage a contract that is time barred.
12. It contends that the case of County Executive of Kisumu –vs- County Government of Kisumu (2017)eKLR relied by the trial court is distinguishable from the present case because in the cited case the court was determining the question of lodging an appeal out of time not filing a claim based on contract out of time.
13. The respondent has opposed this appeal through written submissions done through counsel M/S Okello Okoth Advocate LLP dated 5/6/2025. The respondent contends that the delay in filing suit was threefold. That the appellant kept promising to pay up the debt. That it gave instructions to counsel



to file suit on time but the advocate went and filed the case in a wrong court bereft of jurisdiction and failed to pay legal charges which led to 4 months delay.

14. The respondent contends that the trial court exercised her discretion well in order to determine issues in controversy on merit. It relies on *Royal Media Services –vs- Valentie Mugure Maina & Anor* (2019)eKLR.
15. It blames the former counsel for its predicament and asks that it should not be punished for mistakes of counsel. It relies on *Peter Kipyegon Kirui –vs- Agricultural Development Cooperation & 2 Others* (2007)eKLR where the court held that mistake of counsel should not limit the exercise of discretion by a court and that mistake of counsel should not be visited on an innocent client.
16. It further relies on *Samwel Kiti Lewa –vs- Housing Finance Company of Kenya Limited & Anor* (2008)eKLR where the court delved on the exercise of discretion by a court.
17. The respondent further submits that the lower court in this instance exercised its discretion under Article 159 of the *Constitution*. It relies on the case of *Musanda –vs- Asset Recovery Agency & 3 Others* (Civil Application No.E028 of 2021 (2022)KECA 135 (KLR) where the court emphasized on the right to be heard. According to the respondent the trial court did not err in extending time to file suit out of time.
18. This court has laid out both the appellant’s case as well as the respondent’s position. The singular issue in this appeal is whether the trial court erred in extending time for the respondent to file suit out of time.
19. As I have observed above the subject of the impugned ruling was the respondent’s application dated 15/1/24 seeking for extension of time to file suit against the appellant out of time. It is not contested that the respondent invoked the provisions of section 3(2) of the Public Authority *Limitation of Actions Act* and Order 27 Rule 6 of Civil Procedure Rules. The substantive law cited was the provisions of section 3(2) of *Public Authorities Limitation Act*. section3(2) of that Statute provides as follows;-

“No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued”.

The intention of Parliament is well captured from the preamble of that Statute. Parliament enacted the Statute in order “to provide for limitation of proceedings against the Government and a local authority”. The objective of the Statute is clear. To limit time upon which claims against the government can be filed.

20. A perusal of section 5 of the same act provides a window of extension of time but the same only relates to cases of disability.
21. The provision of section 6 further limits the operation of section 27 of *Limitation of Actions Act* to the extent time for filing suits founded on tort may be extended.
22. The respondent’s suit in the lower court is founded on breach of contract. It is not based on tort or personal injury. That is not in dispute.
23. It is well settled that a court can only exercise power, or jurisdiction that flows from a Statute or the *Constitution*. It cannot arrogate itself power of discretion where none exist. That is what is clearly indicated in the Advisory Opinion by the Supreme Court in the matter of Interim Independent Electoral Commission (Constitutional Application No.2 of 2011(2011) KESC 1(KLR) 20 December 2011. In that advisory opinion, the Supreme Court referenced a Court of Appeal decision in the case of



Owners of Motor Vessel (“Lilian S”) vs- Caltex Oil (Kenya) Limited (1989)KLR 1. The court observed as follows;-

“The “Lilian case” establishes that jurisdiction flows from the law and the recipient court is to apply the same with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intention of Parliament, where the wording of legislation is clear and there is no ambiguity....”

24. It is quite clear and obvious from the reading of the Statute (*Public Authorities Limitation Act*) that there is no other room that allows a court to exercise discretion to extend time other than as provided under section 5 which is only limited to cases of disability. As correctly pointed out by the appellant, the delay in the case before the trial court was not based on any disability. None was pleaded or demonstrated. The respondent’s delay was caused, as pleaded, by mistake of counsel.

25. The extension of time going by the current jurisprudence on that subject applies only to certain torts mainly arising out of negligence. The respondent’s case is based on contract and the same is not covered under the extension of time. This court is persuaded by the cited decision of Nation Media Group Limited (Supra) where the court referenced a Court of Appeal decision in Dadi Odhiambo – vs- Gateway Insurance Co Ltd (2014)KECA 186 KLR where the court inter alia held:

“Under section 27(1) of the Limitations of Actions Act time to file a suit can only be extended where the action is founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages accorded should be in respect of personal injury to the plaintiff as a result of tort”.

26. In YH Wholesalers Limited –vs- Kenya Revenue Authority (2021)KEHC 4159 KLR, Mativo J (as he then was) inter alia found that where an applicant seeking for extension of time to file suit founded on contract was not under disability at the time the alleged cause of action occurred, it cannot benefit from the provision of section 5 of *Public Authorities Limitation Act* which gives the court discretion to extend time in case of disability. The judge further referenced the decision of Mary Osundwa –vs- Nzoia Sugar Ltd (2014)KEHC 4622 KLR) which was dealing with extension of time under section 27 of *Limitation of Actions Act* and observes;

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the claim is in respect of personal injuries.....this section does not give jurisdiction to the court to extend time for filing suits involving contracts or any other causes of action other than tort”. (Emphasis added)

27. It is therefore quite apparent flowing from the above that the cited Statutes that is *Public Authorities Limitation Act* and Limitations of Actions Act (Cap 22) tied the hands of the court from exercising any discretion given the limitations I have highlighted above. The question posed is whether the trial court could invoke the provisions of Article 159(d) to extend time on the basis that the limitations cited by the Statute is a technicality.

28. My answer to that question is in the negative because limitation of time stipulated by a Statute is meant to serve a purpose or an objective. The intention of Parliament as contained in a Statute can only be challenged on grounds of constitutionality. It cannot be disregarded. The respondent herein was not challenging the constitutionality of section 3(2) of *Public Authorities Limitation Act* and in any event even if that was the case the matter should have been filed in the right forum which is the High Court.



29. The respondent asked the trial court to exercise a discretion, the court lacked in the first place, and the basis for the same was that it should not be made to suffer from mistake of counsel. In my considered view the trial magistrate fell into error by finding that Article 159(d) of the Constitution provided her with a window to exercise her discretion particularly where a Statute clearly stipulated that such a discretion could only be exercised where an applicant was under a disability at the time the alleged cause of action arose. The Statute clearly limited the exercise of discretion to that ground. As I have observed above, the respondent did not plead any disability or demonstrated any. The learned magistrate was therefore bereft of jurisdiction to extend time in the given circumstances.
30. While I agree with the respondent that it should not have been made to suffer from inaction or professional negligence of counsel, I do not agree that the remedy lay on leave to file suit out of time because of the limitations provided under section 3 and the fact that its action was based on breach of contract. The respondent is well represented by counsel and should be well advised of what action to take in case his former counsel let it down.

In the end this court finds merit in this appeal for the aforesaid reasons. The ruling of the trial court dated 22/1/25 is set aside and in its place the originating summons dated 15/7/24 is dismissed with costs. The appellant will also have costs of this appeal.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

Moenga for the Appellant

Okoth for the Respondent

Duke/Chemosop – Court assistants

