



**Geoplan Consultants Ltd v County Government of Kisumu (Civil Case
E019 of 2021) [2024] KEHC 5177 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E019 OF 2021
RE ABURILI, J
MAY 15, 2024**

BETWEEN

GEOPLAN CONSULTANTS LTD PLAINTIFF

AND

THE COUNTY GOVERNMENT OF KISUMU DEFENDANT

RULING

1. Vide Plaintiff dated 26th July 2021, the Plaintiff Geoplan Consultants Ltd seeks for Judgment against the Defendant the County Government of Kisumu for Kshs.60,000,000 plus interest at Commercial Rates from December 2015 until payment in full. It also seeks for general damages, costs and interest.
2. The basis of the claim is that it was awarded a tender by the Defendant and a contract entered for preparation of Kisumu County Spatial Plan at a cost of Kshs.150,000,000 and a contract was concluded on 27th October 2015 and that the Plaintiff embarked on the assignment and submitted an initial report together with an invoice but that in 2016, the Defendant informed the Plaintiff that the project was under investigation by EACC hence work could continue nor payment made yet 40% of the work had been completed hence the claim for Kshs.60,000,000 with interest as pleaded, as well as General damages.
3. When the suit came up for hearing, the question arose as to whether the matter should have been filed before the Environment and Land Court or this court and the Plaintiff's counsel submitted that since the suit involves the interpretation of the contract for spatial planning, then this court is the right court with jurisdiction to hear and determine the suit.
4. The defence counsel submitted that the matter is to do with town planning. I therefore reserved the matter for a Ruling on jurisdiction.
5. I have perused the Plaintiff as stated above and reproduced part of the pleadings and the liquidated sums of money sought.



6. I find no ELC matter herein capable of being heard by ELC. I find that a claim for unpaid liquidated sums of money on a contract and the prayer for general damages is a matter for this court to hear and determine.
7. However, there is another issue arising from my perusal of the plaint dated 26th July 2021.
8. The contract is alleged to have been signed on 27th October 2015 and that the Defendant reneged on the performance on its part by stopping the already begun work in the year 2016. The actual date of breach is not indicated. The Plaint at paragraph 9 says “sometime in the year 2016...” being the time of breach.
9. The question is, was this suit filed within the statutory period as stipulated in Section 3 of the *Public Authorities Limitation Act* and therefore does this court have jurisdiction to hear and determine the suit on its merit or it will be a waste of judicial time to engage in a hearing only to end up nowhere?
10. Section 3(2) of the *Public Authorities Limitation Act* Cap 39 Law of Kenya provides:

“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 arose.”
11. In this case, it was pleaded that the contract was entered into in 2015 July and in 2016, the Defendant reneged on the contract by stopping the Plaintiff from continuing with the assignment and that already 40% work had been undertaken by the plaintiff hence the prayer for Kshs.60,000,000 and general damages.
12. Under Section 3(2) of the *Public Authorities Limitation Act*, such suit or proceeding could only be brought against the County Government within 3 years from the date of breach or when the cause of action arose.
13. The suit was filed on 15th November 2021 and paid for on the same date vide receipt transaction No. PKF90Q181T. If the breach took place ‘sometime in 2016’, then the suit ought to have been filed sometime in 2019 when three years lapsed.
14. The suit was filed in 2021, five years after the alleged cause of action arose.
15. That being the case, I have no doubt in my mind that the suit was already caught up by the statute of limitation when it was filed. It was already stale and therefore it cannot be sustained as this court has no jurisdiction to entertain stale claims.
16. Accordingly, I find this suit to be fatally incompetent. It is hereby struck out with no orders as to costs.
17. This file is closed.
18. I so order.

Dated, Signed and Delivered at Kisumu this 15th Day of May, 2024

R. E. ABURILI

JUDGE

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