



**Keraka v Gal Baking Services (Civil Appeal E813 of 2022)
[2024] KEHC 6612 (KLR) (Civ) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E813 OF 2022

WM MUSYOKA, J

JUNE 6, 2024

BETWEEN

SHEM OMOKE KERAKA APPELLANT

AND

GAL BAKING SERVICES RESPONDENT

*(An appeal arising from the judgment of Hon. Martin Mutua, Senior Resident Magistrate/
Adjudicator, delivered on 30th September 2022, in Nairobi SCCC No. E1815 of 2022)*

JUDGMENT

1. The suit, at the primary court, was initiated by the respondent, against the appellant, for compensation, arising from a road traffic accident, which allegedly happened on 9th July 2019, along Mombasa Road, Nairobi, involving motor vehicles registration marks and numbers KBN 774U and KCB 092Y, belonging to the parties herein. The case by the respondent was that its motor vehicle was damaged in that incident, and it attributed liability, through negligence, on the appellant. It assessed its total loss at Kshs. 215,723.00. The appellant filed a response, a preliminary objection on a point of law, founded on section 4(2) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya. He also filed a response to the statement of claim, wherein he denied the accident, and everything else pleaded in the statement of claim. He pleaded, in the alternative, that if any accident occurred, then it was caused by negligence on the part of the respondent,
2. The original trial court record reflects that directions were given on 16th August 2022, for canvassing of the preliminary objection by written submissions. The appellant submitted that the accident had happened on 9th July 2019, and that was the date when the cause of action accrued, and the suit was filed on 10th July 2022, going by the auto-generated receipt from the e-filing platform. He cited *Kenya Power & Lighting Company Limited v. Collins Agumba Aboge* [2016] eKLR (Majanja, J), where it was



stated that a suit based on tort becomes statute-barred three years after the cause of action arose, as prescribed by section 4(1) of the *Limitation of Actions Act*. On its part, the respondent submitted that the accident happened on 9th July 2019, the claim was uploaded on 6th July 2022 in the e-filing system, and was paid for on 8th July 2022. It submitted that a document was deemed filed once payment of the prescribed court fees was done. It conceded that the court generated the payment receipt and issued the cause number, on 10th July 2022. It pleaded that was a system issue for which it ought not be punished for. It cited *Mombasa Cement Limited v. Speaker, National Assembly & another* [2018] eKLR. In the end, the preliminary objection was dismissed, in a ruling that was delivered on 30th September 2022, on grounds that the claim was paid for on 8th July 2022 at 15.31 Hours.

3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 13th October 2022, revolve around the trial court treating the filings by the appellant superficially; for dismissing the preliminary objection; and failing to strike out the suit.
4. Directions were given on 31st July 2023, for disposal of the appeal by way of written submissions.
5. The appellant filed written submissions. His case is principally founded on a system-generated document, at page 28 of the record of appeal, which was signed by the adjudicator on 10th July 2022, at 18.53 Hours, and which states that the matter was filed on 10th July 2022, at 06.53.39 PM, hence the filing was outside the 3 year limitation period.
6. In its written submissions, the respondent states that it paid for the claim on 8th July 2022, at 15.31 Hours, as per the court fee receipt issued on 10th July 2022, and he referred to page 1 of a supplementary record of appeal, dated 22nd November 2023. It said that the auto-generated payment receipt came out on 10th July 2022, together with the cause number.
7. The matter is fairly straightforward, for it rests only on one point, as to when was the claim paid for. Was it 10th July 2022, as claimed by the appellant; or on 8th July 2022, as alleged by the respondent. If the payment was made on 10th July 2022, then it was outside the limitation period, and the claim was stale. If it was done on 8th July 2022, then it was made within the limitation period, and the claim was valid.
8. Both sides concede that the auto-generated receipt came out on 10th July 2022, at 6.53 PM, and it expressed that that was when the cause was filed. The respondent, although acknowledging that, submits that there is another record showing that the payment was done on 8th July 2022. It has referred to a supplementary record of appeal. The supplementary record of appeal in the file of papers before me, appears to have been filed by the appellant, and not the respondent. It has no evidence of a payment made on 8th July 2022. The said supplementary record has 4 pages. Page 1 is the title page. Page 2 is an index, showing that the document filed in the record is a memorandum of appeal. Page 3 is the first page of the memorandum of appeal, filed by the appellant, dated 13th October 2022, while Page 4 is the second page of that memorandum of appeal.
9. In the absence of evidence or proof that a payment was made for the claim on 8th July 2022, I can only go by the record at page 28 of the record of appeal filed by the appellant, which indicates that the cause was filed on 10th July 2022, at 6.53 PM, and, therefore, outside the limitation period. See *Agro Irrigation & Pump Services v. Godrick Otieno Nyongesa* [2018] eKLR (Njuguna, J)
10. No document was exhibited, to demonstrate that leave had been obtained to file the cause out of time. Indeed, it was not alleged that any such leave had been sought, and obtained.



11. I note, from the ruling of the trial court, that the adjudicator stated that he had perused the record, and established that the payment was made on 8th July 2022, at 15.31 Hours. It is not indicated, in that ruling, which document reflected that payment.
12. I have very closely perused the original trial court record, as well as the record of appeal, and I have not come across any evidence or proof of a payment made on 8th July 2022. I have noted from the last page of the statement of claim, that there is a column to be filled by the court, and signed by the registrar, to indicate the date when the claim was filed. However, that space was not filled, and it was not signed by the registrar.
13. In view of everything that I have said above, it is my finding and holding that the appeal herein has merit, and I hereby allow it. The consequence would then be that the order made on 30th September 2022, dismissing the preliminary objection dated 10th August 2022, is vacated or set aside, and it is substituted with an order allowing the said preliminary objection. The statement of claim by the respondent, dated 21st June 2022, was filed outside the limitation period of 3 years, it is time barred, and I hereby strike it out. The appellant shall have the costs of the appeal, as well of at the Small Claims Court. Orders accordingly.

**JUDGMENT DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS
6TH DAY OF JUNE 2024**

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocate

Mr. Kibiku, instructed by K. Kibiku & Company, Advocates for the appellant.

Ms. Murigu, instructed by Okongo Wandago & Company, Advocates for the respondent.

