



**Equity Bank (Kenya) Ltd v Hallmark Valuers Company Ltd (Civil Suit E146 of 2023)
[2024] KEHC 11279 (KLR) (Commercial and Tax) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E146 OF 2023
PM MULWA, J
SEPTEMBER 19, 2024**

BETWEEN

EQUITY BANK (KENYA) LTD PLAINTIFF

AND

HALLMARK VALUERS COMPANY LTD DEFENDANT

RULING

1. The plaintiff instituted this suit against the defendant vide a plaint dated 20th February 2023. The plaintiff's case was that it sought professional valuation services from the defendant through an Engagement Terms Agreement (the agreement).
2. Pursuant to the agreement, the plaintiff instructed the defendant vide a letter dated 26th January 2015, to undertake valuation over the property known as LR No.9042/587 (I.R.72111) which services included the current market value, the planning, highway and other statutory considerations.
3. The plaintiff stated that the defendant provided it with a valuation report of the property dated 21st January 2025 on whose strength the plaintiff used to issue a loan facility to a borrower, with the property used as security.
4. The plaintiff asserted that the defendant breached the agreement by overvaluing the property which led it to suffer loss and damage. The plaintiff stated that when the borrower defaulted in loan repayment, it discovered impediments on the property and that the defendant had breached its instructions by providing incorrect information which the plaintiff relied upon in advancing the loan to the borrower.
5. In opposition to the suit, the defendant filed a preliminary objection dated 5th May 2023 whereby it stated that the suit herein is based on a breach of contract claim which offends the provisions of section



4(1) of the *Limitation of Actions Act* and that the verifying affidavit and the entire suit offends Order 4 rule 1(4) of the *Civil Procedure Rules*.

Analysis and Determination

6. The parties submitted orally on the PO in court on 25th June 2024 and filed authorities in support of their arguments.
7. The defendant submitted that under section 4(1) of the *Limitation of Actions Act*, the matter is time barred as it is premised on an alleged breach of contract which was discovered on 30th August 2016 thus the claim ought to have been filed by 30th August 2022.
8. The defendant further submitted that the verifying affidavit in support of the plaint offends Order 4 rule 1(4) of the *Civil Procedure Rules* due to the fact that the plaintiff is a company and therefore the verifying affidavit ought to be sworn by a duly authorised officer which was not the case here.
9. On her part, counsel for the plaintiff submitted against the PO stating that the suit is not time barred. She argued that even though the breach was discovered on 30th August 2016, the defendant vide a letter dated 17th May 2017, proposed a way of solving the dispute which brings the plaintiff's claim within time. Regarding the verifying affidavit, the plaintiff's counsel submitted that a resolution authorising an officer of the company to file a suit may be filed at any time during the suit.
10. The plaintiff's claim against the defendant is anchored on the agreement between the parties. The plaint sets out how the defendant breached the terms of the agreement and the extent of the losses and damages suffered.
11. Section 4(1) of the *Limitations of Actions 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.
 - b. ...”
12. The pertinent issue for determination is whether the plaintiff's claim, being contractual in nature, is time barred.
13. It is not in dispute that the breach of contract occurred on 30th August 2016 when the plaintiff notified the defendant through a letter of the breach. Vide a letter dated 17th May 2017, the defendant proposed to the plaintiff methods of resolving the matter and informed it had notified its insurer.
14. The plaintiff argued that the defendant's letter dated 17th May 2017 constituted an acknowledgement under Section 23(3) of the Limitations of Actions Act therefore time started running from that time and not on 30th August 2016.
15. Section 23(3) of the *Limitations of Actions Act* states:

“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.”



16. The court in *Telkom Kenya Limited v Kenya Railways Corporation* [2018] eKLR held:
- “I take the view that to amount to an acknowledgment, a document ought to contain an unequivocal recognition and acceptance of the claim being made. A promise to pay makes it even stronger and better but is not necessary. So too, a reference to the exact amount claimed is not mandatory. The essence is to meet the rationale of acknowledgments in reviving or extending limitation periods. Acknowledgments indeed tend to lead to admissions which in essence avoid the prejudice that limitation statutes seek to contain; the prejudice of fading memories and of lost documents or missing witnesses.”
17. The court went on to quote the case of *Shire v Thabiti Finance Co. Ltd* [2002] 1 EA 279 and stated:
- “The court in *Shire (supra)* was more explicit. The court held that an acknowledgment under s.23 resulted in not only the accrual of a fresh action which meant the revival of an otherwise statutorily barred claim but also the extension of limitation period where the acknowledgment was made prior to expiry of the limitation period.”
18. I concur with the authority above cited; to amount to an acknowledgement, a document ought to contain an unequivocal recognition and acceptance of the claim being made.
19. In the instant case, in the letter dated 17th May 2017, the defendant proposed to the plaintiff methods of recovery of the loan arrears and stated that it would notify its insurer on the issue. The letter was in response to the plaintiff’s letter notifying the defendant of its breach of the agreement.
20. It is my finding that the letter constituted a recognition and acceptance of the claim. The defendant did not deny the plaintiff’s claim against it or reject the money claimed from it. Instead it proposed methods of resolving the issue and went ahead to notify its insurer.
21. Therefore, time, for the purpose of the *Limitations of Actions Act*, began running from the date of the acknowledgement, which is 17th May 2017 and that meant the claim was to be filed on or before 17th May 2023.
22. This suit was filed vide a plaint dated 20th February 2023 and therefore it fell within the timeframe permitted by the *Limitations of Actions Act*.
23. On the verifying affidavit, the operative clause is Order 4 rule 1(4) of the *Civil Procedure Rules* which states:
- “Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorised under the seal of the company to do so.”
24. The defendant argued that the deponent of the verifying affidavit did not state that he had the authority to swear the affidavit in violation of Order 4 rule 1(4) of the *Civil Procedure Rules*.
25. It is settled law that where a suit is instituted by a company, there should be a company resolution to that effect. The resolution authorising the institution of a suit can be filed even after the suit is already instituted. This was so held in the case of *Eye Company (K) Limited v Erastus Rotich t/a Vision Express* [2021] eKLR:
- “There is no doubt a resolution is required which I believe as shown above, is intended to address situations where some persons drag the company to court and bind the company on issues litigated yet members of the company have not sanctioned their action. The



requirement is therefore intended to protect the companies from unauthorised court processes. From the above, it is evident that the omission can be ratified after the suit has been filed. The authorization is to assure the court that the company is properly in court and it is not an action of unauthorised members/individuals.”

26. Based on the foregoing I find that a resolution authorising an officer of a company to file a suit may be filed after the suit has commenced.
27. The upshot of the foregoing is that the preliminary objection dated 5th May 2023 holds no water and is dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024.

P. MULWA

JUDGE

In the presence of:-

Ms. Cheruiyot for plaintiff

Mr. Karanja for defendant

Court Assistant: Carlos

