



**Eveready Agricultural Services Limited v Muka Mukuu Farmers Coop Society Ltd
(Civil Case 303 of 1994) [2023] KEHC 4107 (KLR) (Civ) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4107 (KLR)

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

CIVIL

CIVIL CASE 303 OF 1994

AN ONGERI, J

MAY 5, 2023

BETWEEN

EVEREADY AGRICULTURAL SERVICES LIMITED PLAINTIFF

AND

MUKA MUKUU FARMERS COOP SOCIETY LTD RESPONDENT

RULING

1. The defendant filed a notice of preliminary objection (NOPO) dated August 6, 2020 against the hearing of the Notice to Show Cause (NTSC) dated March 10, 2020 on the grounds that the judgment dated September 28, 1994 is stale, time barred and unenforceable due to effluxion of time.
2. The defendant further stated in notice of preliminary objection that the application for execution of the decree filed in court on June 20, 2019 and the notice to show cause dated March 10, 2020 lack in merit, are null and void and an abuse of the court process and the same should be struck off.
3. The parties filed written submissions in the notice of preliminary objection as follows; the defendant applicant submitted that it is not in dispute that the judgement of the court was delivered on September 28, 1994. The application for execution of the said judgment was subject of this application and objection was filed on June 20, 2019. The applicant argued that the action for execution of judgement actively before this court was brought 25 years after judgment was delivered. That the statutory limitation on execution of judgement is 12 years according to Section 4 (4) of the [Limitation of Actions Act](#). That therefore this application for execution is time barred.
4. It was further argued that the application seeks to execute an interest of Kshs 11,748,848.20 which they allege to have accumulated over 25 years and section 4 (4) of the [Limitation of Actions Act](#) provides that no arrears of interest in respect of a judgement may be recovered after the expiration of six years from the date on which the interest became due.



5. The sole issues for determination in this notice of preliminary objection is whether the judgment of this court dated September 28, 1994 is statutory time barred.

6. In the case of *Mukisa Biscuits Manufacturing Co Ltd vs West end Distribution Ltd* [1969] EA 696 a Preliminary Objection was defined as:-

“A point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”

7. I find that there is no dispute that the judgment which the plaintiff seeks to execute was entered on September 28, 1994 and the decree is dated May 17, 1995.

8. The law requires that a judgment be executed within 12 years. Section 4 (4) of the [Limitation of Actions Act](#) provides;

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

9. I find that this case is statute time barred.

10. The law does not assist the indolent but it aids the vigilante. In the case of [Koinange Investments and Development Company Limited v Ian Kabiu Ngethe & 3 others](#) [2015] eKLR which cited with approval the case of ELC NO 5704 of 1992 (OS) [Hudson Moffat Mbue vs Settlement Fund Trustees & 3 others](#) (unreported) Mutungi J it was stated that

“What I understand the law to be is that once a judgment has been rendered, execution of that judgment must be commenced within the 12 year period otherwise you cannot obtain a judgment and fail to do anything about it and after 12 years have expired seek to execute the same. Section 4(4) of the [Limitation of Actions Act](#) will bar you from carrying on with such execution”.

11. I find that the preliminary objection herein has merit and I accordingly allow it and I strike out the notice to show cause.

12. Since the plaintiff has lost his entitlement due to lapse of time, it would not be fair for the defendant to get costs of the suit. I direct that each party bears its own costs of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 5TH DAY OF MAY, 2023.

A. N. ONGERI

JUDGE



In the presence of:

.....for the Plaintiff/Respondent

.....for the Defendant/Applicant

