



**Step-Up Holdings (K) Ltd v Mt Kenya University (Civil Case
245 of 2011) [2023] KEHC 20547 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 245 OF 2011
HK CHEMITEI, J
JULY 20, 2023**

BETWEEN

STEP-UP HOLDINGS (K) LTD PLAINTIFF

AND

MT KENYA UNIVERSITY DEFENDANT

RULING

1. In the Notice of Motion dated 7th June 2022 the defendant /applicant prays for the following orders;
 - (a) That the court be pleased to strike out paragraphs 10,12,13,14,15,16,17 and 18 of the further amended plaint and which was amended on 15th March 2021 and filed on 22nd March 2022 as the same are statute barred and time barred.
 - (b) That the court be pleased to strike out the further amended plaint and which was further amended on 15th March 2021 and filed on 22nd March 2022 as the plaintiff /respondent has failed to annex a verifying affidavit duly sworn by an officer of the company duly authorised under the seal of the company to do so and neither is there a resolution by the plaintiff authorising institution of the said suit.
2. The applicant asked for the costs to be provided.
3. The application is supported by the annexed affidavit of Anthony Mwangi Ndungu the director of administration sworn on 8th June 2021 and the grounds on the face of the application.
4. The applicant deponed that the amended further plaint by the respondent dated 15th March 2022 had several new paragraphs which raised new matters and which ran contrary to the provisions of section 4 of the *Limitation of Actions Act*. He said for instance that the issues contained therein were based on contract and were therefore beyond the six months' limit under contracts as per the above Act.



5. It was his case that allowing the said paragraphs to stand were prejudicial to the case and were introduced later in the day through the back door so to speak.
6. The applicant further attacked the amendments on the grounds that the verifying affidavit was sworn by a stranger without the written and sealed authority of the plaintiff which was a limited liability company. On those two grounds the applicant prayed for the application to be allowed.
7. Bernard Gikundi Mwarania on behalf of the respondent has opposed the application vide his replying affidavit sworn on 13th June 2022 stating that he had the authority to file the amended plaint as he was authorised per the resolution of the plaintiff of 6th September 2021 which he attached as an annexure.
8. On the main issue that the amended plaint ran afoul the provisions of section 4 of the Limitations of Action Act he deponed that the issue had been dealt by this court in its ruling of 10th March 2022 and raising it now was res judicata. At any rate he deponed further that the applicant had already filed an appeal against the said ruling which was yet to be acted upon.
9. He therefore prayed that the application be dismissed as the same was basically meant to delay the substantive hearing of this matter.
10. The court directed the parties to file written submissions which they complied and the court has perused the same as well as the attendant authorities.
11. The applicant while emphasising the provisions of section 4 of the Limitation of Action Act submitted that this court ought therefore to strike out the offending paragraphs. It said that the issues raised were effected 11 years ago and the 6 years' period anticipated by the Act had been passed and thus the court should not give the respondent the chance to resurrect illegalities.
12. The applicant among others relied on the case of *Kassam vs Bank of Baroda (Kenya) limited* (2002) eKLR.
13. The respondent submitted on the lines taken in the replying affidavit and relied on Order 8 rule 3 of the *Civil Procedure rules*. According to the respondent the amendments were not time barred since the issues raised were continuous and related to the issues raised earlier in the plaint as well as the amended plaint. It therefore based on the earlier ruling of this court, submitted that the question of limitation had been dealt with exhaustively.
14. The respondent on the issue of authority to act for the plaintiff by its director submitted that it was no longer necessary for a party to obtain authority to act and that in any case the same could be filed anytime if need be. It prayed for the application to be disallowed and the case to proceed to its logical conclusion.
15. The court has perused the application and it is evident that the issues bedevilling the parties herein have been long and outstanding. The two have had litigation in this court and the Court of Appeal. There have been about 6 suits as per the amended plaint on record. They all stem from the agreements between them around the year 2011. What followed thereafter were the above litigations including this one.
16. The net effect therefore in my view shows that what the respondent raised in the further emended plaint are issues dating around that period and thereafter. It cannot be possible for now at this juncture to declare what and when the limitation period stated running and ending in the dispute pitting them.



17. In my ruling of 10th March 2022 I stated inter alia;

“On the face of it, it is not possible to find at what point these issues arises or end. Again, it is not possible to find out whether the statute of limitation has been breached or not. This calls for thorough oral evidence where supporting documentation may be adduced. The position held by the respondent could be true or not. It is only after the evidence has been tendered that it shall be possible to tell what is time barred or not.”

18. Consequently, and on that ground alone the application is not merited.

19. The issue of the affidavit being sworn by an unauthorised person is a nonstarter. The deponent Bernard Gikundi Mwarania has sworn all the affidavits by the respondent. In any case he has attached the authority by the plaintiff's directors.

20. The above position has been explained in many authorities which have clearly indicated that the authority cannot make a pleading illegal and therefore to be struck out. See [*Siokwei Tarita Ltd v. Dr. Charles Walekwa*](#) (2012) eKLR.

21. In the premises the application is disallowed with costs to the respondent.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 20TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

