



**Hatfield v Kewal Contractors Limited (Civil Case 2010 of 1996)  
[2024] KEHC 14017 (KLR) (Civ) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14017 (KLR)

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

**CIVIL  
CIVIL CASE 2010 OF 1996**

**JN MULWA, J  
NOVEMBER 11, 2024**

**BETWEEN**

**DAVID JOHN HATFIELD ..... PLAINTIFF**

**AND**

**KEWAL CONTRACTORS LIMITED ..... DEFENDANT**

**RULING**

1. Before the court is an application dated 6/05/2024 brought by the defendant herein seeking orders:-
  1. Spent
  2. That pending the hearing of this Application interparties, the Honourable Court does issue interim orders staying any action by the plaintiff in respect of the execution of judgment delivered in the year 1999 and the decree thereof dated 26<sup>th</sup> May, 1999 in the High Court Civil Case 2010 of 1996.
  3. That pending hearing and determination of this Application an order that the plaintiff herein is statute barred from bringing or commencing any action in respect of the judgment delivered in 1999 in High Court Civil Suit No. 2010 of 1996 pursuant to Section 4(4) of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya.
  4. That an Order that the plaintiff's Application for execution of the decree dated 26th May, 1999 is frivolous, vexatious and an abuse of the court process and the same be dismissed.
  5. That costs of this application be provided for.
  6. That any other order the Honourable Court deems fit and just to grant.



2. It is supported by an affidavit sworn on 6/05/2024 by one Parminder Singh Manku the Managing Director of the defendant and grounds on its face, and further on provisions of Section 4(4) of the Limitations of Actions Act, Cap 22 and Sections 1 A, 1B and 3A of the Civil Procedure Rules (CPR).
3. The Application is opposed by a Replying Affidavit sworn by the Plaintiff herein on 25/05/2024 and annexures thereto.

Both parties have filed written submissions which the court has considered alongside the pleadings, and judgment of the court delivered on 15/09/1999.

4. The decree from the said judgment is dated 15/09/201999, and is for a principal sum of Kshs. 6,530,973.60/= plus costs and interest, and US \$7,000,000/= admitted by the defendant on admission on 13/03/1997 together with interest at the rate of 12%P.a from 22/06/1999 until payment in full.
5. The Defendant/Applicant on the very onset objects to the execution of the judgment and decree pursuant to Section 4(4) of the Limitations of Actions Act that bars execution of decrees that are more than twelve (12) years old and recovery of interest after six (6) years of judgment.
6. In addition, the Defendant in its supporting affidavit avers that it made payments of the decretal sums to the plaintiff through its then Advocates Ms. Gibson Morara & Company Advocates in full satisfaction of the decree. It is not in dispute that the Proprietor of the said law firm has since died his personal representative taken over the administration of the Estate. Possibility of frustrations in the process cannot be denied in the circumstances.
7. In the court's opinion, the only issue for determination in this application is whether execution of a decree of more than twelve years and interests of over six years can be legally executed.
8. Section 4(4) of the *Limitation of Actions Act* Cap 22 Laws of Kenya provides as follows:

4(4) 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. It is not under dispute that the judgment in respect of these proceedings was delivered on 26/05/1999 and decree issued on 15/09/1999, all well over 25 years ago and therefore statutory time barred for execution by dint of section 4 (4) of the Law of *Limitation of Actions Act*.
10. However, there are circumstances when the court may extend such a period when there is reasonable cause and sufficient reasons, and proof of the delay, in this case in execution of the decree now running to over 25 years.
11. The plaintiff in its submissions has attempted to explain its failure to execute the decree within the statutory period citing a few as:-
  1. Court file missing for a very long period,
  2. Harassment by the Defendant's Managing Director, physically assaulted, threatened and had to leave Kenyan jurisdiction for a period of time for his safety,



3. Filing of Bankruptcy proceedings by the Defendant company forcing the Plaintiff to halt execution of the decree soon after the decree was issued, including highlighting its frustrations in Kenya Times Newspaper in an Article dated 17/11/1997.
12. The Plaintiff in furtherance to the above deposes that the Defendant filed a Bankruptcy petition at the High Court of Kenya cause No. 3 of 1998 which in its view was a tactic to avoid payment of the decretal sums, obtained receiving orders from the court dated 24/02/1998 but which cause was never determined, nor the decretal sums paid for 24 years.
13. The plaintiff further avers that efforts to trace the Defendant's attachable assets have been fruitless, stating that since the year 2000 the defendant's company records at the Registrar of Companies Registry could not be traced and locating the Directors was not easy and whenever the Plaintiff attempted to file applications, the court file would not be traced with complaints being raised through the Deputy Registrar resulting to a reconstruction of the court file. The Plaintiff has further enumerated many attempts from 1998 towards its efforts in executing the decree which none has been successful.
14. In the peculiar circumstances, the plaintiff urges the court to allow it to execute the decree having obtained a warrant of arrest against the Managing Director of the defendant and the deponent of the supporting affidavit to its application dated 6/05/2024.  
It is trite that by dint of Section 4 (4) of the Limitation of Actions Act, no judgment or decree may be executed after 12 years, and 6 years in respect of interest.
15. In the case of *Jestimure Simmenyi v. Samson Sichangi* [1997] eKLR the court stated that time starts running on the date of judgment and stops running when an application for execution is made and that execution is barred where no steps are taken to enforce a judgment. This court takes the position that under Section 4(4) when an application for execution is brought before the expiry of 12 years, and the said application is not determined for one reason or another, until after the period had expired, such application for execution is allowed.  
See also the case of *Hudson Moffat Mbue v. Settlement Fund trustees & 3 Others* ELC NO. 5704 of 1992 [05] [UR]
16. Application of Section 4(4) is not absolute and or mandatory. There could be circumstances that may mitigate the delay to execute a decree within timelines set at Section 4(4) hence framed as "may" not "shall". The expression gives the court discretion to consider circumstances in each case on its peculiar circumstances.
17. In the case of *Godfrey Ajuang Okumu v. Nicholas Odera Opiya* [2017]eKLR the court (Majanja J) expressed that:-  

When the execution process had been started the court took the view that the process must be allowed to be completed even if completion comes after the statutory 12 years period.
18. However, to allow execution of a decree to proceed after the statutory period under Section 4(4) of the Act, a satisfactory demonstration by the decree holder to realize the decree before the Limitation period expires must be made to bring it within the meaning contemplated under the Act.
19. As enumerated by the plaintiff, in the court's considered opinion, there is sufficient demonstration that the plaintiff was subjected to a myriad frustrations, court file going missing, not being traced when needed and the bankruptcy proceedings by the Defendant, Defendant's records at the company's



registry not traceable, criminal proceedings against the Defendant's Managing Director among many others, as stated in the opposing affidavit.

20. It is therefore this court's opinion that despite the many years post the limitation periods to execute the judgment and decree of the court, the plaintiff has put up a spirited demonstration that its efforts were thwarted by the Defendants own maneuvers in an attempt to avoid settlement/satisfaction of the decree.
21. In the end, the court finds no plausible reasons upon which it may allow the Defendant's application dated 6/05/2024. It is dismissed with costs to the plaintiff.

Orders accordingly.

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 11<sup>ST</sup> DAY OF NOVEMBER 2024.**

**JANET MULWA**

**JUDGE**

