



REPUBLIC OF KENYA



KENYA LAW
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Aketch t/a Kenya Aeronautical College v Kenya Airports Authority (Environment and Land Case Civil Suit 173 of 2014) [2025] KEELC 6216 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6216 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 173 OF 2014**

**AA OMOLLO, J
SEPTEMBER 18, 2025**

BETWEEN

**SAMSON MULIRO AKETCH T/A KENYA AERONAUTICAL
COLLEGE PLAINTIFF**

AND

KENYA AIRPORTS AUTHORITY DEFENDANT

RULING

1. The Plaintiff filed a notice of motion dated 7th March 2025 supported by an affidavit and supplementary affidavit, both sworn by Samson Muliro Aketch on the 7th March 2025 and 10th March 2025, respectively, seeking the following orders;
 - a. That the plaintiff be granted leave to amend the plaint dated 17th February 2014.
 - b. That the annexed draft amended plaint be deemed as properly filed and served.
 - c. That the cost of this application be in the cause.
2. The application is based on the grounds that the plaintiff initiated this suit on 17th February 2014 over a lease agreement with the defendant for an 8,000 sq. ft. parcel of land at Wilson Airport, Nairobi. The lease had a renewable 10-year term at an annual rent of Kshs 480,000.
3. That acting on the offer letter from the defendant, the plaintiff constructed a three-storey building valued at Kshs 126 million as of November 2012. Although the defendant's advocates forwarded a lease for execution in 15th December 2008, which the plaintiff duly signed and returned along with legal fees, the defendant failed to provide a registered lease despite repeated follow ups.
4. The Plaintiff stated that this failure has caused him financial losses, including lost business opportunities and a lack of collateral for financing. He now seeks to amend the original plaint to



include a prayer either for continued use of the premises until the full value of the development is recovered or for compensation equivalent to its current value, estimated at over Kshs 250 million.

5. The plaintiff asserts that the application for amendment is made in good faith and does not alter the original cause of action and that it will not prejudice the defendant, who will have the opportunity to file an amended defence.

Preliminary Objection

6. The Defendant filed two notices of preliminary objections dated 10th February 2025 and 4th April 2025, stating that the suit arises from a contract which has long expired by effluxion of time, hence the suit has also lapsed. That the lease contemplated by the letter of offer dated 24th January 2007 covered a period of ten years from 1st March 2007, which period has expired by reason of which the contract between the parties relating to the lease subsequently expired by effluxion of time.
7. That the suit was brought after the expiry of 6 years since the contract that forms the basis thereof was entered into between the parties, thus time-barred by virtue of section 4 (1) (a) of the *Limitation of Actions Act* 22 Laws of Kenya. The Defendant also filed a replying affidavit, sworn on 20th March 2025, by Beatrice Ongoro, the Wilson Airport Engineer, and grounds of opposition dated 24th March 2025.
8. She deposes and confirms that the plaintiff filed this suit after the defendant declined to execute and issue a lease. She acknowledges that the letter of offer dated 24th January 2007 formed the basis of the agreement and included a condition (clause 17) requiring the plaintiff to submit building plans for approval before construction.
9. That this condition was critical due to the defendant's legal duty under the Kenya Airports Act to control aerodrome construction for safety reasons. Instead, the plaintiff disregarded the requirement, resulting in the defendant's justified refusal to provide the lease.
10. Further, she argues that the lease was never formalised or registered due to the plaintiff's non-compliance. Thus, the idea of renewing a non-existent lease or compensating the plaintiff does not arise. The Defendant states that the plaintiff's application to amend the plaint is not made in good faith and that the amendments are a reaction to the defendant's position that the case has lapsed.
11. That the amendments introduce a new cause of action with far-reaching implications, including a bid to remain on the property indefinitely or claim substantial damages, despite the plaintiff's own failure to comply with the original lease terms.

Submissions

12. The Plaintiff filed submissions dated 30th April 2025 in support of his application stating inter alia that he seeks to amend the plaint under Order 8 Rule 3(1) of the *Civil Procedure Rules*. He argues that the court has wide discretion to allow amendments at any stage of proceedings where necessary to determine the real issues in controversy.
13. Relying on *Eastern Bakery v Castelino* [1958] EA 461, the Plaintiff emphasises that amendments should be freely granted if no injustice is caused to the other party, and asserts that no new or inconsistent cause of action is introduced. That this position is supported by *Lewar Ventures Ltd v Equity Bank (Kenya) Ltd* [2022] eKLR and *Institute for Social Accountability v Parliament of Kenya & 3 Others* [2014] eKLR, where courts affirmed the importance of allowing amendments to align pleadings with the true facts of the case, provided there is no undue delay, bad faith, or prejudice to the opposing party.



14. The Applicant maintains that the amendments seek equitable relief arising from a breach of contract and do not transform the original cause of action. In support he cited the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Ltd* [2013] eKLR, affirming that amendments should be allowed if they serve the substantive merits of the case.
15. With regard to the supplementary list of documents, the Plaintiff relies on Order 11 Rule 3(6) of the *Civil Procedure Rules*, which permits the filing of such documents where pleadings have been amended. He stated that the new documents are critical for proving the current value of the constructed property and the Defendant's failure to issue a registered lease.
16. In opposition to the Defendant's PO, the Plaintiff filed submissions dated 22nd July 2025 arguing that the lease did not expire by effluxion of time, noting that the suit was filed in 2014, well before the lease's initial term ended on 1st March 2017. The Plaintiff submits that the lease was part of a Build-Operate-Transfer (BOT) arrangement and was expressly renewable under clause 5(iv) of the offer letter.
17. Further, even if the lease term lapsed, the Kenya Airports Authority (KAA) continued to accept rent, issue invoices, and allow the Plaintiff to remain in possession, conduct which the Plaintiff asserts created a periodic tenancy by implication. He cited the case of *Aroko v Ngotho & another* [1991] KEHC 28 (KLR), arguing that such post term conduct establishes an implied tenancy.
18. The Defendant on the other hand filed submissions opposing the Plaintiff's application. The Defendant acknowledges that a binding contract was formed on 30th January 2007 when the Plaintiff accepted the terms of the letter of offer by signing the "Form of Confirmation" and paying the required Kshs. 240,000. That this offer, as set out in the letter dated 24th January 2007, detailed the lease terms, including a 10-year Build-Operate-Transfer (BOT) arrangement, submission of development plans for approval, and execution of a formal lease.
19. Relying on Cheshire and Fifoot's *Law of Contract* Ninth Edition at page 26, the Defendant emphasizes the essential legal elements of contract formation which are offer, acceptance, intention to create legal relations, and capacity. That the letter of offer met the definition of a definite offer capable of acceptance, and the Plaintiff's response constituted valid acceptance under established contract principles, thereby creating a binding agreement.
20. The Defendant underscores that despite the formation of this initial agreement, the Plaintiff failed to comply with critical conditions precedent, particularly clause 17, which required submission and approval of development plans before construction. That this failure justified the Defendant's refusal to execute or register the lease citing that acceptance can be inferred from conduct.
21. The Defendant maintains that while a contract was formed, its enforceability was conditioned on compliance with all agreed terms, noncompliance with which, in their view, invalidates any claim to a registered lease. In support of the PO, the Defendant submitted that the three-pronged Preliminary Objection seeking to strike out the Plaintiff's suit is on pure points of law as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors* (1969) EA 696.
22. First, it argues that the contract embodied in the letter of offer dated 24th January 2007 contemplated a lease for a fixed term of 10 years commencing 1st March 2007 and that since the lease was never executed or registered, and the 10-year term has since lapsed, both the contract and lease expired by effluxion of time.
23. Hence, any rights flowing from the agreement also lapsed, rendering the suit, filed on 17th February 2014, non-existent and incapable of being sustained. Secondly, the Defendant contends that the suit is



time-barred under Section 4(1)(a) of the *Limitation of Actions Act*, as the breach occurred no later than 1st March 2007 when the lease was due but not provided, and the claim was filed nearly seven years later.

24. In support, the Defendant cited the case of *Gilbert Osiengo v Michael Gabriel Ojiambo Omondi and South Nyanza Sugar Co. Ltd v Charles M. Nyantabe* [2022] eKLR, which affirms that time starts running from the date of breach.
25. Thirdly, the Defendant invoked Section 34 of the *Kenya Airports Authority Act*, which mandates one month's notice and a 12-month filing window for actions arising from acts done under the Authority's statutory powers. That the Plaintiff failed to comply with these requirements, rendering the suit fatally defective.
26. The Defendant also submitted that as a general rule application for leave to amend pleadings ought to be allowed freely but there are exemptions from this rule as demonstrated in the case of *Eastern Bakery vs Castelino* Civil Appeal No. 33 of 1958, *John Gakuo & Anor vs County Government of Nairobi & Anor* Civil Appeal (Application) No. 201 of 2016 and *Weldon -vs- Neal* (1887) QB 395 among others.

Analysis and Determination

27. The Defendant opposes the application to amend on the ground that the core of this case is a lease agreement, which they argue was for a fixed term of 10 years starting 1st March 2007. That the lease period has expired, hence, the claim is time-barred under Section 4(1)(a) of the *Limitation of Actions Act*, since the breach occurred no later than 1st March 2007, when the lease was due but not fulfilled. That the claim was initiated nearly seven years later.
28. It further relied on the provisions of section 34 of the *Kenya Airports Authority Act*, which requires service of one month's notice and a 12-month filing window for actions arising from acts done under the Authority's statutory powers. In this case, the Defendant contends the requirement has not been complied with.
29. I will begin by looking at the merit of the preliminary objection before I delve into the application. The Court of Appeal in *Spire Bank Limited v Land Registrar & 2 others* [2019] KECA 530 (KLR) discussed what constitutes a preliminary objection as follows;

“In the celebrated case of *Mukisa Biscuit Manufacturers Ltd vs Westend Distributors Limited* [1969] EA 696 Law, JA stated that;

“...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of 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.”

In the same case, Newbold, JA set out the remit upon which preliminary objections would be founded;

“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”.



30. In this case, the Plaintiff has referred to a written lease agreement which the defendant contends its period lapsed, and also tenancy by implication. To assess the validity of both leases, this court will have to conduct an analysis of facts, an exercise which cannot be undertaken while dealing with an interlocutory application.

31. Section 34 of the [Kenya Airports Authority Act](#) provides as follows:

“ 34 Limitation

where any action or other legal proceedings is commenced against the Authority for any act done in Pursuance or execution, or intended execution of this Act or any Public duty or authority, or in respect of any alleged neglect or default in the execution of this [Act](#) or of any such duty or authority, the following provisions shall have effect,

(a) the action or legal proceedings shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the managing director by the Plaintiff or his agent”

32. It is my understanding that this provision of the law intends to ensure that the Authority is well informed of any claim against it before legal proceedings commence. At this juncture, the proceedings had begun and the Defendant has a defence filed. Thus it is fully aware of the claim against it.

33. On the premise that the preliminary objection raised requires proof by way of evidence and the fact of the case already being alive, I hold that the preliminary objection will and does fail.

34. The Plaintiff filed a motion seeking to amend his Plaintiff, an application that was vehemently opposed by the defendant stating that the amendments will introduce a new cause of action. In the case of [Elijah Kipngeno Arap Bii vs Kenya Commercial Bank Limited](#) [2013] eKLR, which was relied on by the appellants, this Court differently constituted observed:

“The law on amendment of pleading in terms of section 100 of the [Civil Procedure Act](#) and Order VIA rule 3 of the repealed [Civil Procedure Rules](#) under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's [Precedents of Pleading](#) - 12th Edition, in the case of [Joseph Ochieng & 2 Others vs First National Bank of Chicago](#), Civil Appeal No. 149 of 1991 as follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”



35. I have looked at the draft amended Plaintiff annexed and observed that the amendments seek to add more information to the complaint overall. The proposed amendment does not substantially change the character of the case, and the subject matter and the parties to the suit remain the same. I find no prejudice will be occasioned to the Defendant by granting the Plaintiffs leave to amend their pleadings.
36. The orders I make is as follows;
- a. The preliminary objection dated 10th February 2025 and 4th April 2025 is dismissed
 - b. The application to amend ought to be allowed, and I proceed to allow it.
 - c. The amended plaintiff shall be filed and served within seven (7) days of this order.
 - d. Costs of the application to the Respondent in any event.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. OMOLLO

JUDGE

