



County Government of Mombasa v Gulambas & another (Environment and Land Appeal E027 of 2024) [2025] KEELC 6204 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E027 OF 2024**

**JO OLOLA, J
SEPTEMBER 25, 2025**

BETWEEN

COUNTY GOVERNMENT OF MOMBASA APPELLANT

AND

SHIRINBHAI GULAMBAS 1ST RESPONDENT

JELANI BADAWI BOOSRI 2ND RESPONDENT

JUDGMENT

1. This is an Appeal arising from the Ruling and orders of the Honorable M L Nabibya (SPM) as delivered on 13th June 2024 in Mombasa CMELC Case No. E1718 of 2022.
2. By a Plaint dated 30th November, 2022, the County Government of Mombasa (the Appellant) sought for judgment to be entered against the two Respondents for:
 - a. Payment of Kshs. 107,038,016.00;
 - b. Costs of and/or incidental to the suit; and
 - c. Interest on (a) and (b) above at court rates.
3. It was the Appellant's case that the two Respondents being the registered owners of Plot No. Mombasa/Block XL/46 had since the year 1988 neglected, failed and/or refused to pay land rates, land rate arrears and accumulated penalties totaling Kshs. 107,038,016/- as at 1st March 2022 and hence the suit.
4. Jeilani Badawi Boosri (the 2nd Respondent) objected to the suit. In his Statement of Defence dated 25th January, 2024, the 2nd Respondent asserted that he only became the registered proprietor of the suit property on 12th November 2019 and that before he purchased the property the Appellant had issued him with a Clearance Certificate indicating that there were no arrears as all the land rates had been paid.



5. The 2nd Respondent further asserted that ever since he was issued with the title for the suit property he has been diligently paying the rates and he does not therefore owe any money to the Appellant.
6. In addition, the 2nd Respondent asserted that the Appellant's claim was barred by virtue of the [Ratings Act](#) the same having been raised 22 years late.
7. Subsequently and by a Notice of Preliminary Objection dated 25th January 2024, the 2nd Respondent objected to the suit on the grounds:
 1. That the Honorable Court lacked the requisite jurisdiction to hear and determine the matter.
 2. That the entire suit is time barred by virtue of Section 17(8) of the [Ratings Act](#) which provides that suits for recovery of rates should be brought within 12 years.
 3. That the Plaintiff's claim has exceeded the time frame upon which the Plaintiff can institute any claims against the Defendants having (been) brought 22 years after the cause of action accrued.
8. Having heard the objection and in his Ruling delivered as aforesaid, the Learned Trial Magistrate upheld the objection and dismissed the Appellant's suit with costs.
9. Aggrieved by the said decision, the Appellant moved to this court and lodged the Memorandum of Appeal dated 9th July 2024 urging this court to set aside the Ruling on the grounds:
 1. That the Learned Trial Magistrate erred in law and fact in allowing and upholding the 2nd Respondent's Preliminary Objection dated 25th January 2024;
 2. That the Learned Trial Magistrate erred in law and fact in misinterpreting the provisions of Section 17(8) of the [Ratings Act](#) Cap 267 of the Laws of Kenya on the question of limitation of time thereby arriving at a wrong decision;
 3. That the Learned Trial Magistrate erred in law and fact in failing to appreciate that the Appellant's claim was in respect of annual rates plus interest up to February 2022 and the Ruling and Order by the Trial Court was therefore erroneous and contrary to the facts and law;
 4. That the Learned Trial Magistrate erred in law and fact in assigning the year of accrual of the rates when there was no reason or sufficient ground for such assignment thereby arriving at a wrong decision;
 5. That the Learned Trial Magistrate erred in law and fact in misinterpreting the provisions of Section 17(1) of the [Ratings Act](#) which sets the date of the written demand as the date of accrual of rates for purposes of filing suit for recovery of outstanding rates;
 6. That the Learned Trial Magistrate erred in law and fact in relying on the 2nd Respondent's allegation that the cause of action arose in 1988 when there was no proof of such fact;
 7. That the Learned Trial Magistrate erred in law and fact in failing to find that the Preliminary Objection was not based on a pure point of law but rather on facts and as such the same was not sustainable.
10. This being a first appeal, this court is enjoined by the provisions of Section 78 of the [Civil Procedure Act](#) [Cap 21 of the Laws of Kenya] to evaluate and examine the trial court's record and the evidence presented before it in order to arrive at its own conclusion. This Principle of Law was well settled in



the case of *Selle –vs- Associated Motor Boat Co. Ltd* (1968) EA 123 where the Court of Appeal outlined the duties of a first appellate court as follows:

“(An Appellate Court) is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.....”

11. I have accordingly perused and considered the Record of Appeal as well as the Ruling which is the subject of this Appeal. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
12. By the Notice of Preliminary Objection dated 24th January, 2024, the 2nd Respondent objected to the Appellant’s claim on the basis that the suit was time-barred by virtue of Section 17(8) of the [Ratings Act](#) which, according to the 2nd Respondent did provide, that suits for recovery of rates should be brought within 12 years. In opposition to that objection, the Appellant filed Grounds of Opposition dated 25th March 2024 wherein they contended that the objection was frivolous, misconceived and unmerited.
13. Having considered the issues raised by the parties, the Learned Trial Magistrate concluded as follows at page 3 of the Ruling (page 85 of the Record):

“Upon careful examination of the arguments presented by both parties and the relevant provisions of the [Ratings Act](#), it is evident that the critical date for determining the limitation period in the present case is the day upon which the rate became due and payable. Contrary to the contention of the plaintiff, the issuance of the Demand Notice does not alter this critical date but serves as a subsequent enforcement mechanism. Section 17(8) of the [Ratings Act](#) clearly stipulates that suits or proceedings to recover money due in respect of any rate must be commenced within twelve years of the day upon which the rate became due and payable. Therefore, the cause of action for the recovery of rates in this matter accrued at the time the rates were initially due and payable, which, as alleged by the second defendant, dates back to the year 1988.

In light of the foregoing, the Preliminary Objection raised by the second defendant stands justified. Consequently, the suit brought by the plaintiff on November 30, 2022, seeking payment of the outstanding sum of Kshs. 107,038,016/= as land rates, arrears, and penalties in respect of the property known as Mombasa/Block XL/46, is indeed time-barred by virtue of Section 17(8) of the [Rating Act](#). Therefore, the Preliminary Objection is sustained, and the suit is dismissed with costs awarded to the defendants.”

14. As conceded by the Appellant in their Submissions before the Court, the seven (7) grounds set out in their Memorandum of Appeal relate to one issue, which is whether the Learned Trial Magistrate correctly appreciated, interpreted and applied the provisions of Section 17(8) of the [Rating Act](#) Cap 266 of the Laws of Kenya. The said Section provides as follows:

- “ 17. Enforcement of payment of rate
- (1)
 - (8) Notwithstanding anything contained in the [Limitation of Actions Act](#) (Cap 22), a suit or proceedings to recover money due in respect of any rate may be



commenced at any time within twelve years of the day upon which the rate became due and payable.”

15. As to when the rate becomes due and payable, Section 15(1) of the Act provides as follows:

“Every rate levied by the rating authority under this Act shall become due on the first day of January in the financial year for which it is levied and shall become payable on such day in the same financial year as shall be fixed by the rating authority, of which day and of the amount of which rate, the rating authority shall publish at least thirty days’ notice.”
16. That being the case, it was evident to me that the rates fall due every year and that the same become payable on a date fixed by the rating authority which is obliged to give notice of the same to the rate payer.
17. In their claim as filed in the Lower Court, the Appellant pleaded as follows at Paragraphs 5 and 6 of the Plaint:
 - “5. The Plaintiff shall aver that since 1988, the Defendants have neglected, failed and/or refused to pay land rates, land rate arrears and accumulated penalties totaling Kshs. 107,038,016.00 as at March 2022; and
 6. The Plaintiff’s claim against the Defendant is for payment of the sum of Kshs. 107,038,016.00 due and owing as land rates, land rate arrears and accumulated penalties in respect of the property.”
18. The Appellants then proceeded under the said paragraph 6 of the Plaint to particularize the arrears claimed. In the circumstances of this case, I was unable to see how the court could come to the conclusion that the sum of Kshs. 107,038,016/- claimed by the Appellants accrued in the year 1988. The Appellants have clearly stated that what was being demanded are arrears pending “since 1988” and that as at 1st March 2022, what was due was the sum being claimed.
19. While it may as well as be true that part of the claim may be barred under the statute of limitation, it was clear as stated under Section 15(1) of the Rating Act that the rates fell due every financial year and hence the entire claim could not be invalidated on the basis that it was time-barred.
20. In the premises, I was persuaded that the Learned Magistrate fell in error in construing the provisions of the Rating Act and hence arrived at the wrong conclusion that the suit was time barred.
21. Accordingly, I allow the Appeal, set aside the Ruling delivered on 13th June 2024 and substitute the same with an order dismissing the Notice of Preliminary Objection dated 25th January, 2024.
22. I make no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 25TH DAY OF SEPTEMBER, 2025

.....

J. O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.



b. Mr. Mutubia Advocate for the Appellants

c. No Appearance for the 1st Respondent

d. Ms. Nafula Advocate holding brief for Amina Advocate for the 2nd Respondent

