



**Amollo v Kimuma (Civil Appeal E236 of 2024)  
[2025] KEHC 13325 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13325 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E236 OF 2024  
A MABEYA, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**BONFACE OGALLO AMOLLO ..... APPELLANT**

**AND**

**GEORGE KIMUMA ..... RESPONDENT**

*(Being an appeal from the ruling/order of the Honourable G.C. Serem (RM)  
at Kisumu in Kisumu SCC No. EE269 of 2024 delivered on 14/10/2024)*

**JUDGMENT**

1. By a Statement of Claim dated 24/6/2024, the appellant sued the respondent for Kshs. 126,000/- arising out of the respondent's failure to honour an agreement to compensate him for ascertained damages caused by the respondent's destruction of his crop.
2. The appellant contended that the respondent caused damage to his crop and subsequently an estimation was undertaken by the Ministry of Agriculture. In the estimation, the respondent was to pay the respondent Kshs. 126,000/-. That the respondent only paid Kshs. 5,000/- then defaulted on the remaining amount.
3. The respondent opposed the suit vide a Preliminary Objection dated 15/7/2024 stating that the appellant's claim was statute barred by dint of Section 4 (2) of the Limitations of Actions Act.
4. After considering the matter, the trial court dismissed the appellant's suit with no order as to costs.
5. Aggrieved by the said decision, the appellant appealed to this Court setting out 4 grounds of appeal which can be summarized into one broad ground; that the trial court erred and misdirected itself by relying on the wrong principles when determining the issue of limitation of time thereby dismissing the Appellant's case herein.



6. The appeal was disposed by way of written submissions. The appellant submitted that the Preliminary Objection before the trial court lacked merit as his case was based on contract and thus fell within the provisions of Section 4(1) (a) of the *Limitation of Actions Act* and therefore not time barred as held by the trial court.
7. Conversely, the respondent submitted that the appellant's cause of action, from his own pleadings, arose out of a claim for compensation for the tort of damage to crops that occurred on the 9/10/2020 and that the reference and attachment of the agreement dated 11/12/2020 is in support of his claim.
8. This being a first appellate Court, its duty is well defined, that is; to re-evaluate and analyse the evidence tendered before the trial court with a view to arriving at its own independent findings and conclusions. (See *Selle & Another –vs- Associated Motors Boat Company Ltd & Others*).
9. The trial court dismissed the appellant's suit on account that the nature of his claim was compensation for damage to property and thus a tort that was time barred by dint of the provisions of section 4 (2) of the *Limitation of Actions Act*.
10. The question this Court has to determine is the nature of the appellant's claim as framed before the trial court and consequently whether the respondent's Preliminary Objection was valid.
11. Under section 4(1) of the *Limitation of Actions Act* (Cap 22), the limitation period for actions founded on contract is six years while section 4 (2) thereof provides that an action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.
12. Was the appellant's claim a tort or contract? The appellant described his claim as follows: -
 

“Incordance of the estimation from the Ministry of Agriculture of the damage caused by the above party was to pay the sum of amount 126,000 which he committed to honour and later disowned. I herein therefore attached the assessment from the Ministry of Agriculture which he agreed to pay and committed from one to which he paid 5000 remaining with the balance of 121,000 to which he has not honoured as well”
13. A tort is a civil wrong, apart from a breach of contract, in which one party's act or omission causes harm to another, leading to legal liability for the person who commits the tortious act.
14. In the present case, the respondent occasioned harm to the appellant's crops, liability was established by the Ministry of Agriculture and compensation set for Kshs. 86,000/- as per the assessment dated 10/12/2020. Subsequently, the parties entered into an agreement dated 11/12/2020 whereby they agreed to a sum of Kshs. 40,000/- of which Kshs.5,000/- was paid and the balance to be paid on 11/01/2021.
15. From the statement of claim, it is clear that the appellant's cause of action was initially based on the claim for compensation. But he pleaded and produced an agreement dated 11/12/2020. Although the agreement is for the balance of Kshs.35,000/- and not the initial claim of Kshs.126,000/-, if he bases it on that subsequent agreement, he cannot be shut out as the limitation for contracts extends to 6 years.
16. Since both claims for compensation for Kshs.126,000/- and agreement for Kshs.35,000/- are pleaded, all that can be shut out is the compensation claim that was under tort but the claim under the agreement should be left to continue as it is contractual.
17. Consequently, I find that the trial Court erred in completely shutting out the appellant instead of allowing him to proceed with the claim based on the agreement of 11/12/2020. I allow the appeal and



order that the Appellant's suit does continue only on the basis of the agreement dated 11/12/2020.  
Each party do bear own costs of the appeal.

It is so decreed.

**DATED AND DELIVERED AT KISUMU THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

