



**Mwananchi Credit Limited v Tobiko Njoroge & Company Advocates
(Commercial Case E630 of 2024) [2025] KEHC 13430 (KLR)
(Commercial & Admiralty) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL CASE E630 OF 2024
PM MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

MWANANCHI CREDIT LIMITED PLAINTIFF

AND

TOBIKO NJOROGE & COMPANY ADVOCATES DEFENDANT

RULING

1. Before this Court is a Preliminary Objection dated 11th February 2025 filed by the Defendant. The objection is premised on the grounds that the Plaintiff's Originating Summons dated 16th October 2024 is statute-barred under the provisions of Section 4(1)(a) and (d) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya, and is thus misconceived, incompetent and an abuse of the court process.
2. The Defendant's case is that the professional undertaking in question amounts to a contract, which, pursuant to Section 4(1)(a) of the *Limitation of Actions Act*, ought to be enforced within six (6) years. Since the undertaking was issued on 3rd July 2017, and the Originating Summons was filed more than six years later on 16th October 2024, the suit is statute-barred. Counsel for the Defendant relied on *Equip Agencies Limited v Credit Bank Ltd* [Nairobi HCCC No. 773 of 2003] and *Nelson Havi Andanyi t/a Havi & Co. Advocates v Jane Muthoni Njage t/a JM Njage & Co. Advocates* HCC No. 59 of 2009 (2015) eKLR.
3. Further, it was submitted that only advocates to an undertaking can enforce it and not the respective clients. Reliance was placed on *David Karanja Thuo t/a D.K. Thuo & Co. Advocates v Njagi Wanjeru t/a Njagi Wanjeru & Co. Advocates* HCCC No. 209 of 2008. On this basis, it was urged that the Plaintiff herein lacks the requisite *locus standi* to mount the proceedings.



4. The Plaintiff on its part opposes the Preliminary Objection. It avers that the professional undertaking dated 3rd July 2017 was issued by the Defendant to the firm of A.S. Kuloba & Co. Advocates for its benefit, undertaking to pay the balance of Kshs. 6,971,164.20/=. The Plaintiff's case is that the Defendant defaulted on this obligation.
5. It is the Plaintiff's contention that the cause of action did not accrue on the date of the undertaking, but rather on 20th June 2019, being seven days after issuance of a demand letter dated 13th June 2019. Consequently, the suit filed on 16th October 2024 is not time-barred.
6. The Plaintiff further submits that a professional undertaking is not a contract, but a solemn promise or declaration by an advocate which is enforceable on equitable and professional grounds. It thus falls under Section 4(1)(d) of the *Limitation of Actions Act* which provides a six-year limitation period for actions to recover sums recoverable by virtue of written law, or for actions not otherwise specifically provided for. Reliance was placed on the Court of Appeal decision in *Ndung'u v Koskei Joel Kipkurui Monda Ombori Rogers & E.J. Ruto t/a Koskei Monda & Co. Advocates* - Civil Appeal No. 221 of 2018 (2023) KECA 1381 (KLR).

Analysis and Determination

7. A Preliminary Objection, as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, must be founded on pure points of law that are argued on the assumption that the facts pleaded by the other side are correct. If what is raised requires interrogation of facts, the objection fails.
8. The central issue for determination is whether the Plaintiff's claim is statute-barred under Section 4(1) of the *Limitation of Actions Act*. The Defendant urges that time began to run on 3rd July 2017 when the professional undertaking was issued. The Plaintiff, however, maintains that time accrued only upon breach, specifically after the Defendant failed to honour the undertaking following the demand letter dated 13th June 2019.
9. Section 4(1)(a) of the *Limitation of Actions Act* provides:

“Actions founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.”
10. Section 4(1)(d) further provides:

“An action for relief from the consequences of a mistake, or for money lent, or for money received by the defendant for the use of the plaintiff, may not be brought after six years from the date on which the cause of action accrued.”
11. The jurisprudence on professional undertakings is now settled. In *Nelson Havi Andayi v Jane Muthoni Njage* (*supra*), the Court held that a professional undertaking is enforceable in the same manner as a contractual obligation between advocates. However, the Court of Appeal in *Ndung'u v Koskei Joel Kipkurui Monda Ombori Rogers & E.J. Ruto t/a Koskei Monda & Co. Advocates* (*supra*) clarified that such undertakings are sui generis obligations grounded on professional ethics, public policy, and reliance, and courts ought to enforce them to maintain integrity within the legal profession.
12. The Plaintiff avers that the cause of action accrued on 20th June 2019, seven days after the issuance of the demand letter dated 13th June 2019. Whether this assertion is correct is a matter that requires



interrogation of evidence and is not amenable to a pure point of law, as required of a preliminary objection under *Mukisa Biscuit case (supra)*.

13. The question of when time begins to run is a factual one. Limitation runs from the date the cause of action accrues, which is when a right to sue first arises. Here, the Plaintiff contends that the cause of action accrued on 20th June 2019 when the Defendant failed to settle the outstanding balance despite demand. This position is not frivolous and requires evidentiary interrogation.
14. To that extent, the objection as framed does not meet the threshold of a pure point of law as it calls for examination of when breach occurred and whether the Plaintiff has *locus standi* to enforce the undertaking. These are not matters which can be determined without evidence.
15. On the issue of *locus standi* the Defendant contends that only advocates to an undertaking can enforce it. In my view, that principle, however, is not absolute. Where an undertaking is given to an advocate for the benefit of a client, the client, as a beneficiary, has a direct and substantial interest in its enforcement.
16. In *Kenya Reinsurance Corporation v Njenga & Co. Advocates* [1998] eKLR, the court affirmed that a client for whose benefit a professional undertaking is given is entitled to seek enforcement. This accords with the equitable foundation of undertakings and ensures that the protective purpose of such obligations is not defeated by technical arguments on privity.
17. In the present case, the undertaking was given to A. S. Kuloba & Co. Advocates expressly for the benefit of the Plaintiff. Accordingly, I find that the Plaintiff has *locus standi* to enforce it.
18. For the foregoing reasons, I find that the Preliminary Objection dated 11th February 2025, is devoid of merit. It raises contested factual issues which cannot be determined without evidence. It is hereby dismissed with costs to the Plaintiff.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Bryan Khaemba for Plaintiff

Mr. Mukeli h/b for Mr. Sankale for Defendant

Court Assistant: Carlos

