



REPUBLIC OF KENYA



**KENYA LAW**  
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**Copy Cat Company Limited v Independent Electoral and Boundaries Commission (Civil Appeal E186 of 2023) [2025] KEHC 14040 (KLR) (Civ) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14040 (KLR)

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

**CIVIL**

**CIVIL APPEAL E186 OF 2023**

**WM MUSYOKA, J**

**OCTOBER 7, 2025**

**BETWEEN**

**THE COPY CAT COMPANY LIMITED ..... APPELLANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

*(An appeal arising from the ruling and order of Hon. EM Kagoni, Principal Magistrate, PM, delivered on 17th June 2022, in Nairobi CMCCC No. 3221 of 2019)*

**RULING**

1. The suit, at the primary court, was initiated by the appellant, against the respondent, for damages, with respect to breach of contract. The claim was that there was a contract between the parties, for supply, by the appellant to the respondent, of photocopiers and cartridges, and for maintenance and servicing of photocopiers, scanners and printers. In response to the claim, the respondent filed a defence, denying liability, but pleading, alternatively, that if there was such a contract, the same was time barred, as 6 years had lapsed since 31<sup>st</sup> June 2013.
2. No formal hearing on the main suit was conducted in the matter. The appeal herein arises from an interlocutory order, made in a ruling delivered on 17<sup>th</sup> June 2022, founded on an application, dated 7<sup>th</sup> March 2022, for striking out of the suit for being time barred, having been filed outside the 6 years allowed by section 4(1)(a) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya. The trial court found and held that the suit was time barred, and struck it out.
3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 7<sup>th</sup> March 2023, revolve around the said suit not being statutorily time barred; the trial court



erring in finding that the cause of action arose on 30<sup>th</sup> April 2013, when the appellant issued the last invoice; the trial court failing to find that there had been credit extension period by the respondent; there was an error in determining that time began to run on 30<sup>th</sup> April 2013, when the invoice of that date was not paid; the trial court did not consider the submissions made by the appellant; there was overwhelming evidence; and the court gave due regard to procedural technicalities of procedure, instead of the substance of the case.

4. Directions, on the disposal of the appeal, were given, on an unknown date in 2024, for canvassing by way of written submissions. The pro forma signed by the Judge, purporting to give directions, does not bear the date when the matter was before the Judge.
5. The issue for determination, in the appeal, is whether the trial court properly exercised discretion, when it ruled, on 17<sup>th</sup> June 2022, that the suit was statute-barred, as the last invoice was raised on 30<sup>th</sup> April 2013, and that was the effective date when the cause of action arose.
6. The original trial court records were not availed, and I only have the material in the record of appeal, dated 7<sup>th</sup> March 2023. I have no way of satisfying myself that the said record truly reflects or represents what transpired at the trial court. A copy of the application, dated 7<sup>th</sup> March 2022, and its supporting affidavit, are in the record, and so are the submissions by both sides, on that application. However, I do not have a copy of the affidavit that responded to that application, said to have been sworn on 23<sup>rd</sup> March 2022.
7. The appeal revolves around the ruling of the court, on that application, dated 7<sup>th</sup> March 2022, and it would not do justice to determine the appeal, in the absence of a complete record of appeal, especially as it relates to the application of 7<sup>th</sup> March 2022, the subject of the ruling of 17<sup>th</sup> June 2022. The appellate court ought to have the benefit of looking at all the material that the trial court had before it, as it ruled on the matter.
8. The Deputy Registrar should call for the original trial court records, in Nairobi CMCCC No. 3221 of 2019. On the other hand, the appellant ought to file a complete record of appeal, capturing all the documents placed on record, in Nairobi CMCCC No. 3221 of 2019. As it is, the appeal is only half-baked, and it should be determined only after all the material, that was before the trial court, is also placed before the appellate court.
9. Consequently, I do hereby return the file herein, to the relevant registry, for compliance. The file could be forwarded back to me for completion of writing the judgement, once the parties have regularized the position, and the Deputy Registrar has retrieved the original trial court record. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Akinyi, instructed by Dennis Anyoka Moturi & Company, the Advocates for the appellant.

Mr. Okong'o, instructed by Muthee Kihiki Soni & Associates, the Advocates for the respondent.

