

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E794 OF 2023

UZURI FOODS LIMITED.....APPELLANT
VERSUS
BETA HEALTHCARE INTERNATIONAL LIMITED.....
RESPONDENT

(Appeal from ruling and order of Hon. Lucy Njora, Senior Principal Magistrate, SPM, of 21st July 2023, in Nairobi CMCCC No. E2451 of 2021)

JUDGEMENT

1. The suit, at the trial court, is by the respondent, against the appellant. It is in respect of recovery of compensation, being special damages, suffered by the respondent, following damage to its vehicle, after it was in a collision with another vehicle belonging to the appellant. The suit attributes negligence on the appellant or its driver. The appellant has resisted the claim. It avers that the accident, the subject of the suit, was caused or substantially contributed to by negligence on the part of the respondent.
2. A trial has not been conducted yet in the matter. What has been handled is a Motion, dated 31st October 2022, filed at the instance of the appellant.
3. That application had sought dismissal or striking out of the suit, on the basis that it is statute-barred, for it was filed outside the limitation period allowed for a suit founded on the tort on which it is based. It was argued that the suit had been filed on 12th April 2021, in respect of a cause of action which arose on 11th April 2018, when the tortious act happened. It was argued that the filing of the suit was outside the 3 years allowed by the law, the Limitation of Actions Act, Cap 22, Laws of Kenya.

4. The respondent reacted, by way of an affidavit sworn on 1st November 2022, where it sought protection under Order 50 rule 3 of the Civil Procedure Rules. It conceded that the cause of action arose on 11th April 2018, and argued that the last day for filing the suit should have been 11th April 2021, which fell on a Sunday, and going by Order 50 rule 3, that time was extended to the next working day, which was 12th April 2021.
5. The appellant made a rejoinder, by an affidavit sworn on 8th November 2022, contending that the last day for filing the claim was not 11th April 2021, as alleged by the respondent, but 10th April 2021. It also argued that Order 50 rule 3 was inapplicable, as it could not oust the provisions of the Limitation of Actions Act.
6. The application was canvassed by way of written submissions.
7. The appellant based itself on section 4(2) of the Limitation of Actions Act, which 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.*” It cited *Simel & others vs. County Council of Narok & others* [1994] eKLR [1994] KEHC 129 (KLR) (Pall, J), to make the argument that subsidiary legislation, under the Act, cannot supersede the express provisions of the same Act, and subsidiary legislation, which conflicts with the provisions of such an Act, would be *ultra vires* that Act.
8. The respondent submitted on the basis of Order 50 rule 3 of the Civil Procedure Rules, and section 57(b) of the Interpretation and General Provisions Act, Cap 2, Laws of Kenya, to argue that where the last day, of any activity, prescribed in legislation, falling on a Sunday or public holiday or an official non-working day, should be deemed to fall on the next official working day. It cited *Francis Mukoma & another vs. Peter Muita Nderitu* [2017] KEHC 7948 (KLR) [2017] eKLR (Ngaah, J); *Jonathan Wafula Mbinga vs. Kabaka Wabwile Wekesa* [2004] eKLR [2004] KEHC 2229 (KLR (Sergon, J)); and *Simba Colt Motors vs. Registrar of the Industrial Court & 2 others* [2011] eKLR [2011] KEHC 1486 (KLR) (Musinga, J).

9. The trial court, guided by Order 50 rule 3 of the Civil Procedure Rules, found and held that the last day, for filing the suit fell, on the last day, 11th April 2021, hence the day following, which was a working day, could be taken to be the last day.
10. The appellant was aggrieved by that outcome; and brought the instant appeal. It avers that the trial court misapprehended the provisions of the Limitation of Actions Act; it failed to appreciate that the 3 years, for a cause of action accruing on 11th April 2018, expired or lapsed on the midnight of 10th April 2021, and not 11th April 2021; and the court had computed time wrongly.
11. Directions were taken on an unknown date, in 2004, for the pro forma signed by the Judge, does not bear a date. Both sides have filed written submissions, arguing the same positions as were argued before the trial court, and citing the same authorities, save for the respondent, who has added *Letshego Kenya Limited vs. Timothy Kimenyi Mungathia* [2021] eKLR [2021] KEHC 5380 (KLR) (Chepkwony, J).
12. The only issue, for me to determine, is whether the trial court was justified to deem the suit, before it, to have been properly filed, despite being filed outside the limitation period.
13. It is not in dispute, as to whether the limitation period for filing the suit had expired. It was common ground that the cause of action had accrued on 11th April 2018. There is no clear evidence, from the record, as to when the suit was filed, but the parties appear to agree that the date was 12th April 2021. The tort, the subject of the suit, was negligence, in respect of which limitation period is 3 years. There is disagreement as to when that period expired. The appellant argues that the date of lapse or expiry was 10th April 2021, while the respondent counters that the same was 11th April 2021. The 3 years lapsed on 10th April 2021, and not on 11th April 2021.

14. The key dispute centres around Order 50 rule 3 of the Civil Procedure Rules, on whether the same can apply to a provision of the Limitation of Actions Act. Order 50 rule 3 of the Civil Procedure Rules, from its own language, is limited to computation of the times provided for in the Civil Procedure Rules. It is subsidiary legislation, made by the Rules Committee, established under section 81 of the Civil Procedure Act, Cap. 21, Laws of Kenya, to make Rules, for the purposes of the Civil Procedure Act, or any other written law, which should not be inconsistent with the provisions of the Civil Procedure Act or any other applicable written law.
15. The Civil Procedure Rules is delegated or subsidiary legislation. Delegated, in the sense that it is made by bodies or entities other than Parliament, exercising authority that Parliament has delegated to those bodies or entities, through an Act of Parliament. Parliament draws its legislative-law making power or authority directly from the Constitution, while subsidiary legislation is made by bodies or entities exercising authority or power delegated to them by Parliament. Such bodies or entities do not derive authority directly from the Constitution.
16. Because it is delegated legislation, it is subsidiary or subservient to legislation made by Parliament, so it cannot supersede or override an Act of Parliament. It follows then that Order 50 Rule 3 cannot apply to the provisions of the Limitation of Actions Act, unless the Limitation of Actions Act itself has allowed it, for the Civil Procedure Rules was not passed under the Limitation of Actions Act, for the purpose of the Limitation of Actions Act, but under the Civil Procedure Act, for the purposes of the Civil Procedure Act. It can only apply for the purpose of the Civil Procedure Act, and only for the purposes of the Limitation of Actions Act, by the express provisions of the Limitation of Actions Act itself.
17. The appropriate law, on computation of time, to be applied, for determining the last day for filing a civil action, with respect to an Act of Parliament, other than the Civil Procedure Act, is the Interpretation and General Provisions Act, which is “*An Act of*

Parliament to make provision in regard to the construction, application and interpretation of written law.” Section 57, of the Interpretation and General Provisions Act, provides for computation of time, with respect to any time stipulations made in written law, which include Acts of Parliament. The relevant portion, for the purposes of this judgement, is section 57(b), which provides that, “*if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day.*”

18. Section 57(b) of the Interpretation and General Provisions Act is, therefore, what should apply to the instant scenario, and not Order 50 Rule 3. Order 50 Rule 3 itself draws from section 57(b), in obedience to section 81(1E) (a) of the Civil Procedure Act, regarding consistency with written law. This is the provision that the trial court ought to have considered for application, and applied, to determine the dispute.
19. As indicated above, 3 years, from 11th April 2018, ran up to the midnight of 10th April 2021, and not the midnight of 11th April 2021. 10th April 2021 was a Saturday, while 11th April 2021 was a Sunday. Section 57(b) provides for “*the last day,*” falling on an excluded day, meaning a Sunday, public holiday or an official non-working day. So, 10th April 2021 fell on an official non-working day, which then meant the last day had to be pushed to the next day, 11th April 2021, which was itself a Sunday, and meant the said day being extended again to the next working day, which was 12th April 2021, which was a Monday.
20. Applying section 57(b) of the Interpretation and General Provisions Act to the scenario at hand, would mean that the filing of the suit, in Milimani CMCCC No. E2451 of 2021, on 12th April 2021, was proper, and the suit was, and is, valid and competent. The trial court arrived at the right decision, although it relied on the wrong provision of the law. The Limitation of Actions Act has no provisions on computation of time, has not provided for making of Rules and has

not imported the Civil Procedure Rules. Consequently, when it comes to time, with respect to the period stated in the Limitation of Actions Act, the applicable law, for computation purposes, is section 57(b) of the Interpretation and General Provisions Act, and not Order 50 Rule 3 of the Civil Procedure Rules.

21. I find no merit in the appeal herein, and I hereby dismiss it, with costs. Let the original trial court records, Milimani CMCCC No. E2451 of 2021, be returned to the trial court, for the purpose of prosecution of the suit therein. The appeal file herein shall be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, ON THIS 7TH DAY OF COTOBER 2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Macharia, instructed by Macharia Waiganjo & Nyakoe, Advocates for the appellant.

Mr. Mahugu, instructed by Wangai Nyuthe & Company, Advocates for the respondent.