



**Ndonye v Stanley & another (Civil Appeal E194 of 2022)  
[2025] KEHC 15627 (KLR) (Civ) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15627 (KLR)

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

**CIVIL**

**CIVIL APPEAL E194 OF 2022**

**LP KASSAN, J**

**OCTOBER 31, 2025**

**BETWEEN**

**LUCY MWIKALI NDONYE ..... PLAINTIFF**

**AND**

**MALESI LIPAYI STANLEY ..... 1<sup>ST</sup> RESPONDENT**

**SIMBA CORPORATION LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This a PO that was raised to strike the suit for having been filed out of time. I have read the submissions and all relevant documents and wish to note the following;
2. The PO appears to be straightforward because timelines cannot be changed and so certainty of upholding the PO was automatic. This is buttressed by the fact that the Appellant herein filed a notice of motion to enlarge time meaning that the Appellant is in admission that the Suit was time barred. The very important question to ponder is, where there is an application that if allowed would remedy a time barred suit or a PO based on limitation of time, should the Court hear the Application or proceed to determine the PO which would automatically be upheld? Should the Courts give priority to a cure of an ailment which would automatically consume the Suit or thrush aside the probable cure and let the Suit suffer the fate of death? I do not need to belabor on the jurisprudence on giving priority to POs because they have the ultimate capacity to end the suit but what is the position of the Courts where there is an application that provides a cure of the PO? A PO is akin to any application and must be subjected to a cure and one cannot stop all "tools" , all applications when the PO is by itself a subject of it whether directly or indirectly. I do not find any reason why a party can make an application to amend an earlier application or to provide a cure of the said application which has an imminent threat of being dismissed but the same cannot apply to a PO like this one. If Courts were to take this route, then a bad precedent would be set and truly there would be a travesty of Justice. In fact, the Courts have always



given priorities to applications to amend a defective application and this procedure, even though the PO herein is not defective, must be applied too. A PO is not a further that cannot be attacked separately or have its weight and strength devalued or have its sharp half-moon claws trimmed by a cure that will ensure that Justice is done for all.

### **Nature of the Application**

3. It is a tradition generally that an Application to extend time is always done *ex parte*. This is because the Suit itself if time barred cannot be sustained in Courts. The suggestion or submission that an application to extend time cannot be filed during the pendency of the Suit cannot hold water and is incorrect. There are many circumstances that allow filing of such Application as in this case whereby a wrong party was sued based on a genuine document like police abstract and it took time for substitution to be done. I am well aware that I am not supposed to discuss the Application here because what is before me is a PO only but as a High Court, I am mandated to reevaluate the entire file in order to deliver Justice for all.

### **Memorandum of Appeal**

4. This is a document that outlays reason for Appeal and not evidence. I have looked at the Memo of Appeal and I am satisfied that it captures proper reasons to determine the Appeal. The Memo could be having superfluous reasons that are suited to the pending Application but this does not make it incompetent.
5. The upshot of the above is that the decision of the trial magistrate is overturned with the directions that this matter is send back to the lower Court and before a magistrate other than the trial Magistrate for disposal of the pending application to enlarge time. Each party shall bear costs.

**DATED DELIVERED VIRTUALLY AND SIGNED THIS 31ST DAY OCTOBER 2025**

**HON L P KASSAN**

**JUDGE**

