



**Orion East Africa Limited v Stanbic Holdings Public Liability  
Company (PLC) & 3 others (Commercial Case E1000 of 2025)  
[2025] KEHC 15401 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15401 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E1000 OF 2025**

**PM MULWA, J  
OCTOBER 30, 2025**

**BETWEEN**

**ORION EAST AFRICA LIMITED ..... APPLICANT**

**AND**

**STANBIC HOLDINGS PUBLIC LIABILITY COMPANY (PLC) .... 1<sup>ST</sup>  
RESPONDENT**

**NIMBLE GROUP KENYA OF INTERNATIONAL FINANCE  
CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**LEAKEY STORAGE LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**KEYSIAN AUCTIONEERS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the 1<sup>st</sup> Respondent's Preliminary Objection dated 8<sup>th</sup> January 2025, challenging the validity of the Application before the Court on the following grounds:
  - i. The Application offends the provisions of Section 19 of the *Civil Procedure Act* as read with Order 3 rule 1 of the Civil Procedure Rules.
  - ii. There is no valid suit before the Court pursuant to which any of the remedies sought vide the application can be granted.
  - iii. There is no privity of contract between the Applicant and the 1<sup>st</sup> Respondent herein.
  - iv. The claim (if any) is barred by the statute of limitations.



- v. The Application before the Court has been lodged by an incompetent person.
2. Learned Counsel Mr. Maondo for the 1<sup>st</sup> Respondent submitted that the Applicant has improperly moved this Court by way of a Miscellaneous Application seeking substantive monetary and declaratory reliefs, including a prayer for a down payment of Kshs. 1 billion. Counsel submitted that such prayers are incapable of being granted through a Notice of Motion without an underlying suit as required by Section 19 of the Civil Procedure Act and Order 3 Rule 1 of the Civil Procedure Rules.
3. Counsel further submitted that the alleged cause of action, if any, arose in 2013 when the Applicant's motor vehicles were repossessed and subsequently sold. Relying on Section 4(1)(a) of the Limitation of Actions Act, Counsel argued that actions founded on contract must be brought within six (6) years from the date the cause of action accrues. The present application, filed twelve years later, is therefore statute-barred.
4. He further argued that there exists no privity of contract between the Applicant and the 1<sup>st</sup> Respondent, Stanbic Holdings PLC, and that the application was lodged by an incompetent person without capacity.
5. The Applicant, appearing in person, opposed the objection, contending that the same is based on procedural technicalities contrary to Article 159(2)(d) of the Constitution. He argued that the contract between the parties is ongoing and has not lapsed, and that the application is therefore properly before the Court.

### **Analysis and determination**

6. I have carefully considered the Preliminary Objection dated 8<sup>th</sup> January 2025, the rival submissions, and the record before me. The issues that arise for determination are:
  - a. Whether the Preliminary Objection meets the threshold in law; and
  - b. Whether the Application before the Court is competent.
7. The law on preliminary objections is settled. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, Law JA stated that:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
8. Therefore, a proper preliminary objection must raise a pure question of law that can dispose of the matter in limine without the need to ascertain contested facts.
9. The 1<sup>st</sup> Respondent's first and second grounds challenge the manner of institution of the proceedings. Section 19 of the Civil Procedure Act provides:

“Every suit shall be instituted in such manner as may be prescribed by rules.”
10. Correspondingly, Order 3 Rule 1 of the Civil Procedure Rules stipulates that:

“Every suit shall be instituted by presenting a plaint to the court, or in such other manner as may be prescribed.”



11. The import of these provisions is that a suit is the foundation of civil proceedings. Substantive reliefs such as monetary claims, declarations, or orders of payment must be anchored on a properly instituted suit either through plaint or Originating Summons.
12. In the present case, the Applicant has moved the Court by way of a Miscellaneous Application under a Notice of Motion, seeking various substantive orders including the payment of Kshs. 1 billion and production of records. However, no plaint, petition, or originating summons has been filed to define the cause of action or delineate the issues for adjudication.
13. Such a freestanding application is procedurally incompetent. A substantive claim cannot be founded on a miscellaneous cause, it must originate from a proper pleading.
14. Upon perusal of the record, no suit, plaint, or originating process has been filed to give rise to a cause of action capable of being adjudicated upon. The Court is therefore faced with an application that is freestanding, unsupported by any originating pleading.
15. The Supreme Court in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR reiterated that procedural rules are not mere technicalities but serve the purpose of ensuring orderly adjudication of disputes. A process that disregards those rules is incurably defective and cannot be salvaged by Article 159(2)(d) of *the Constitution*.
16. Accordingly, I find that the Application before the Court, having been filed in the absence of a substantive suit, offends Section 19 of the *Civil Procedure Act* and Order 3 Rule 1 of the Civil Procedure Rules, and is therefore incompetent.
17. The 1<sup>st</sup> Respondent also contends that the alleged cause of action arose in 2013 when the Applicant's vehicles were repossessed. Section 4(1)(a) of the *Limitation of Actions Act*, Cap 22, 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.”
18. The Applicant has not disputed that the events complained of occurred in 2013. The present proceedings were filed in 2025, almost twelve years later. No evidence of a continuing contract or acknowledgement of debt has been adduced to extend the limitation period under Section 23 of the Act.
19. The law states that no court has jurisdiction to entertain a claim or action that is time-barred by statute. Consequently, even assuming that a contractual relationship existed, any claim arising therefrom is statute-barred, and this Court lacks jurisdiction to entertain it.
20. The doctrine of privity of contract is well settled. As a general rule, a contract cannot confer rights or impose obligations on any person except the parties to it. The Applicant has not produced any agreement or document evidencing a contractual nexus with Stanbic Holdings PLC. In the absence of such evidence, no cause of action lies against the 1<sup>st</sup> Respondent.
21. With respect to the competency of the person instituting the proceedings, it is trite that such a person must have the requisite locus standi or legal capacity. The Applicant, acting in person, has not shown authority to act on behalf of the company. Consequently, this ground also succeeds
22. In light of the foregoing, I am satisfied that the Preliminary Objection dated 8<sup>th</sup> January 2025 raises pure points of law which, if upheld, are capable of disposing of the entire matter. The defects identified are fundamental and not curable under Article 159(2)(d) of *the Constitution*.



23. Accordingly, I find the Application before the Court to be fatally defective, incompetent, and an abuse of the court process.
24. The upshot is that the Preliminary Objection dated 8<sup>th</sup> January 2025 is upheld. The undated Notice of Motion is hereby struck out. There will be no orders as to costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**P.M MULWA**

**JUDGE**

In the presence of:

Applicant – present in person

Ms. Akiso h/b for Mr. Maondo for 1<sup>st</sup> Respondent

Court Assistant: Carlos

