

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**MISC. APPLICATION NO. 238 OF 2003**

**BETWEEN**

**TRANSWORLD SAFARIS LIMITED.....**  
**.....APPLICANT**

**AND**

**EAGLE AVIATION**  
**LIMITED.....1<sup>ST</sup>**

**RESPONDENT**

**KIRAN CHANDUBHAI PATEL.....2<sup>ND</sup>**

**RESPONDENT**

**GILBERT MACHARIA KIBE.....3<sup>RD</sup>**

**RESPONDENT**

**CHARLES KYALO MUTHAMA.....4<sup>TH</sup>**

**RESPONDENT**

**RULING**

**Introduction and Background**

1. By an application dated 4<sup>th</sup> October 2023, the 2<sup>nd</sup> Respondent (“the Applicant”) seeks a declaration that the judgment and decree of Court issued on 30<sup>th</sup> October 2006 flowing from the adoption of an Arbitral Award is stale and statute-barred and can no longer be

enforced by dint of **section 4(4)** of the ***Limitation of Actions Act***. He also seeks a declaration that the interest and costs now being claimed are unconscionable, oppressive, and without lawful justification and are also barred by the limitation period and that the Notice to Show Cause and the proceedings leading to it be declared illegal, null, and void. Further, that a permanent order be issued barring the Applicant (“the Respondent”) from ever trying to enforce the 2006 judgment against him.

2. The application is supported by grounds set out on its face and the Applicant’s supporting affidavit sworn on 4<sup>th</sup> October 2023. He avers that the judgment was issued on 30<sup>th</sup> October 2006 but the Respondent took no action to enforce it for over 17 years and that the recent attempt to enforce it in August 2023 is well beyond the 12-year limitation period prescribed by law for executing a judgment. Therefore, the right to enforce the judgment has expired, and any attempt to do so is now illegal.
3. The application is opposed by the Respondent through the replying affidavit of its Managing Director, **BALOOBHAI CHHOTABHAI PATEL**, sworn on 26<sup>th</sup> February 2025. It argues that the issue whether the decree is statute-barred has already been finally and conclusively adjudicated as a nearly identical application by the Applicant

was dismissed by the Court (Ng'etich J.,) on 20<sup>th</sup> July 2018. The Court then explicitly ruled that the execution was not time-barred as it was commenced within the 12-year limitation period from the date the award was adopted as a judgment on 30<sup>th</sup> October 2006. That the Applicant appealed this decision to the Court of Appeal (**Civil Appeal No. 288 of 2018**), which dismissed his appeal on 28<sup>th</sup> April 2022, upholding this Court's finding. Therefore, prayers in the application which seek a declaration that the judgment is stale and statute-barred, are a collateral attack on these previous, final decisions and are barred by the doctrine of *res judicata*.

4. The Respondent states that execution proceedings were commenced in 2017, which was within the 12-year limitation period that began on 30<sup>th</sup> October 2006 and that the Court's ruling from July 2018 confirms this. The Respondent accuses the Applicant as a party who has consistently and strategically used the Court process to obstruct justice and that he has filed multiple applications and appeals at every stage to challenge the Arbitral Award and subsequent decree, all the way to the Court of Appeal and even attempting to appeal to the Supreme Court. The Respondent alleges that the present application is a repeat of this

pattern, filed just days before a scheduled hearing of the Notice to Show Cause to scuttle the hearing.

5. The Respondent concludes that the Applicant's application is an affront to the rule of law and a blatant abuse of the Court process, designed solely to hinder the Respondent from realizing the fruits of a judgment that is now over 17 years old. As such, the Respondent urges the Court to dismiss the application with costs. In addition to the pleadings, the parties have also filed written submissions which I have considered and I will be making relevant references to in my analysis and determination below.

### **Analysis and Determination**

6. The main issue for the Court's determination is whether the judgment is statute barred and whether the Respondent should be barred from enforcing it. The Respondent has countered this contention by stating that this issue is *res judicata*, having been determined by the Court (Ngetich J.,) in the ruling of 20<sup>th</sup> July 2018. I agree. I have gone through the record and noted that the Court held in the said ruling that "*the award was adopted as the judgment of this Court on 30<sup>th</sup> October 2006. The Plaintiff filed the Notice to Show Cause against the 2<sup>nd</sup> Defendant on 16<sup>th</sup> August*

2017. The application was filed within the 12-year period for execution of a decree for judgment. Execution against the 2<sup>nd</sup> Defendant is not therefore time barred". This decision was appealed against but the Court of Appeal in **Patel v Transworld Safaris Limited [2022] KECA 871 (KLR)** dismissed the appeal holding as follows:

*14.....the learned Judge's reasoning cogent and there is no reason for us to disturb it. We observe that, ironically, even as the appellant seeks to be protected by the statute of limitation, claiming delay in enforcement of the award, he seems to have contributed to the delay by seeking to strike out the award and the Respondent's application for enforcement in this Court, in Kiran Chandubhai Patel -vs- Transworld Safaris Ltd Civil Appeal No. 216 of 2003 at Nairobi (unreported) and Kiran Chandubhai Patel -vs- Transworld Safaris Limited [2015] eKLR.*

*15. Ultimately, we find no reason to fault the Judge. She addressed herself properly on the law and took into account all relevant factors in exercising her discretion. This Court must always be slow to interfere with the decision made by first instance Judges in exercise of discretion. The discretion lies with such Judges, and not with this Court, hence the clear strictures we impose on our interference. The appeal is devoid of merit and we therefore dismiss it with costs.*

7. The aforementioned decision affirmed that the execution begins after issuance of the decree by the Court from the judgment of the Court. Time for execution of decree is provided under **section 4(4)** of the ***Limitation of Actions Act*** and that the execution was within the 12-year statutory period and the same was not time barred. I therefore dismiss the contention by the Applicant that the decree being executed by the Respondent is time barred and hold that this issue is ***res judicata*** having been determined by this Court and the Court of Appeal.

### **Conclusion and Disposition**

8. Without belaboring so much on this issue, I now dismiss the application dated 4<sup>th</sup> October 2023 with costs to the Respondent assessed at Kshs.50, 000/=. It is so ordered.

**DATED SIGNED AND DELIVERED virtually at NAIROBI this  
21<sup>ST</sup> DAY of OCTOBER 2025**

.....  
**J.W.W. MONGARE**  
**JUDGE**

### **IN THE PRESENCE OF**

1. Mr. Teddy Ochieng for the Applicant/2<sup>nd</sup> Respondent.
2. Ms. Leyla Ahmed for the Respondent/Applicant.
3. Amos- Court Assistant

ORIGINAL