



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Gathigo v Mugambi (Miscellaneous Civil Application E575 of 2025)
[2025] KEHC 16413 (KLR) (Civ) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E575 OF 2025
SN MUTUKU, J
NOVEMBER 12, 2025**

BETWEEN

EVALYN NGENDO GATHIGO APPLICANT

AND

JONNES ALBERT MUNENE MUGAMBI RESPONDENT

RULING

1. The dispute subject of the Notice of Motion dated 25th March 2025 arose from an agreement entered into by the parties where Evalyn Ngendo Gathigo, the Applicant, advanced Jonnes Albert Munene Mugambi, the Respondent, GBP 3,000 in August 2012. The parties agreed that should the Respondent fail to refund the amount after three (3) weeks, the Applicant would credit this amount to the balance of the purchase price in respect of the purchase price of a house purchase transaction the parties had entered into vide an agreement for sale dated 12th September 2011 in respect of Ngong Ngong 45038.
2. The Respondent failed to update the Applicant with the progress of the construction of the house and the completion of the sale despite her frequent requests. He continued to ask for additional payments towards the purchase of the house which requests the Applicant declined. The Applicant rescinded the agreement and asked for the refund of her money. The Applicant resorted to approach this court for recourse basing her claim on the acknowledgment of the debt by the Respondent through WhatsApp messages dated 21st and 26th July 2024. It is upon that background that the Applicant has filed this application.

The Application

1. The Applicant filed a Notice of Motion (the Application) dated 25th March 2025 under Sections 1A, 1B and 3A of the *akn ke act 1924 3 Civil Procedure Act (CPA)*, Section 23(3) of the *akn ke act 1968*



21 Limitation of Actions Act, and Order 51, Rule 1 of the Civil Procedure Rules (CPR), seeking the following orders:

- i. That this Honourable Court grants leave to the Applicant to file civil suit against the Respondent out of time.
 - ii. That the annexed draft intended Statement of Claim of the Applicant be deemed as duly filed despite the expiry of the limitation period as provided in the *akn ke act 1968 21 Limitation of Actions Act* upon payment of the requisite fees.
 - iii. That costs of the application be provided for.”
2. The Applicant has advanced grounds in support of the application on the face of it and in the Supporting Affidavit sworn by Sheila C. Chumo on 25th March 2025.
 3. The gist of the Applicants case is that the Respondent requested the Applicant to loan him a sum of 3,000 GBP (Great British Pound) vide an email dated 15th August 2012 promising to refund the said amount plus an additional sum of 500 GBP, within three (3) weeks thereof.
 4. It was the agreement between the parties that should the Respondent default on the loan repayment, then the same would be credited to the balance of the purchase price owed by the Applicant in respect of a sale agreement entered into between the parties herein on 12th September 2011, for the purchase of the property known as Ngong Ngong 45038 (the property).
 5. The Applicant is said to have transferred the requested funds to the account, whose details were provided by the Respondent, on 19th August 2012. The Respondent acknowledged receipt of the funds. The Respondent, however, failed to give the Applicant regular updates or updates at all, regarding the construction of the house situated on the property and the completion of the sale process, despite several follow-ups by the Applicant. That meanwhile, the Respondent persisted in demanding additional payments from the Applicant, towards the purchase of the property. The Applicant opted to rescind the agreement and conveyed the same to the Respondent.
 6. That the Applicant demanded from the Respondent, a refund on the instalment payments previously made as well as the loan sum previously advanced to the Respondent. The Respondent has, to date, failed and or neglected to settle the loaned amount and or to refund any sums paid towards the purchase of the property.
 7. The Applicant filed a claim before the Small Claims Court namely SCCOM No. E8794 of 2025 on 12th November 2024, seeking judgment against the Respondent to the tune of the abovementioned 3,500 GBP plus costs of the suit and interest thereon. The Respondent did not file Defence to that claim, necessitating the Applicant to seek entry of a default judgment. The claim was however dismissed for being time barred. The court directed the Applicant to seek leave to file the claim out of time.
 8. The Applicant has stated that while the standing legal position is that claims founded on contract ought to be brought within six (6) years from the date on which the alleged breach occurred by dint of Section 4(1)(a) of the *akn ke act 1968 21 Limitation of Actions Act*, the draft intended Statement of Claim in the present matter is brought under Section 23(3) of the Act which provides that a right of action can accrue afresh where a debt has either been acknowledged or partly settled. It is stated that the Respondent has acknowledged the debt owed to the Applicant and promised to refund the claimed sum of 3,500 GBP via a WhatsApp message sent on 21st July 2024.



9. The Applicant urged that the instant Application be allowed as prayed to prevent prejudice to her. She stated that she has a strong case with high chances of success, and thus urges this court to exercise its discretion in her favour.
10. The Respondent did not file a Response to the Application despite service of the Application as the court record shows.
11. The Court directed that the application be argued through written submissions. the Applicant filed submissions dated 14th August 2025.

Applicant's Submissions

12. The Applicant has framed the issues for determination as follows:
 - i. Whether this Honourable Court has jurisdiction to extend time for filing a suit out of the limitation period.
 - ii. Whether the Applicant has demonstrated acknowledgment of debt under Section 23(3) of the *akn ke act 1968 21 Limitation of Actions Act*.
 - iii. Whether this Honourable Court should exercise its discretion to grant the orders sought in the interest of justice.
13. On the 1st issue, the Applicant has submitted that this court is clothed with the requisite jurisdiction to grant this application. She relied on section 23 (3) of the *akn ke act 1968 21 Limitation of Actions Act* and argued that while the original cause of action arose in 2012 when the Respondent received GBP 3,000, making it time-barred by dint of section 4(1) (a) of the *akn ke act 1968 21 Limitation of Actions Act*, the Respondent acknowledged the debt through emails and WhatsApp messages, with the latest acknowledgment being on 21st July 2024. The Applicant argued that by virtue of Section 23(3) of the Limitations of Actions Act, a fresh right of action accrued on the date of acknowledgment. She relied on *One Step Family Group v Njenga & another* (Environment and Land Appeal No. E096 of 2022) [2024] KEELC 3610 (11 April 2024) and *Newfortis Sacco Ltd v Nyeri Teachers Plaza Housing Co-operative Society* (Tribunal Case 591 of 2023) [2025] KECPT 193) where the Court held the view that Section 23(3) of Limitations of Actions Act allows time-barred claim to be revived upon acknowledgment of the debt.
14. The Applicant has submitted that in view of the foregoing, the present claim would competently be before this court, upon leave being granted to file the same out of time.
15. On the 2nd issue, the Applicant submitted that the Respondent sent emails to the Applicant in August 2012 expressly confirming receipt of GBP 3,000 with a promise to repay GBP 3,500 within three weeks; that the Respondent sent WhatsApp messages on 21st and 26th July 2024 in which he acknowledged his indebtedness and made proposals of repayment, which acknowledgment fall within the definition of acknowledgment under Section 23(3) of the Limitations of Actions Act and that the acknowledgment revived the cause of action afresh as at July 2024.
16. The Applicant relied on *Mwangi & another v Mwangi* [1986] KLR 328 where the Court held that a clear admission of liability constitutes acknowledgment.
17. On whether this Honourable Court should exercise its discretion in granting the orders sought, it is the Applicant's contention that while the extension of time for a party to bring a claim does not lie as of right, the same can be granted at the discretion of the court in order to prevent an injustice. That in the present instance, the Applicant herein stands to suffer grave injustice if the orders sought in the Motion



are denied, since she will be barred from recovering monies admittedly owed to her by the Respondent. The Applicant relied on the decision in *Nicholas Salat v IEBC & 7 others*, Supreme Court Application No. 16 of 2014 [2014] eKLR in which the Supreme Court reasoned that the principle on extension of time does not lie as of right, rather, it constitutes an equitable remedy applied to avoid an injustice. She also relied on the case of *Morema v Guto & another* [2025] KEHC 797 (KLR) on the principle of the discretionary power of the courts in extending time.

18. The Applicant has submitted that the instant Motion has been brought without undue delay and that the Respondent does not stand to suffer any damage or prejudice, if the same is allowed as prayed, and that the Applicant's claim raises triable issues for determination.

Analysis and Determination

19. In determining this matter, I wish to consider a singular issue, whether this court has powers to extend time within which to file a suit? Put differently, has the Applicant provided sufficient material to demonstrate that her application is merited? A determination of that issue will address any other matter arising incidentally to that central issue.
20. I have considered the Application and the grounds supporting the same. I have also read the court file record. I have noted that the Applicant did not annex her draft pleadings to the instant Motion as claimed in the Application
21. It is clear to me that the Applicant's cause of action against the Respondent is founded on an alleged breach of contract for which Section 4(1)(a) of the *akn ke act 1968 21 Limitation of Actions Act*, Cap. 22 Laws of Kenya is applicable. This Section provides, inter alia, that an action founded on contract may not be brought after the end of six years from the date on which the cause of action accrued
22. Going by the averments made by the Applicant, the alleged breach of contract arose from the Respondent's refusal and or neglect to refund the sum of 3,500 GBP previously loaned to him by the Applicant on 19th August 2012. As stated, the agreement between the parties stipulated that the loaned sum was to be refunded within three (3) weeks of the date on which the request was made.
23. Basing on that agreement, the Applicant was required by law to bring the claim for breach of contract not later than six (6) years from the date on which the cause of action accrued (namely the breach), but did not, thus causing the suit to be statute barred.
24. The question therefore remains whether the courts have discretionary power to extend the time required to bring claims founded on contract. In *Mary Osundwa v Nzoia Sugar Company Limited* Civil Appeal No. 244 of 2000 [2002] eKLR the Appellant had successfully sought leave (granted by consent in the High Court) to file a cause for alleged breach of contract, 7 years since the cause of action accrued. On appeal however, the Court of Appeal stated the following:

“The section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent was neither here nor there; the parties could not confer jurisdiction on the Judge by their consent”.



25. No doubt echoing the decision in *Wycliffe A. Swanya v Toyota East Africa Limited and Another* [2009] eKLR; *Rawal v Rawal* (1990) KLR 275 and *Dhanesvar V. Mehta v Manilal M. Shah* [1965] EA 321, the Court restated the rationale behind the enactment of the *akn ke act 1968 21 Limitation of Actions Act*, in the case of *Bosire Ogero v Royal Media Services* [2015] eKLR thus:

“The Law of Limitation of actions is intended to bar plaintiffs from instituting claims that are stale and (is) aimed at protecting defendants against unreasonable delay in bringing of suits against them. The issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred, the court has no jurisdiction to entertain the same”.

26. I have noted all the circumstances of this case, the legal provisions and the authorities cited by the Applicant. I have also considered Section 23(3) and Ssection 24 of the *akn ke act 1968 21 Limitation of Actions Act*. Section 23(3) is expresses thus:

Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:

Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt.

27. Section 24 of the same Act further provides that:

- (1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.
- (2) The acknowledgement or payment mentioned in section 23 of this Act is one made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be, and it may be made by the agent of the person by whom it is required by that section to be made.

28. The record shows that the method of acknowledgment of the debt, in respect of this application, is through emails and WhatsApp messages. As to whether this mode of acknowledgment meets the threshold of the provisions of Section 24 of the *akn ke act 1968 21 Limitation of Actions Act*, cited above, is subject to interpretation by the Court. upon considering the evidence of the parties.

29. In the meantime, and in the interest of justice, I am persuaded to allow this application dated 25th March 2025 in terms of prayer 1. The Applicant shall file the claim within 14 days failing which this order for leave to file shall lapse. Costs of this application shall abide the outcome of the main suit.

30. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 12TH NOVEMBER 2025.

S. N. MUTUKU

JUDGE

