



**I & M Bank Limited v Pattni & another (Civil Suit E262 of 2025)  
[2025] KEHC 17232 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17232 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E262 OF 2025  
PM MULWA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**I & M BANK LIMITED ..... PLAINTIFF**

**AND**

**JITENDRA PATTNI ..... 1<sup>ST</sup> DEFENDANT**

**KOKILA PATTNI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. For determination is a Notice of Preliminary Objection dated 20<sup>th</sup> May 2025, in which the Defendants challenge the jurisdiction of this Court on the ground that the Plaintiff's cause of action is time-barred. It is contended that the claim as pleaded under paragraph 19 of the plaint amounts to a tort of conversion said to have occurred on 3<sup>rd</sup> November 2018, and by virtue of Section 4(2) of the *Limitation of Actions Act*, the claim is statute-barred, the statutory limitation period of three years having lapsed.
2. The Plaintiff opposes the objection through written submissions dated 2<sup>nd</sup> July 2025. It argues that the objection fails to meet the threshold of a true preliminary objection as laid down in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, since it raises contested issues of fact requiring evidence to resolve. The Plaintiff maintains that the cause of action is not based purely on the tort of conversion but rather on recovery of a specific sum of Kshs. 16,500,000, being amounts paid in 2023 by the bank to third parties, namely, Umesh Kalyan and Manju Lalji, following the conversion of jewelry by the Defendants. It is thus submitted that the cause of action accrued in 2023 when payment was made, and the applicable limitation period under Section 4(1)(d) of the *Limitation of Actions Act*, which provides for a six-year period for actions to recover a debt or liquidated sum, applies.
3. Having considered the pleadings and submissions, the only issue for determination is whether the Defendants' preliminary objection is merited.



4. The law on preliminary objections is well settled. In Mukisa Biscuit case (supra), Law JA stated:

“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. Examples are an objection to the jurisdiction of the court or a plea of limitation.”

However, as Sir Charles Newbold P cautioned:

“A preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

5. The Defendants anchor their objection on Section 4(2) of the Limitation of Actions Act, which provides:

“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.”

Their position is that the alleged conversion occurred on 3<sup>rd</sup> November 2018, hence any suit filed after November 2021 is barred by statute.

6. The Plaintiff, however, contends that its cause of action did not accrue in 2018, but in 2023, when it made payment of Kshs. 16,500,000 to third parties following the Defendants’ conduct. This, it argues, constitutes a cause of action for recovery of money, which under Section 4(1)(d) enjoys a six-year limitation period.

7. Whether the Plaintiff’s cause of action accrued in 2018 or in 2023 depends on when the alleged payment occurred and whether the claim indeed arises from tort or contract, or from restitution for unjust enrichment. This is not a purely legal question ascertainable on the face of the pleadings; rather, it necessitates factual inquiry.

8. The Court of Appeal in *Oraro v Mbaja* [2005] eKLR emphasized that a preliminary objection must be based on uncontested facts, stating:

“Anything that purports to be a preliminary objection must not deal with disputed facts, and must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

9. In the present case, the Court cannot, without evaluating evidence, determine the exact date the cause of action accrued or the precise legal nature of the claim. These are matters of fact and mixed law and fact, and hence inappropriate for determination through a preliminary objection.

10. In light of the foregoing, I find that the Defendants’ Preliminary Objection dated 20<sup>th</sup> May 2025 fails and is dismissed with costs to the Plaintiff.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Wawire for Plaintiff



Mr. Koech for Defendant

Court Assistant: Carlos

