



**Youth with a Mission Limited v Musau & another (Environment and Land Appeal E024 of 2022) [2025] KEELC 8150 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8150 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E024 OF 2022**

**AY KOROSS, J**

**NOVEMBER 25, 2025**

**BETWEEN**

**YOUTH WITH A MISSION LIMITED ..... APPELLANT**

**AND**

**CHRISTOPHER MUSYOKA MUSAU ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MANGALA KISAMWA ..... 2<sup>ND</sup> RESPONDENT**

*(on 5/07/2022 in Machakos Magistrate's Court ELC Civil Suit No. 70 of 2021 between Youth With A Mission Limited versus Christopher Musyoka Musau and John Mangala Kisamwa)*

**JUDGMENT**

**Background**

1. To help understand the impugned ruling of 5 07 2022 and the appeal, it is important to clarify the subject matter of the dispute that was originally before the trial court and is now before this court.
2. From the plaint dated 9 07 2021, the appellant sued the first respondent regarding the transfer of several land parcels sold by the first respondent to the appellant between 1994 and 1995. It was alleged that the appellant paid Kshs. 7,500,000 for the land intended for establishing its Athi River base, and it had made substantial improvements on the land. However, despite repeated requests for the transfer of the land parcels, the first respondent refused, claiming the documents had been given to the second respondent and that the land was a conditional gift for which full payment was allegedly not made. The appellant stated that the second respondent had no authority to represent it and sought a court order to compel the first respondent to transfer the specified land parcels, and requested costs and interest.
3. In response, the first respondent filed his defence dated 17 08 2021, which was amended on 25 03 2022. Nonetheless, before the matter could proceed, the second respondent sought to be joined to the proceedings, which the court permitted. Following this joinder, he filed a notice of motion dated 28



03 2022 seeking the striking out of the suit. Upon service of this document, the appellant responded by filing a replying affidavit sworn on 19 04 2022.

4. Accordingly, upon reviewing these documents, the learned trial magistrate in her impugned ruling determined that the suit was filed out of time and struck it out.

### **Appeal to this court and the hearing**

5. The appellant was dissatisfied with this decision and exercised its right to appeal by submitting its memorandum of appeal dated 12 07 2022, which was officially filed on the instant date. Although the appeal initially contained six grounds, the appellant later consolidated them into two main points in its submissions dated 14 11 2024. These points criticised the learned trial magistrate for making errors in both law and fact by:
  - a. Holding that the appellant's suit was barred by time.
  - b. Failing to take into account the evidence presented by the appellant.
6. Accordingly, the appellant urged this court to allow the appeal, reinstate the suit and direct that it be heard by a court that is differently constituted. It also sought the costs of the appeal.
7. Thereafter, this matter was brought before the court for hearing, and as directed by the court, it was canvassed through well-argued written submissions received from the law firms of Mss. J. Mbugua Mburu & Associates for the appellant, dated 14 11 2024, and Evans Muli & Co. Advocates, previously on record for the second respondent, dated 14 06 2024.

### **Issues for Determination, Analysis, and Determination**

8. As this is a first appeal, the court's duty is outlined in Order 42 Rule 32 of the Civil Procedure Rules, which requires it to re-examine the evidence and make factual inferences to arrive at an independent decision. This duty has been affirmed in several court decisions, including *Abok James Odera T A A.J Odera & Associates v John Patrick Machira T A Machira & Co. Advocates* [2013] KECA 208 (KLR), where it was held that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

9. Accordingly, this court has reviewed the memorandum of appeal, the record of appeal, the appellant's and second respondent's submissions, the relevant legal provisions relied upon, and the authorities cited therein. Therefore, in this court's humble opinion, this appeal shall be decided by considering the singular issue of whether the appellant's suit was barred by time.
10. This issue was extensively addressed in the submissions before this court. Consequently, it is essential to emphasize the relevant legal provisions and prevailing jurisprudence on timelines for filing a claim for breach of contract related to the land purchase, as that is the core of the appellant's claim. Thus, as both the appellant and the second respondent submitted, and as correctly highlighted by the learned trial magistrate, the applicable provision is found in our Section 4 (1) (a) of the *akn ke act 1968 21 Limitation of Actions Act*, which provides: -

“(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—



- (a) actions founded on contract;
- (b) .....

11. Imperatively, this provision of the law prevents a cause of action based on a contract from being brought after six years have passed since the cause of action arose. To this extent, the parties agree. However, the dispute between the parties centred on when the cause of action is considered to have begun, particularly in cases involving breach of contract. Regarding this issue, our courts have made several pronouncements which this court adopts: -

In *Deposit Protection Fund Board in Liquidation of Euro Bank Limited (In Liquidation) v Rosaline Njeri Macharia & another* [2016] KECA 804 (KLR), the Court of Appeal held:-

“As the breach was of a contract relating to lending of money whose security instrument is contested, section 4(1)(a) of the Limitations of Actions Act, Cap 22 requires 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. In this appeal, the “suit” having been instituted in 2007 when the accrual of the cause of action was in July 1999, it was clearly filed outside the six-year period and consequently was time barred, if indeed it was a suit.”

Additionally, in *Diana Katumbi Kiio v Reuben Musyoki Muli* [2018] KECA 860 (KLR), the Court of Appeal gave the following rendition: -

“17. A cause of action in contract arises from breach of the contract and not at the time it is executed. According to the author in the *Journal of International Banking and Financial Law: "What's the Limit"* (2007) 11 JIBFL 642: -

“In contract the cause of action accrues when the breach occurs, but in tort the cause of action accrues when damage is first sustained. The cause of action, whether in tort or contract, arises regardless of whether or not the claimant could have known about the damage.”

12. Reverting to the case before this court and the submissions, the learned trial magistrate recognized that the cause of action arose when the contract was breached and appropriately focused her attention on determining the timing of its accrual by examining the crucial elements, which were the plaint and documents listed by the appellant. It therefore follows that the appellant's argument that the cause of action accrued on 23 02 2021, which was when it became aware of the breach, cannot stand.

13. On scrutiny of the plaint, this court agrees with the learned trial magistrate that it was somewhat vague as it did not specify when the contract was breached. In this court's humble opinion, it is likely that the appellant deliberately omitted this detail to avoid the issue of the suit being time-barred from being noticed. Moreover, the learned trial magistrate properly appreciated that the appellant did not produce an agreement for sale to establish when the completion period commenced or otherwise arose. Consequently, she based her decision on the various receipts for payments and concluded that the cause of action arose when the final instalment was paid. This court has no reason to fault this reasoning and finding.

14. Although the appellant has submitted that the learned trial magistrate found that the cause of action occurred on 25 08 1997, which was when the appellant allegedly became aware of the breach, but chose to remain silent and filed a suit in 2004, seven years later. This court has not encountered such a



finding, and in its view, these dates and or years seem to have been arbitrarily chosen by the appellant for reasons best known to it.

15. Therefore, given that the learned trial magistrate did not specify the precise date when the cause of action accrued, this court finds it necessary to determine it conclusively. Hence, having considered the record, it finds that the cause of action occurred on 26 10 1995, which was when the first respondent, in a letter to Waki & Co. Advocates, informed this law firm that it had received the entire purchase from the appellant and instructed them to effect the transfer. This letter was copied to the appellant. Following this and being guided by the law and judicial precedence, the latest date the suit could have been filed was around 26 10 2001, and not 13 07 2021, which was when the instant suit was filed. So, this court concurs with the learned trial magistrate and the second respondent that the appellant's suit was time-barred.
16. In the end, for the reasons stated above, this court concludes that the learned trial magistrate did not err in her conclusions and findings, and it will not disturb the lower court's ruling. This court finds and holds that this appeal is without merit. It is hereby dismissed, and the court upholds the orders issued in the verdict rendered on 5 07 2022. Since it is established law that costs follow the event, and as the appeal was unsuccessful, this court awards costs to the respondents.

Judgment accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

11.2025

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

No appearance for parties.

