



REPUBLIC OF KENYA



KENYA LAW
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**Booko v Attorney General & another (Civil Case E080 of 2025)
[2025] KEHC 18175 (KLR) (Civ) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E080 OF 2025

SN MUTUKU, J

DECEMBER 2, 2025

BETWEEN

EUCABETH NYAMBEKI BOOKO PLAINTIFF

AND

THE HON ATTORNEY GENERAL 1ST DEFENDANT

ECO BANK KENYA LIMITED 2ND DEFENDANT

RULING

The Preliminary Objection

1. Eucabeth Nyambeki Booko (the Plaintiff) filed the present suit against The Hon. Attorney General and Eco Bank Kenya Limited (the 1st and 2nd Defendants) respectively, vide a plaint dated 27th March 2025 in which she is seeking a declaratory order and general, exemplary, punitive and special damages arising from a claim of malicious prosecution.
2. It is this Plaint that has necessitated the filing of a Notice of Preliminary Objection (PO) dated 3rd September 2025 by the 1st Defendant who has stated that the Plaintiff's suit is statutorily time-barred by dint of Section 3(1) of the [Public Authorities Limitation Act](#) and therefore the suit is incompetent and a bad starter. The 1st Defendant is seeking to have the suit struck out in the interest of justice.

Replying and Supplementary Affidavits

3. The Plaintiff has challenged the PO through a Replying Affidavit sworn on 10th September 2025 in which she has deposed that the delay in bringing the present suit was occasioned by various factors beyond her control; that the delay was unintentional and unavoidable; that she was unable to obtain typed proceedings relating to the criminal case and that her advocate proceeded on maternity leave in 2024.



4. She has deposed, further, that, while her claim is partially founded on the tort of malicious prosecution, the substantive claim is premised on constitutional violations under Articles 28, 29 and 50 of the Constitution, which claims are not subject to the statute of limitations. She further claims that her claim for malicious prosecution falls within the exceptional category of continuing injury given its impact on her psychological and emotional wellbeing and that it would serve the interest of substantive justice for her claim to be allowed to proceed on merit.
5. In her Supplementary Affidavit sworn on 17th September 2025, the Plaintiff deposed that to her knowledge, the statutory timelines for bringing a claim for malicious prosecution is three (3) years; that irrespective of the foregoing, the provisions of the Limitation of Actions Act are inapplicable here, since the present suit lies primarily against the 2nd Defendant who is both a private company and the complainant in the criminal proceedings and therefore the PO is unfounded.

Written Submissions

6. The PO was canvassed by way of written submissions. In support of the PO, the 1st Defendant that the suit has been brought outside the statutory timelines for bringing a claim for malicious prosecution; that consequently, the present suit is incompetent for being statute barred by dint of Section 3(1) of the Public Authorities Limitation Act, and ought to be struck out accordingly.
7. The 2nd Defendant, in its submissions, associated itself with the position taken by the 1st Defendant that the Plaintiff's suit is time barred, the same having been brought close to three (3) years since the Plaintiff's acquittal in the criminal case on 5th April 2022. The 2nd Defendant has further submitted that no certificate of delay has been tendered to support the claim by the Plaintiff regarding the reasons for the delay in timeous filing of her claim; that consequently, the present suit ought to be automatically struck out for being time barred, with an appropriate award on costs.
8. The 2nd Defendant further submitted that the PO is grounded on a pure point of law, with reliance on *Mukisa Biscuit Company v West End Distributors Limited* (1969) EA 696 and *Hassan Nyange Charo v Khatib Mwashetani & 3 others* [2014] eKLR on what constitutes a PO.
9. In her submissions, the Plaintiff, while admitting to the existence of statutory timelines for filing a claim founded on malicious prosecution, has contended that viable reasons have been given to explain the delay in filing the present claim and that the delay in question is neither intentional nor inordinate.
10. She has contended, further, the present claim does not lie solely against the 1st Defendant who is a public entity, but extends to the 2nd Defendant being a private entity; for whom the limitation period is three (3) years under the Limitation of Actions Act and therefore that the claim against the latter Defendant is competently before the court.
11. It is the Plaintiff's submissions that her claim is also founded on violation of constitutional rights and freedoms, for which no statutory limitation exists. She relied on the decision in *Wamwere & 5 others v Attorney General* [2023] KESC 3 (KLR) where the Supreme Court acknowledged that the limitation of actions does not extend to claims relating to a violation of constitutional rights and freedoms.
12. She submitted that the High Court is vested with unlimited original jurisdiction in criminal and civil matters under Article 165(3) (a) and (b) of the Constitution, as well as the jurisdiction to determine a question of violation or infringement of a freedom or right under the Bill of Rights. It is her submission that she has a prima facie case which ought not to be struck out for being time-barred but to be heard on its merits. She urged that the PO be dismissed with costs.



Analysis and Determination

13. I have considered the PO and the submissions of the parties. I have also read and understood the Plaint dated 27th March 2025. The issues that pop up for determination in this matter are the following:
- i. Whether the PO raised herein meets the threshold of a PO?
 - ii. Whether the Plaintiff's claim is time-barred by operation of Section 3(1) of the *Public Authorities Limitation Act*?
14. I have subjected the PO to the principles set out in *Mukisa Biscuit Company v West End Distributors Limited* (1969) EA 696 and *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others* [2015] eKLR to determine the first issue. In *Mukisa Biscuit* case, a PO is defined thus:
- “A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised in any fact that has to be ascertained or if what is sought is the exercise of judicial discretion.”
15. In *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others* [2015] eKLR, the Supreme Court stated as follows in respect of a PO:
- “It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.”
16. I have subjected the PO raised herein to the above authorities and I am satisfied that it meets the threshold defined in the two cited authorities. The PO is based on a claim that the suit filed by the Plaintiff is time-barred by dint of section 3(1) of the Public Authorities Act. This is a point of law which is capable of determining the matter. It is clear that this case is capable of being terminated by a finding in favour of the PO.
17. On the second issue, I have read Section 3 (1) of the *Public Authorities Limitation Act*. It provides that:
- No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.
18. The claim by the Plaintiff is based on the tort of malicious prosecution. The Plaintiff has claimed that the present claim raises two (2) separate causes of action, an action based on the tort of malicious prosecution and alleged violations or infringements of *the Constitution*. My reading and understanding of the Plaint does not disclose anything to demonstrate that this claim is also based on violations of the Plaintiff's constitutional rights. To my understanding, the instant suit is founded purely on the tort of malicious prosecution and therefore the cause of action. Going by the provisions of Section 3, the cause of action is purely based on the tort of malicious prosecution.
19. Further, it is clear that the Plaintiff approached this court (Civil Division) through a Plaint. She did not file a Petition under *the Constitution* in the Constitutional and Human Rights Division. This court will and does hereby find that this claim is purely a claim based on tort and has nothing, as pleaded, to do with constitutional violations. The claim therefore falls squarely under Section 3(1) of the *Public Authorities Limitation Act*. The Plaintiff has sued the 1st Defendant who represents the Government. Any suit against the Government, by dint of the above legal provision, must be filed within 12 months.



20. I have noted that the Plaintiff has admitted to bringing the suit outside of the stipulated timelines and has explained the delay for the same, in the manner earlier set out. There is however nothing on the record to indicate that the Plaintiff sought and obtained leave of the court prior or subsequent to instituting the claim against the 1st Defendant out of time, in any event. For the foregoing reasons, the court is satisfied that the instant suit against the 1st Defendant is time barred.
21. As relates to the 2nd Defendant, no credible material has been tendered to indicate that it is a Government or local authority under the Public Authorities Limitation Act. Resultantly, the statute applicable to the aforesaid Defendant on the subject of limitations is the Limitation of Actions Act. Section 4(2) of the said Act stipulates thus:
- “ 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...”
22. The cause of action here accrued on 5th April 2022 upon the acquittal of the Plaintiff. The Plaintiff was filed sometime on or about 27th March 2025. Upon a consideration of the limitation period expressed under Section 4(2) of the Limitations of Actions Act, the court is satisfied that the claim as against the 2nd Defendant was filed within the statutory timelines and is therefore is not affected by Section 3(1) of the Public Authorities Limitation Act.
23. In the end therefore, the court finds that the notice of PO dated 3rd September 2025 succeeds as regards the 1st Defendant. Consequently, the suit against the 1st Defendant is hereby struck out for being time barred, with costs to the 1st Defendant.
24. In respect of the 2nd Defendant, this court will not close to doors of justice on the Plaintiff. She should have her day in court to prove that she has a claim against the 2nd Defendant. To that end, I hereby allow the Plaintiff to amend her Plaintiff to align it with the findings of this ruling. This should be done in the next 60 days from the date of this ruling, failing which the order granted to the Plaintiff to amend the Plaintiff will automatically lapse.
25. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 2ND DECEMBER 2025.

S. N. MUTUKU

JUDGE

In the presence of:

1. Ms Mhanghi for Ms Kalii for the Plaintiff
2. Mr. Ngumbi for the 1st Defendant
3. Mr. Raingo for the 2nd Defendant

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