



REPUBLIC OF KENYA



**Ndugo v Board of Management Mugwandi Mixed Secondary School (Civil Appeal E062 of 2024) [2025] KEHC 18940 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18940 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E062 OF 2024  
EM MURIITHI, J  
DECEMBER 11, 2025**

**BETWEEN**

**IRENE WAMBUI NDUGO ..... APPELLANT**

**AND**

**BOARD OF MANAGEMENT MUGWANDI MIXED SECONDARY  
SCHOOL ..... RESPONDENT**

*(Appeal from the whole Ruling of Hon. S.K Manyura Adjudicator/Resident Magistrate delivered on the 7th day of May 2004 in Kerugoya SCCOMM NO. E031 of 2024)*

**JUDGMENT**

1. Before the Court is an appeal from the Ruling of Hon. S. K. Manyura, Adjudicator, Resident Magistrate delivered on 7<sup>th</sup> May, 2024 in Kerugoya SCCOMM E031 OF 2024. The following are the grounds of appeal:
  1. That the Learned Adjudicator/ Resident Magistrate erred in law in failing to apply the provisions of Section 23 (3) and Section 24 of the [Limitation of Actions Act](#).
  2. That the Learned Adjudicator/ Resident Magistrate erred in law in failing to find the part payment of the debt in 2021 which was filed in court is covered under the provisions of Section 23 (3) and Section 24 of the [Limitation of Actions Act](#) and therefore the claim before court was not time barred.
  3. That the Learned Adjudicator/ Resident Magistrate erred in law in failing to find that the preliminary objection before court was not a proper one as it called upon the court to determine facts so as to confirm if the same fell under the exceptions set out under Section 23 (3) and Section 24 of the [Limitation of Actions Act](#).



4. That the Learned Adjudicator/ Resident Magistrate erred in law in failing to apply the decision in *Co-operative Bank Of Kenya v Peter Kimani* [2020] EKLK which was binding on the circumstances of the case.

### **Brief facts of the case**

2. The appellant has been supplying dry foodstuffs to Mugwandi Secondary School from 2012-2015. In 2015, the Management of the Respondent has failed to pay a debt of Kshs. 545,200 for the dry foodstuff supplied.
3. The Respondent acknowledged the debt twice. First, via a text message from the Respondent's Acting Deputy Principal dated 11<sup>th</sup> March, 2024 (Refer to page 43 of the Record of Appeal) and second, via a letter dated 11<sup>th</sup> April, 2024 requesting to be allowed to pay Kshs 3,000 per term (Refer to page 44 of the Record of Appeal).
4. The appellant instituted a suit in the Small Claims Court at Kerugoya via a Statement of Claim dated 20<sup>th</sup> March, 2024 where the Learned Adjudicator/ Resident Magistrate dismissed the suit for being time barred necessitating this Appeal.

### **Appellant submissions**

#### **Whether the Learned Adjudicator erred in law in deciding that the suit was time barred**

5. The time limit for actions based on contracts is provided for in section 4(1) of the *Limitation of Actions Act* as follows:

4. Actions of contract and tort and certain other actions

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...

6. However, Section 23 and 24 of the *Limitation of Actions Act* provides that a right of action shall accrue freshly on the date of an acknowledgement or part payment of a debt. The aforementioned sections read as follows;

- 23 (3). Fresh accrual of right of action on acknowledgement or part payment

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 therefore acknowledge 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.

7. Section 24 provides as follows:

24. Formalities as to acknowledgements and part payments

Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it...



8. The Court of Appeal in the case of *Afrofreight Forwarders Ltd vs African Liner Agencies* (2009) eKLR in which the Court said that:

“With due respect to the learned Judge, we think the learned Resident Magistrate was right in reaching the conclusion that time started to run from the date of the letter in which the debt was acknowledged. We have looked at the contents of the letter of 4<sup>th</sup> July, 2000 and in our view the said letter acknowledged the debt.

9. The Respondent’s Deputy Principal sent a text message dated 11<sup>th</sup> March 2024, (Refer to page 43 of the Record of Appeal) acknowledged the existence of a debt of Kshs. 545,200/~.

10. Moreover, the Principal via a letter dated 11<sup>th</sup> April, 2024 acknowledged the existence of a debt of Kshs. 545,200/= and even suggested to settle the debt by paying Kshs. 3,000/= per term (Refer to page 44 of the Record of Appeal).

11. The aforementioned letter was in writing and had been duly signed.

12. The appellant submits that the suit was not time barred as a fresh right of action started accruing on 11<sup>th</sup> April 2024, thus the appellant had a right to institute a claim against the Respondent.

In *Co-operative Bank of Kenya v Peter Kimani* [2010] eKLR, Koome J. as she then was held:

“It is common ground that the Applicant admitted liability by a letter dated 22<sup>nd</sup> August, 2003. In that letter, he also made proposals of a settlement. By dint of Section 23(3) of the Limitation of the Actions Act, the Applicant acknowledged the debt, thus the cause of action arose on that date of acknowledgement. This suit is therefore not time barred it cannot be struck out; it should proceed for trial. The application dated 12<sup>th</sup> April, 2010 is dismissed with costs to the Plaintiff.”

## **Respondent submissions**

### **Whether the trial court erred in finding that the claim was time-barred?**

13. The Claimant in her claim stated that she started supplying for the respondents in 2012 and had not been paid since then and that she is basing her claim for money owed and that the breach was in 2015, as such the time limit since 2015 to 2024 has already exceeded the 6-year time limitation period for seeking such orders.

14. The respondent submits that the claimant has no legal ground for seeking award of the money claimed since the Claimant bringing a claim 9 years later was indolent and guilty of laches.

15. In the case of *Bosire Ongero vs Royal Media Services* (2015) eKLR the court held that:

“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.....”.

16. The Claimant/Appellant argued that the alleged debt was acknowledged via a letter dated 13<sup>th</sup> November, 2017 and subsequent text messages, and thus relied on Sections 23 and 24 of the *Limitation of Actions Act*.

17. However, as the trial court found, the Claimant did not satisfy the legal requirements for an acknowledgment that would reset the limitation clock. Specifically, there was no formal written and signed acknowledgment as required under Section 24(1):



18. The alleged acknowledgments were not shown to be unequivocal admissions of a legally enforceable debt:
19. The documentary evidence (including payment vouchers) demonstrated that the Claimant had in fact been overpaid and was not owed the amount claimed.
20. Moreover, as noted in the decision, acknowledgment cannot revive a time-barred claim where there is no clear and valid acknowledgment in compliance with statute.

### Issue

21. Whether the Magistrate erred in law in failing to apply the provisions of Section 23 (3) and Section 24 of the *Limitation of Actions Act*.

### Analysis

22. The appeal primarily challenges the finding that the suit was time barred, arguing that the Magistrate failed to apply Section 23(3) and Section 24 of the *Limitation of Actions Act*, which provide for a fresh accrual of cause of action following acknowledgment or part-payment of debt.
23. The starting point is Section 4(1)(a) of the *Limitation of Actions Act* which provides a six-year limit for actions founded on contract.
24. However, the Legislature created exceptions to ensure that acknowledgment or continued dealings between parties do not unjustly extinguish legitimate debts.
25. Section 23(3) Fresh accrual of right of action

Fresh accrual of right of action on acknowledgement or part payment

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 therefore acknowledge 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.

Section 24 Formal requirements of acknowledgment are as follows:

24. (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.

26. The legal consequence is renewal of the limitation period from the date of acknowledgment or part-payment. The Court of Appeal in *Afrofreight Forwarders Ltd v African Liner Agencies* (2009) eKLR held that a valid acknowledgment revives and resets time from the date of acknowledgment.
27. The claim was based on a debt in contract that accrued in 2015. Thus, absent acknowledgment, the limitation period would have expired in 2021. However, the letter dated 11<sup>th</sup> April, 2024 was addressed to the Appellant. It expressly refers to the debt of Kshs. 545,200, and it is signed on behalf of the Respondent. This places the acknowledgment squarely within Section 24(1), meeting the necessary legal conditions. As a consequence, Section 23(3) is triggered, thereby reviving the right of action from 11<sup>th</sup> April 2024.



28. Regarding the text message dated 11<sup>th</sup> March, 2024, while it confirms acknowledgment, its form may not independently meet the signature requirement under Section 24(1). Nonetheless, the written and signed letter is sufficient to reset the limitation period. The learned Magistrate's finding that the suit was time-barred ignored these statutory exceptions.
29. The appellant relied on the case of *Co-operative Bank of Kenya v Peter Kimani* [2010] eKLR, where the court held part-payment or acknowledgment within six years defeats limitation and the dispute must proceed to full hearing.
30. Further, limitation of action was raised via preliminary objection, yet the court needed to interrogate factual evidence regarding acknowledgment. Thus, the objection was not a proper pure point of law as per the principles in *Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors Ltd* (1969) EA 696.
31. In conclusion, the Respondent's acknowledgment of the debt in writing revived the Appellant's cause of action. The suit filed in March 2024 was properly within time since a fresh limitation period had commenced.

### **Orders**

32. Accordingly, for the reasons set out above, the Court finds that the appeal has merit and it is allowed.
33. The Ruling of the Small Claims Court dated 7/5/2024 is set aside and substituted with an order dismissing the Respondent's Preliminary Objection so that the suit proceeds to hearing and determination on the merits.
34. Each party shall bear its own costs.

Order accordingly.

**DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF DECEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Magee for the Appellant.

Mr. Mwatsuma for the Respondent.

