



Enochem Agrovet Limited v County Government of Kisii (Civil Case E007 of 2025) [2026] KEHC 660 (KLR) (16 January 2026) (Ruling)

Neutral citation: [2026] KEHC 660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL CASE E007 OF 2025
TA ODERA, J
JANUARY 16, 2026**

BETWEEN

ENOCHEM AGROVET LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF KISII DEFENDANT

RULING

1. Before this Court for determination the application dated 23.7.25 filed by the defendant Pursuant to Order 2 Rule 15(1) of the Civil Procedure Rules, Section 1A, 1B, 3A and 63(f) of the Civil Procedure Act Cap 21 Laws of Kenya and all enabling provisions of the Law: Seeking orders
 - a. Spent
 - b. That pending the hearing and determination of this Application, this Honourable Court be pleased to stay all proceedings herein.
 - c. That this Honourable Court be pleased to strike out the Plaintiff's suit for being time barred and otherwise an abuse of the process of the Court.
 - d. In the alternative to prayer C above, this Honourable Court be pleased to hear a Preliminary Objection dated 23rd July 2025, in which the Defendant contends that the Plaintiff's suit is time-barred pursuant to section 3(2) of the Public Authorities Limitation Act, Cap 39 Laws of Kenya, and seeks that the suit be struck out with costs.
2. The application is based on the annexed affidavit of Alfred Nyandieka the County Attorney Kisii on the grounds that a) On 18th May, 2025, the Plaintiff /Respondent filed the instant suit as well as a notice of motion application under certificate of urgency b) c) The file was placed before this Hon. Court, (Hon. Lady Justice Odera) who considered the Application and directed that the same deserved for directions on 1st July, 2025. On 1st July, this Honourable Court gave directions for the



matter to be mentioned on 24th September for pre-trial directions and in the meantime a mention for mediation before Honourable Omwanza on 14th July, 2025 who has since referred the matter to Court annexed mediation. d) The defendant/ Applicant while preparing defense pleadings, has discovered that the suit filed herein is time barred and is therefore an abuse of the process of the Court e) Consequently this Honourable Court lacks Jurisdiction to entertain a time barred suit. f) The Applicant is apprehensive that unless this Honourable Court stays the suit and all proceedings thereon pending determination of the notice of motion herein, precious Judicial time may be put to waste g) It is in furtherance to the overriding objective of this Honourable Court that this Application has been brought h) Continuing with the current suit will clog the court besides occasioning unnecessary costs to the parties i) The suit is otherwise an abuse of the process of the court 4 j) In the premises, this Honourable Court lacks jurisdiction to entertain a suit k) The claim herein is unarguable and cannot succeed and it is in the circumstances a clear case for striking out. 1) This Honourable Court is further enjoined by *the Constitution* and the overriding objective in ensuring efficient use of available judicial and administrative resources and hence strike out this suit in limine. It sought the costs be awarded to i.t In the premises the Respondent applies that the suit/claim be struck out with costs to it.

The applicant also filed a notice of preliminary objection dated 28.7.25 together with the said application objecting to the suit on the grounds that that it is statute-barred pursuant to Section 3(2) of the *Public Authorities Limitation Act*, Cap 39 Laws of Kenya.

Plaintiff's Submissions

A. Whether the Preliminary Objection is Defective

3. The Plaintiff submitted that the Preliminary Objection is fatally defective for being supported by an affidavit sworn by the Defendant's Advocate, who deponed to contested matters of fact not within his personal knowledge.
4. It was argued that no justification was offered as to why the Defendant did not swear the affidavit itself, rendering the affidavit irregular and deserving of being struck out.
5. The Plaintiff relied on several authorities, including: *Magnolia Pvt Limited v Synermed Pharmaceuticals (K) Ltd* [2018] eKLR, *International Community of Women v NGO & Another* (Milimani Petition No. 221 of 2018), *DJC v BKL* (Civil Suit E021 of 2021) [2022] KEHC 10189 (KLR), and *Henry Wanyama Khaemba v Standard Chartered Bank Ltd & Another* [2014] eKLR, to support the position that a valid preliminary objection must be based purely on points of law and must not be supported by evidence or affidavits.
6. The Plaintiff further cited the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, arguing that the Preliminary Objection herein fails to meet the legal threshold.

B. Whether the Plaintiff's Claim is Time-Barred

7. The Plaintiff submitted that the claim is not time-barred, arguing that there were continuous engagements between the parties through physical visits, demand letters, and submission of the claim to the Defendant's Pending Bills Committee pursuant to a Gazette Notice dated 5th July 2024.
8. It was further contended that the Defendant made a part payment, which amounted to an admission of liability and effectively reset the limitation period.
9. The Plaintiff maintained that time had not lapsed and urged the Court to determine when time began to run, insisting that the Defendant should not benefit from its own breach.



Issues for Determination

10. Having considered the Preliminary Objection, submissions, and authorities cited, the Court finds that the following issues arise for determination:
 - a. Whether the Preliminary Objection is defective;
 - b. Whether the Plaintiff's suit is time-barred under the Public Authorities Limitation

Analysis and Determination

A. Whether the Preliminary Objection is Defective

11. It is now settled law that an advocate should not swear an affidavit on behalf of a client on contentious matters of fact. In *Regina Waithira Mwangi Gitau v Boniface Nthenge* [2015] eKLR, the Court held that advocates who depone to contested facts risk being converted from counsel into witnesses, a practice the courts have consistently frowned upon.
12. Similarly, in *Magnolia Pvt Limited v Synermed Pharmaceuticals (K) Ltd* [2018] eKLR, the Court cautioned advocates against swearing affidavits on disputed matters, noting that such conduct exposes counsel to cross-examination and undermines their professional role.
13. In the present case, the affidavit in support of the application for stay of proceeding and hearing of the Preliminary Objection was sworn by the Defendant's Advocate. The issues raised in the said affidavit are not contentious as they relate to stay and priority hearing and disposal of the preliminary objection which are matters of law.

B. Whether the Plaintiff's Claim is Time-Barred

15. Section 3(2) of the *Public Authorities Limitation Act* provides:

“No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”
16. It is not in dispute that the Defendant is a County Government, hence a public authority within the meaning of the Act. It is also undisputed that the claim is founded on contract.
17. The Court of Appeal in *Attorney General & Another v Andrew Maina Githinji & Another* [2016] eKLR, citing *Letang v Cooper* [1964] 2 All ER 929, defined a cause of action as:

“A factual situation the existence of which entitles one person to obtain from the court a remedy against another.”
18. The Plaintiff pleaded that the Defendant made a part payment of Kshs. 7,500,000/= in April 2022. The Defendant did not file a defence to controvert this assertion.
19. It is trite law that part payment amounts to an acknowledgment of debt and has the effect of restarting the limitation period. Consequently, time began to run afresh in April 2022 and lapsed in April 2025.
20. The present suit was filed in May 2025, approximately one month after the limitation period had expired.



21. While the Court sympathizes with the Plaintiff's predicament, limitation statutes are mandatory and leave the Court with no discretion once time has lapsed. As was held in numerous authorities, equity cannot override an express statutory provision.
22. The Court therefore finds that the suit was filed out of time and is consequently statute-barred.

Disposition

23. In the premises, the Court finds that the Preliminary Objection dated 23rd July 2025 is meritorious.
24. Accordingly, the Plaintiff's suit is hereby struck out for being time-barred under Section 3(2) of the *Public Authorities Limitation Act*.
25. Costs of the suit are awarded to the Defendant.

T. A. ODERAJUDGE

JUDGE

Delivered Virtually at At Kisii on this 16th day of January 2026 Virtually Via Microsoft Teams Platform in the Presence of:

Parties – Absent

Court Assistant –Kipchirchir

1.26

