



**Makokha v Chunghe & another (Civil Case E008 of 2024)
[2026] KEHC 400 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL CASE E008 OF 2024
S MBUNGI, J
JANUARY 27, 2026**

BETWEEN

NANJIRA LUKONDO MAKOKHA PLAINTIFF

AND

ELIZABETH CHUNGE 1ST DEFENDANT

KENINDIA ASSUARANCE 2ND DEFENDANT

RULING

1. The Plaintiff vide a plaint dated 20.09.2024 filed a suit seeking orders that: The Defendants pay him back his compensation money as directed in Bungoma CMCC/770/1996 together with its costs and interests.
2. The 1st Defendant filed a statement of defence and a counterclaim dated 16th November, 2024.
3. In her defence pleaded the suit was res judicata for the issues raised in the suit are the same issues raised in:-
 - a. the plaintiff's complain at the advocate's complaint commission vide his pleadings filed by him along other claimants dated 17/6/2004 or thereabout which was determined in favor of the 1st defendant and which the plaintiff never appealed against.
 - b. By the plaintiff in the High Court of Kenya at Nairobi in Misc. Civil Appl. No. 299 of 2007 between Nanjira Lukondo MAKokha (the plaintiff herein and 3 17. the plaintiff therein) and 104 others versus Elizabeth Chunghe T/A Elizabeth Chunghe & Company Advocates & 3 others which was determined or dismissed in favor of the 1st defendant herein which the plaintiff herein has never appealed against the decision therein.
 - c. In the Plaintiffs' complaint to the Advocates Complaints Commission in his complaint vide file reference number CC/PE/IWG/March/2011/2023 in the year 2011 which was



determined in favor of the 1st defendant after she was summoned to give an account by the said commission which decision has never been appealed against in a superior court

4. The 2nd Defendant filed a statement of defence dated 22.11.2024, denying all averments in the plaint and further laid down an objection under section 4 (4) of the Limitation of Actions Act (Cap.22) Laws of Kenya on paragraph 12, since the current suit is brought upon a judgement rendered in 2003.
5. On 8th October, 2025 the parties agreed to first dispose off the Preliminary Objection raised by the 2nd Defendant by way of written submissions.
6. The 2nd Defendant filed submissions dated 23rd June, 2025.
7. The Plaintiff filed submissions dated 11th November, 2025.
8. The first Defendant did not file as at the time of writing this ruling.
9. I have looked at the submissions filed by the Plaintiff and the 2nd Defendant.
10. The Plaintiff misapprehended what was supposed to be submitted on; his submissions are as if the matter had been heard and concluded and waiting for judgment, whereas he was supposed to submit of whether the suit was time-barred or not under the Limitation of actions act Cap 22, Laws of Kenya.
11. Nevertheless I isolate the issue of determination as whether the suit is time-barred under Section 4 (4) of the Limitations Act (Cap .22) Laws of Kenya as submitted by the 2nd Defendant.
12. The 2nd Defendant submits that the Judgment sought to be enforced by the 2nd Defendant via this suit was rendered on the 20th Day of March, 2003. This suit was filed on 20.9.2024 almost 21 years later, whereas the law says that a judgment cannot be enforced 12 years after it was delivered.

Determination.

13. What is a preliminary objection?

A preliminary objection was defined in the case of Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, where it was held: "a Preliminary Objection consists of a point of law which has been pleaded and/or which arises by clear implications 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 or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...a Preliminary Objection is in the nature of what used to be demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion."

14. From the above decision, a plea of limitation of action is a pure point of law if argued successfully, disposes off the suit.
15. Section 4(4) of the Limitation of Actions Act (Cap 22) Laws of Kenya states:-
 - (4) 4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.



16. From the pleadings, it is clear that the Judgment the Plaintiff is seeking to enforce was delivered almost 22 years plus prior to the date of filing this suit which is clearly contrary to the provisions of Section 4 (4) of the Limitations of Actions Act Cap 22, Laws of Kenya.
17. There is no evidence that the Plaintiff had sought exemption to file the suit out of time.
18. The upshot of this is that, the court has no choice other than to strike out the suit for being statutory time barred.
19. I am alive to the provisions of section 27 of the Civil Procedures Act that costs follow event. But given the history of this matter, each party to bear its own cost of the suit.
20. The 1st Defendant is at liberty to continue and prosecute a counterclaim.
21. It is so ordered.
22. Right of Appeal 30 days explained.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF JANAURY, 2026 .

S.N. MBUNGI

JUDGE

In the Presence of:-

C/A: Ang'onga/Nekesa

Mr. Miheso for the Respondent present online.

