



Maseki p/a Maseki & Company Advocates v Muguna (Civil Case 3031 of 1996) [2026] KEHC 761 (KLR) (Civ) (30 January 2026) (Ruling)

Neutral citation: [2026] KEHC 761 (KLR)

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

CIVIL

CIVIL CASE 3031 OF 1996

JN MULWA, J

JANUARY 30, 2026

BETWEEN

MUTAVI MASEKI P/A MASEKI & COMPANY ADVOCATES PLAINTIFF

AND

GIDEON KIMATHI MUGUNA DEFENDANT

RULING

(On Preliminary Objection dated 20/09/2024)

1. By a Notice of Motion application dated 11/06/2024, the Application/Defendant Gideon Kimathi Muguna sought orders that:-
 1. That there was existing decree of this court issued on 26th February, 1998 which has not been satisfied and now stands at Kshs. 9,001,597.88
 2. That the Plaintiff judgment debtor died on 17th April, 2021 before settlement of decree in this case.
 3. That Angela Matha Maseki has been appointed by the Administrator of the Estate of the deceased judgment debtor in Succession Cause No. E079 of 2022 in CMCC Kitui Court.
 4. That the estate of the deceased judgment debtor has properties that can be used to offset the decree but the Administrator has not set aside any property to settle the decree.
 5. That the application for confirmation of grant is fixed for hearing on 19th June, 2024



6. That it is only fair and in the interest of justice that the deceased judgment debtor be substituted by the administrator of the estate Angela Matha Maseki herein.
2. The application is grounded on Order 24 Rule 3(1) of the Civil Procedure Rules and further supported by an affidavit sworn by the Applicant on 11/06/2024.
3. It is his deposition that in the suit, he is one of the Decree Holders of the decree awarded against the Plaintiff Advocate (now deceased) on 26/02/1998, which decretal sum now stands at Kshs. 9,001,597.88 (copy of decree attached hereto) and that the said decree remains unsatisfied by the administrator of the Advocates Estate, one Angela Matha Maseki – grant of letters of administration intestate having been duly issued in the Chief Magistrates Court at Kitui in success cause No. E079 of 2022, and issued on 7/07/2022.
4. Upon service and in opposition of the motion, the estate of the deceased Advocate raised a Preliminary Objection (PO) on the following grounds:-
 1. That the suit is time barred by dint of Section 4(4) of the Limitations of Actions Act, Cap 22 Laws of Kenya;
 2. That the suit has abated by provisions of Order 24 Rule 4 (3) of the Civil Procedure Rules.
 3. That the suit should be dismissed or struck out against the Plaintiff's estate with costs.
5. Further, a replying affidavit to the PO was also filed sworn on 3/03/2025 by the Applicant stating that the decretal sum stood at Kshs. 9,289,494.33, as at 26/02/2025 whereas the Advocate died on 17/04/2021 and despite all efforts to realize the decretal sum, including taking out Garnishee orders against the decree remains unsettled.

The Preliminary Objection (PO)

6. As is the nature of a Preliminary Objection, once brought to the attention of the court, it ought to be heard in the first instance as it may dispose of the suit as held in the case of Mukisa Biscuits Manufacturing Company Ltd, wherein, it was held that:-It consists of a point of law that if argued as a preliminary point, it will dispose of the suit.It raises a pure point of law, which is argued on the assumption that at the facts pleaded by the other side are correctIt cannot be raised if any fact has to be ascertained.It is not subject of judicial discretion.
7. In Oraro V. Mbaja (2005) KUP 141 the court held that where a court needs to investigate facts, a matter cannot be raised as a preliminary point, that anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be fasted by normal rules of evidence.
8. Looking at the issues raised in the PO it is evident that it fits the parameters of a PO as defined in the above two learned decisions.

The questions that arises is therefore, whether the preliminary objection is merited and whether the suit has abated.
9. There is no dispute that the judgment of the court was delivered on 28/02/1998 twenty-six years as at date of the application. Section 4(4) of the Limitation Action Act concern Limitation of contract



and Tort among others. The instant suit was grounded on contract between the Plaintiff and the Defendant.

10. Order 24 Rule 1 of the Civil Procedure Rules concerns abatement of a suit upon death of the Plaintiff or Defendant; and/or if the cause of action survives the deceased or continues.

It is important to note here that judgment had been delivered against the Plaintiff before his death in 2021; and that letters of Administration of his estate have since been granted to his widow as aforesaid in 2022 July, 7th.

11. Section 4(4) of the *Limitation of Actions Act* (Cap 22 laws of Kenya) provides that any action upon a judgment after 12 years from the date of the judgment is delivered is time barred. On the other hand interest on a judgment is limited to a period of six (6) years from date of its delivery as held in the *Mukwana Construction and Engineering Co. Ltd v. Limuru* as well as in the Supreme Court of Kenya Application No. E026 of 2023 in *Everton Coal Enterprises Ltd vs. Rose Wakanyi Karanja & 5 Others*.
12. Generally, courts will enforce the time limitations for actions and limited scope for extension, when necessary and anchored under the Law and on very plausible grounds.
13. In *Khamis & Another v. Omar Trustee of the Estate of malim Bin Hero & 4 Others* [2024] eKLR in respect of execution of judgments, the court reiterated that legal limitation of execution of judgment to 12 years stating that it would be against public policy and good order. Additionally, the import of Section 4(4) of Cap 22 was considered by the court in the Court of Appeal case of *M'ikiara M'Rinkanya & Another v. Gilbert Kabeer M'mbijiwe* [2007]eKLR extensively wherein the time limit of 12 years was upheld and in *Joseph Njenga njoroge v. Kabiri Mbit* [1986]eKLR where in all the decisions the courts suggested that there is no room for extension of time to execute a judgment after 12 years from date of delivery of the judgment.
14. Additionally, Order 24 Rule 4(3) of the Civil Procedure Rules provides for causes of action that survive death of parties- that:-

3(1): Where one or more plaintiffs die and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole Plaintiff.. the court on an application made in that behalf shall cause the legal representative of the deceased Plaintiff to be made a party and should proceed with the suit.

3(2): Where within one year no application is made under sub Rule(1) the suit shall abate so far as the deceased plaintiff is concerned and on application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff.

15. Here the cause of action was a civil debt wherein the court rendered a judgment against the plaintiff who passed on on 17/04/2021. Judgment having been delivered on 28/02/1998, 12 years had already lapsed before the deceased plaintiff judgment debtor was substituted by the administrator of his estate.

Clearly, the limitation period during which time the judgment ought to have been executed lapsed in 2010 long before the plaintiff died; and therefore by the date of the instant application dated 11/06/2024 made by the defendant there was no judgment capable of being executed.

16. Without belaboring further, the Preliminary Objection lodged by the 2nd Defendant succeeds in its entirety. Consequently, the suit against the Plaintiff's Estate is hereby struck out with no orders on costs.

Orders accordingly.



DELIVERED DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JANUARY, 2026.

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JANET MULWA.

JUDGE

