



**Muriakiara v Ngugi (Environment and Land Case E161 of 2024)  
[2026] KEELC 427 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 427 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E161 OF 2024**

**JA MOGENI, J**

**FEBRUARY 2, 2026**

**BETWEEN**

**PETER NGUGI MURIAKIARA ..... PLAINTIFF**

**AND**

**IRENE WANJIKU NGUGI ..... DEFENDANT**

**RULING**

1. The Defendants has raised a Preliminary Objection dated 9/06/2025 on the grounds that;
2. That the entire suit as comprised in the Plaint dated 27/09/2024 be struck out with costs on the grounds that the Plaintiff's claims in respect of breach of contract and recovery of the suit property as set out in the Plaint are statute and time barred as they offend the provisions of Section 4(1) (a) & 7 of the *Limitation of Actions Act*, Cap 22.
3. That therefore the claim should be dismissed with costs.
4. The Plaintiff filed a Replying Affidavit sworn on 19/07/2025 and deposed that that the Preliminary Objection is incompetent and fatally defective. It was his contention that although the timeline for actions to recover land is prescribed as 12 years, the same does not begin running from the date the contract was entered into but rather from the date on which the right of action accrued to him. That this simply means that the cause of action arose the date the Defendant breached the contract and a wrong was done unto the Plaintiff wherefrom he obtained a right of action.
5. According to the Plaintiff, the cause of action in this suit did not arise in the year 2003. That it arose sometime around 12<sup>th</sup> September 2024 when the Defendant decided to breach the verbal agreement entered in the year 2003 by beginning the process of selling the suit property solely because the Defendant was dissatisfied by an unrelated decision he had made as the head of the family. Thus, it is his contention that it is only then, that the cause of action arose and the right of action accrued to the



Plaintiff. He states that this position is duly captured at paragraphs 9 and 13 of the Plaintiff's Plaint dated 27/09/2024.

6. It is the position of the Plaintiff/Respondent that this suit has been brought within the legally prescribed timeline of 12 years and the Preliminary Objection is incorrect. Further he deposes that the Defendant has failed to prove or demonstrate any of the conditions required in law to warrant striking out of the Plaintiff's suit.
7. It is the Plaintiff's averment that he stands to suffer grave injustice and prejudice if this Court allows the Preliminary Objection as his constitutional rights to be heard and to access justice shall be gravely violated. He therefore prays that the Preliminary Objection be dismissed with costs because it lacks merit.
8. The parties canvassed the application by written submissions. The Applicant/Objector filed their written submissions dated 31/07/2025 while the Plaintiff/Respondent filed their submissions dated 26/08/2025. I have considered both submissions, pleadings filed and responses.

### **Analysis and Determination**

9. This Court has considered the Preliminary Objection and submissions therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary ....”
10. The above legal proposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the Court held that;

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A Preliminary Objection is in the nature of what used to be a demurer 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 if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”
11. In the case of Attorney General & Another vs Andrew Mwaura Githinji & Another (2016) eKLR the Court outlined the scope and nature of Preliminary Objection as;
  - i. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
  - ii. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
  - iii. The improper raise of points by way of Preliminary Objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
12. It is trite law that a Preliminary Objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter.



13. The Defendant in his submissions identified three issues for determination of the Preliminary Objection (PO) being whether the PO is properly and validly raised in order to merit consideration, secondly whether the Plaintiff's claims relating to breach of contract and recovery of the suit property as set out in the plaint are statute and time-barred and lastly whether the Court possess the jurisdiction to adjudicate over the suit herein?
14. I do find that the filed Preliminary Objection by the Defendant herein was properly brought before the Court since it has raised the issue of jurisdiction of the Court which is a pure point of law. The Defendant has referred to a number of decided cases which I have considered to buttress the three issues she has identified in her submissions.
15. The Defendant argues is that this Court does not have jurisdiction and the suit is time barred as provided under Section 4 of the Limitation of Actions Act. That the cause of action accrued in 2003 and under the contract law and the window period closed in 2009. Further that the claim for recovery of land had a time span of 12 years and that the window period closed in 2015.
16. In the case of Owners of the Motor Vessel M.V Lillian S. vs Caltex Oil (K) Limited (1989) KLR 1 the Court held that without jurisdiction it has to down its tools. The jurisdiction of the Environment and Land Court (ELC) flows from Article 162 (2)(b) of the Constitution of Kenya 2010. Section 13 (2) of the ELC Act vests this Court with wide powers over any dispute relating to land it provides that;
 

“In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

  - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - e. any other dispute relating to environment and land.”
17. The jurisdiction of this Court to hear and determine this suit flows from the Constitution and the law. The jurisdiction of Court is not conferred upon it by parties nor can the Court confer upon itself jurisdiction. The Supreme Court in Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 Others (2012) eKLR held that;
 

“A Court's jurisdiction flows from either the Constitution of legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”
18. I have perused the Court record and find that by a Plaint dated 27/09/2024, the Plaintiff avers that he entered into a contract with the Defendant in 2003 but that although the timeline for actions to



recover land is prescribed as 12 years, the same does not begin running from the date the contract was entered into but rather from the date on which the right of action accrued to him. That this simply means that the cause of action arose the date the Defendant breached the contract and a wrong was done unto the Plaintiff wherefrom he obtained a right of action.

19. On his part the Defendant submitted that this is a matter relating to contracts and that it ought to have been brought to Court within six (6) years and if the Plaintiff wanted to recover the land, he should have moved the Court within twelve (12) years. I find that this matter relates to a contract touching on the purchase of the suit land and hence this Court has jurisdiction as per Section 13 of the ELC Act referred to above.

20. The Applicant's contention in her submissions is that since the suit is founded on contract and in accordance with Section 4(1) of the *Limitation of Actions Act*, it ought to have been instituted within a period of six (6) years from the date when the cause of action accrued. The said Section provides as follows:

“Section 4(1) 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.”

21. The purpose of the Law of Limitation was stated in the case of *Mehta vs Shah (1965) E.A 321*, as follows;

“The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

22. In the case of *Gathoni vs Kenya Co-operative Creameries Ltd (1982) KLR 104*, the Court of Appeal held as follows;

“...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

23. A suit barred by limitation is a claim barred by law, hence by operation of law, the Court cannot grant the relief sought. In the case of *Iga vs Makerere University (1972) EA*, the Court had this to say on the Law of Limitation;

“A Plaint which is barred by limitation is a Plaint barred by law. Reading these Provisions together it seems clear that unless the Applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption, the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the Court cannot grant the remedy or relief sought.”

24. The Plaintiff on his part identified two issues for determination in his submissions being whether the Defendant's Preliminary Objection dated 9/06/2025 is proper, valid and or merited and whether the Plaintiff's suit is statute or time-barred.



25. Section 4 of the *Limitation of Actions Act* provides that an action based on contract may not be brought after the lapse of six (6) years from the date the right of action accrued to the Plaintiff/Respondent.
26. In the case of *Narne Rama vs Murthy vs Ravula Soma Sundarama and Others*, Supreme Court of India, 2005 stated as follows:
- “... the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and ... been stating that the purchase had been made on behalf of all. 5. We also see no substance in the contention that the suit was barred by limitation and that the Courts below...should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is ....”
27. Given the foregoing, the issue of limitation of actions is a mixed question of law and fact, requiring evidentiary proof, and cannot be properly raised as a Preliminary Objection. Therefore, whereas the question of whether the suit is time-barred is a factual matter, the determination of whether the cause of action accrued outside the prescribed statutory period requires an inquiry into the facts, which can only be determined upon evidence being adduced.
28. In a Tanzanian case of *Hammers Incorporation Co. Ltd Versus The Board of Trustees of the Cashewnut Industry Development Trust Fund*, the Court of Appeal, (Rutakangwa, N. P. Kimaro and S. S. Kadage JJA), sitting in Dar es Salaam in their decision given on 17/9/2015 regretted that the practice of raising Preliminary Objection that was frowned upon by the Court of Appeal in Kampala in the *Mukisa Biscuit Case* (Supra) still persists. They stated as follows: -
- “It was hoping against hope. We believe that had that Court survived to this day it would have issued a sterner warning. This is because the "improper practice" never stopped. Neither did it ebb away. On the contrary, it is on the increase. This forced the Full Bench of this Court in *Karata Ernest & Others V The Attorney General*, Civil Revision No. 10 of 2010 (unreported) to mildly urge all parties in judicial proceedings to pay heed to what was aptly pronounced in the *MUKISA BISCUIT* case (supra). The late call appears to be falling on deaf ears as this ruling will demonstrate.”
29. Therefore, a Preliminary Objection must be based on current law and be factual in its Constitution. It cannot be based on disputed facts or facts requiring further inquiry. In determining a Preliminary Objection, therefore, only three documents are required in addition to the *Constitution* – the impugned law, the Complaint, and the Preliminary Objection. If you have to refer to the Defence, then the Preliminary Objection is untenable.
30. As already stated above, a Preliminary Objection must raise pure points of law. This was held in *Mukisa Biscuit Manufacturing Co. Limited vs West End Distributors Ltd* (supra), and must consist of a pure point of law, and where facts are disputed, the matter cannot be determined at the preliminary stage.
31. In my considered view, the Defendant/Applicant has improperly invoked the Preliminary Objection procedure. The issue of limitation should be raised by way of a formal application supported by evidence and not as a Preliminary Objection, since the Preliminary Objection offends the principles of fair hearing and access to justice.



32. Allowing the Defendant/Applicant Preliminary Objection will improperly terminate the suit without allowing the Plaintiff/Respondent to present its case, contrary to Article 50 and Article 159 of the Constitution of Kenya, 2010. This despite the fact that the suit discloses triable issues.
33. Even if I was to assume that the limitation is a valid concern, the Plaintiff/Respondent is entitled to be heard on any exceptional circumstances that may justify extension of time, which requires factual proof.
34. Thus, while some older cases suggested limitation as a pure point of law, recent jurisprudence emphasizes that if any evidence or factual dispute is involved, it must be dealt with through a proper application, not a Preliminary Objection, to uphold fair play and efficient justice.
35. In my considered view therefore, this suit requires a trial to ascertain as to when the Plaintiff discovered the contract or the fact that he would not get any ownership to the suit property. The Plaintiff avers in his Plaint that the Defendant made arrangements to sell the suit property which she had contracted to transfer back to him. So then when did the Defendant discover the action denying him ownership of the suit property? I rely on the authority of Justus Tureti Obara vs Peter Koipetai Nengisoi (2014) eKLR where Okongo J. Stated that;

“... The proviso to section 26 (a) of the Limitation of Actions Act, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the Defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it. As to when the Plaintiff herein discovered the fraud alleged against the Defendant is a matter to be ascertained at the trial.”

36. I therefore find that this suit is not time barred and that the Preliminary Objection is not merited and I dismiss it with costs.
37. It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2026.**

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**MOGENI J**  
**JUDGE**

In the presence of:-

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Mr. Melita – Court Assistant

