



**Gachunga (Suing as the administrator of the Estate of Joseph Gachunga Mwangi) v Muthecha  
(Sued as the administrator of the Estate of Geoffrey Muthecha Gitau) (Environment  
and Land Case E072 of 2025) [2026] KEELC 735 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 735 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E072 OF 2025  
JM ONYANGO, J  
FEBRUARY 10, 2026**

**BETWEEN**

**DAVID MWANGI GACHUNGA (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF JOSEPH GACHUNGA MWANGI) ..... APPLICANT**

**AND**

**ALLAN MUTHECHA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF  
GEOFFREY MUTHECHA GITAU) ..... RESPONDENT**

**RULING**

**Introduction**

1. The threshold question before this Court is whether the Applicant's case may lawfully be heard, or whether it is foreclosed by the unforgiving hand of limitation. That question arises from the Respondent's Notice of Preliminary Objection dated 11<sup>th</sup> June 2025 by which the Respondent urges this Court to summarily dismiss the Applicant's Notice of Motion dated 24<sup>th</sup> April 2025, wherein the Applicant seeks, inter alia injunctive relief against the Respondent.
2. The Respondent contends that the application is irredeemably time-barred pursuant to section 4(1) (a) of the *Limitation of Actions Act*, the foundation of the Applicant's claim being a contract allegedly executed on 9<sup>th</sup> August 1993. On that footing, the Respondent asserts that the lapse of time has extinguished not merely the remedy, but the right to invoke the jurisdiction of this Court.
3. Moreover, the Respondent submits that this Court lacks jurisdiction to entertain both the application and the suit dated 24<sup>th</sup> April 2025 by reason of section 4(2) of the *Limitation of Actions Act*. The Respondent additionally invokes section 7 of the Act, contending that the suit is equally barred on account of limitation relating to actions for recovery of land.



4. It is therefore the Respondent's position that the suit, in its entirety, is incompetent, fatally defective, and an abuse of the due process of this Court, warranting its striking out with costs.
5. The preliminary objection was canvassed by way of written submissions duly filed by both parties.

### **Issues for Determination**

6. Having examined the Applicants Notice of Motion, the Notice of Preliminary objection, the rival submissions and the corpus of applicable law, the sole issue that emerges for determination is: Whether the Respondent's Preliminary Objection seeking dismissal of the Applicant's Notice of Motion on grounds of limitation, and lack of jurisdiction is meritorious."

### **Analysis and Determination**

7. At the threshold of its inquiry, this Court must first understand the nature and purpose of the procedural device invoked by the Respondent. A preliminary objection, properly understood, consists of a pure point of law which has been pleaded, or which arises by clear implication from the pleadings, and which, if upheld at the outset, would dispose of the suit or application without recourse to a substantive hearing. See: *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696 at 700.

### **Jurisdiction**

8. Turning first to the question of jurisdiction, it is settled law that a Court's authority to hear and determine a matter is circumscribed by statute and by the principles of law.
9. The Respondent invokes sections 4(1) and 4(2) of the *Limitation of Actions Act*, contending that the application is predicated on a cause of action which arose outside the temporal ambit within which the Court may exercise its jurisdiction.
10. Sections 4(1) and 4(2) of the *Limitation of Actions Act* provide:
  - "(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;
    - (b) actions to enforce a recognizance;
    - (c) actions to enforce an award;
    - (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
    - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
  - (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued..."
11. The object of these provisions is manifest. Section 4(1) establishes a clear six-year limitation period for contractual actions, while section 4(2) imposes a three-year limitation for tortious claims.



12. The language of the statute is peremptory: once the prescribed period has elapsed, the Court is divested of jurisdiction to entertain the action. This limitation is not merely procedural; it goes to the very competence of the Court and is intended to protect defendants from defending stale claims where evidence may have been lost and memories faded.
13. It is well recognised in our law that a Court of law shall down its tools in respect of a matter before it the moment it holds that it lacks jurisdiction.
14. In addressing a preliminary issue concerning the threshold of its authority, the Supreme Court of Kenya considered the question of jurisdiction in *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR and stated:

“The first issue, however, raises concerns regarding the jurisdiction of this court; and we are thus obligated to consider the same, as it is a threshold issue, to be resolved at the earliest opportunity. It is well recognised in our law that a court of law shall down its tools in respect of a matter before it, the moment it holds that it lacks jurisdiction. We hereinbelow enumerate the relevant cases justifying our decision to hear and determine the question of jurisdiction, as a preliminary point, though without making further comments on this indefatigable principle of law. These are: (i) *The Owners of the Rive Rima* [1987] 3 All ER 1;(ii) *Roy Shipping SA Agencies and all interested in the Ship “Mama Otan” v Dodoma Fishing Company Limited* [1995 – 1998] 2 EA 293; (iii) *The Owners of the Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd* [1989] KLR 1.”
15. Guided by this principle, the Court turns to consider whether it possesses the requisite jurisdiction to entertain the Applicant’s Notice of Motion.
16. The Respondent contends that the Applicant’s case is predicated on a contract executed in 9<sup>th</sup> August 1993 and is therefore barred by limitation under sections 4(1) and 4(2) of the *Limitation of Actions Act*.
17. The Respondent contends that filing the suit more than thirty-one (31) after the alleged contract far exceeds the six-year limitation period for contract enforcement.
18. The Applicant contends that the Notice of Motion dated 24<sup>th</sup> April 2025 does not seek to enforce the contract itself, but rather asserts a claim grounded in constructive trust, arising from the joint contribution of the parties’ deceased fathers to the purchase of the suit property.
19. The Applicant submits that, because the relief sought is equitable in nature and seeks recognition of a constructive trust rather than contractual enforcement, the strict limitation period applicable to contractual actions under sections 4(1) and 4(2) of the *Limitation of Actions Act* ought not to bar the claim at this stage.
20. The Applicant further contends that the pleadings particularize acts of fraud on the part of the Respondent’s deceased father (Geoffrey Mutheca Gitau), which are alleged to have materially affected the acquisition and ownership of the suit property.
21. The Applicant submits that these allegations raise factual questions that are central to the Applicant’s claim and cannot be resolved at the threshold of a Preliminary Objection.
22. According to the Applicant, the determination of whether the alleged fraud occurred, and the extent to which it informs the asserted equitable interests, is best left to a full hearing where evidence can be tested and the parties afforded the opportunity to be heard.



23. The Court must distinguish between matters that are purely legal and those that are predominantly factual.
24. Limitation and jurisdiction are, by their nature, questions of law, capable of determination at the threshold without recourse to evidence beyond the pleadings.
25. The Respondent contends that the claim is founded on a contract executed over thirty-one years ago, thereby engaging the statutory limitation period prescribed under sections 4(1) and 4(2) of the *Limitation of Actions Act*. On the face of the pleadings, this would ordinarily bar any claim for enforcement of contractual obligations.
26. However, the Applicant does not seek to enforce the contract per se, but rather asserts equitable interests in the form of a constructive trust, arising from joint contributions to the acquisition of the suit property.
27. The Applicant further pleads particularized acts of fraud by the Respondent's deceased father, which are alleged to have materially affected ownership and control of the suit property.

### **Limitation**

28. Turning to the question of limitation, section 20(1) of the *Limitation of Actions Act* is directly engaged in these circumstances. It provides that:
  - “(1) None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action—
    - (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or
    - (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.”
29. This statutory provision explicitly recognizes that equitable claims grounded in trust and fraud may be exempt from the time bars that otherwise limit contractual and tortious actions. See *Mae Properties Ltd vs Joseph Kibe & Another HCCC 311 of 2004*.
30. The Court of Appeal in *Kabogo v Gitau [2025] KECA 193 (KLR)* addressed Section 20(1) of the *Limitation of Actions Act* as follows:
  - “Our understanding of the appellant's case was, to paraphrase section 20(1) of the *Limitation of Actions Act*, that he was a beneficiary under a trust, in respect of a fraud or fraudulent breach of trust to which the trustee (the respondent) was a party or privy and he intended to recover from the trustee (the respondent) trust property (suit properties) or the proceeds thereof in the possession of the trustee (the respondent) or previously received by the trustee (respondent) and converted to his use.
32. In our view, the appellant, having pleaded and particularised trust, pursuant to section 20(1) of the *Limitation of Actions Act*, the issue ought to have gone to full hearing since section 4 of the same Act became irrelevant and inapplicable.”



31. Guided by this authority, the Court is mindful that the law, while stern in enforcing limitation periods, does not turn a blind eye to the claims of those who come seeking equity and redress for wrongs that cannot be measured merely by the passage of time.
32. Section 20(1) of the *Limitation of Actions Act* embodies this principle: it preserves the rights of a beneficiary under a trust to recover property or its proceeds where fraud or a fraudulent breach has tainted the administration of that trust.
33. In the present matter, the Applicant has pleaded a constructive trust, alleging that both the Applicant's (Joseph Gachunga Mwangi) and the Respondent's (Geoffrey Mutheca Gitau) deceased fathers contributed to the acquisition of the suit property and that the Respondent's deceased father engaged in conduct tainted by fraud.
34. These allegations strike at the very heart of equity and the conscience of the Court. They raise questions that are not susceptible to resolution on paper alone: whether a trust existed, the measure of the Applicant's contributions, and the existence and effect of fraudulent conduct.
35. As the Court of Appeal in *Kabogo v Gitau* [2025] KECA 193 observed, once such allegations are pleaded, the ordinary limitation periods become irrelevant, and the matter cannot be adjudicated without a full hearing.
36. To allow the Preliminary Objection at this stage would be to attempt to adjudicate matters of fact in the absence of a record, and to preclude the Applicant from vindicating rights that the law, through section 20(1) of the *Limitation of Actions Act*, expressly preserves.
37. The ordinary limitation periods under sections 4(1) and 4(2) are therefore not dispositive of the present dispute.
38. Accordingly, the Notice of Preliminary Objection dated 11<sup>th</sup> is hereby dismissed.
39. The costs shall be in the cause.
40. It is so Ordered.

**DATED, SIGNED AND DELIVERED, VIRTUALLY AT THIKA THIS 10<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**J. M. ONYANGO**

**JUDGE**

In the presence of:

Mr Omwa for the Defendant

Mr Njenga for the Plaintiff

Court Assistant: Hinga

