



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI, NAIROBI**  
**ELC 161 OF 2019**

**NANDLAL AND COMPANY LIMITED.....**  
**PLAINTIFF**

**-VERSUS-**

**GENCO**  
**LIMITED.....DEFENDANT**

**JUDGMENT**

1. This case before this court relates to land title No 209/11880 on which has been erected Parkside towers which has the 4<sup>th</sup> floor of tower B herein referred to as the suit premises.

**Plaintiff's case**

2. The plaintiff filed the suit vide a plaint on 16<sup>th</sup> May 2009. It was its assertion that it was the registered owner of the suit property and that they entered into a lease agreement with the defendant over the suit property for a period of 6 years via a letter of offer dated 17<sup>th</sup> August 2009. That the defendant had breached the agreement being that it had been in occupation but had failed to pay the rent

The plaintiff sought the following orders

- i. A permanent injunction against the defendant restraining its servants agents, employees or anyone from claiming through the defendant from occupation and possession of the plaintiff's 4<sup>th</sup> floor tower B Parkside towers Mombasa Road Nairobi

- ii. An order do issue directing the defendant to deliver vacant possession of the suit property
  - iii. The sum of Ksh 28,524,986.90 and USD 1,098,377.85 being the amount of rental arrears as at 31/03/2018.
  - iv. Costs of the suit and interest
- 3.** The Defendants were duly served with all the relevant pleadings and as result entered appearance, filed their Statement of Defence and all other pleadings thereof
- 4.** Hearing proceeded on the 27<sup>th</sup> May 2025 and PW1 Vinay Sanghrajka testified in and relied on documents filed on behalf of the plaintiff being his witness statement dated 31<sup>st</sup> March 2023 and list of documents. He deponed that the eviction of the defendant had happened after the court delivered a ruling on the 5/3/2010 and that the orders that they were seeking were for rental arrears, service charge arrears and car parking arrears. He provided for a statement of account attached to his list of documents to prove the indebtedness of the defendant He was subjected to cross examination by the defendant's advocate and further a re examination by his counsel
- 5.** The plaintiff filed its submissions dated 11<sup>th</sup> June 2025 and the issues for determination were whether the plaintiff is entitled to the sum of Ksh 28,524,986.90 and USD 1,098,377.85 being the amount of rental arrears as at 31/03/2018 and who should bear costs. He submitted that he had proven that the defendant was in arrears through production of documents and that the defendant

was required to prove that the said evidence was false relying on section 107 of the evidence Act. It was further submitted that the defendant had not produced any evidence to rebut the plaintiff's claim on rent arrears. He relied on the case of National Bank of Kenya Ltd Vs Pipe Plastic Samkolit( k)Ltd (2001) 2E.A 5003, (2011)eKLR.

Counsel further indicated that the defence by the defendants that the lease agreement was not signed hence not valid could not hold water since there was an executed head of terms and further conduct of parties had indicated that they were bound by the same. On the issue raised of limitations of time he indicated that suit premises had remained locked and the allegations of surrender of keys had not been substantiated.

**Defendants case**

6. The defendant filed its defence dated 17th June 2019 denying the contents in the plaint. It was their case that the suit was founded on contract and the cause of action is based on alleged breach which occurred in 2009 making it time barred under the limitations of Actions Act.
7. The defendant had one witness Samuel Mwangi Mungai DW1 testified on the same date as the plaintiff on the 27<sup>th</sup> May 2025. He deponed that the plaintiff and the defendant entered into a lease pursuant to a letter of offer dated 28<sup>th</sup> August 2009 .That after the said lease, the plaintiff had frustrated the peaceful occupation of the defendant which frustration led to the defendant returning the keys

of the premises in the year 2012 and the premises remained locked since a then and they could not be in t been in possession. He indicated that based on the circumstances the defendant was not liable to pay any rent

They further advanced their argument in their submissions on the issue of the suit being time barred as it was based on a contract which cause of action as in the Limitations of Actions Act stipulated that contracts could not be brought after the end of six years the cause of action herein having arose in 2012. That the defendant returned the keys to the suit premises in the year 2012 and since then had not been in possession since the suit premises remained locked .Counsel relied on the case of **Sood & 3 Others v Kenya Agribusiness Agroindustry Alliance (ELC Case No. 35 of 2020) [2024] KEELC 386**, where the Court held that the surrender of the keys back to the Plaintiff pointed out to giving back of vacant possession.

### **Analysis and Determination**

After looking at the case in and evidence produced by all parties, the issue for determination are as listed by the parties

1. Whether the suit is time barred
2. Whether the plaintiff is entitled to the sum of Ksh 28,524,986.90 and USD 1,098,377.85 being the amount of rental arrears as at 31/03/2018.
3. Who should bear the costs of the suit?

The plaintiff's case is that there was a lease created via the letter of offer dated 17<sup>th</sup> August 2009 which terms had been breached by the defendant who had been in possession without paying rent till eviction happened in the year 2018 via court order .The defendant on the other hand claims frustration of the lease made them give back the keys to the plaintiff in the year 2012 and were not in possession hence not required to pay any rents.

It is not in dispute that the parties intended to be bound by the letter of offer dated 17<sup>th</sup> August 2009 .The defendant has admitted to a contractual obligation arising out of the lease entered into via the letter of offer at paragraph 2 of the witness statement and hence cannot come back and claim there was no contractual obligation arising since the intended lease agreement that had been drafted was not executed . In this respect, I am guided by the holding of the Court of Appeal in the case of **Chon Jeuk Suk Kim & Another v E.J. Austin & 2 Others [2013] eKLR**, where the court held as hereunder;

*“Those two decisions show that an agreement of a lease or unregistered lease where the statute requires registration, though not conferring any legal or equitable estate is nevertheless enforceable as a contract between the parties for the period stated in the document and non-registration does not preclude the use of the document to show the terms of contract between the parties. Although those decisions relate to the construction of the provisions of*

*the Registration of Titles Ordinance Act they apply with equal force to the legal effect of an agreement for a lease of unregistered lease of a period of two years under the Registered Land Act as Section 47 thereof is similar to the provisions under consideration in those decisions.”*

I have perused the pleadings filed herein and would wish to rely on court ruling dated 5th March 2023 where the court indicated that to determine whether the suit was time barred, the conduct of parties would have to be ascertained after the execution of the offer to the point the lease expired. The defendant alleges that it surrendered the keys to the plaintiff in 2012 and was eventually locked out from the suit premises. From the record there is no evidence of such surrender to the plaintiff however the plaintiff acknowledged the agent that defendant claims to have left the keys with as their own agent and that he was never asked whether he had been left with the keys. From the said court ruling as above and the order extracted dated 15<sup>th</sup> December 2020 the court ordered that the plaintiff was entitled to vacant possession. The same ruling also stated that the defendant was not in physical possession of the suit premises. I would tend to think that the defendant not being in physical possession then implied that the lease was no longer in effect considering the offer letter did not provide for any termination clause.

The plaintiff claims that the defendant did not hand over the keys and the defendant claims it did hand over the keys to the plaintiffs

agent .In the schedule for rent annexed by the plaintiff it is evident that the plaintiff stopped invoicing the defendant herein which implies the plaintiff had considered that the defendant was no longer a tenant otherwise he would have done so to request for rent if indeed the defendant was still in possession. Furthermore, it is my view that if the plaintiff considered the lease still binding then he would have sued for the breach of the lease when the plaintiff left the suit premises the issue of handing the keys notwithstanding. The plaintiff herein also had the option of levying distress for rent which action was not taken as there is no evidence on record pointing to that. The conduct of the plaintiff implied that he considered the lease terminated before the official expiry that is the 6 years as in the offer letter and therefore making the cause of action arise at the time it considered the lease terminated in this case the year the defendant vacated that is 2012.

Having submitted as such then it goes without saying that the suit is time barred which doctrine is captured in section 4 of the statute of limitations Act

Section 4(1)(a) of the Limitation of Actions Act provides as follows: -

*The following action may not be brought after the end of six years from the date when the cause of action accrued*

*(a) actions found on contract*

The object of the law of limitation was stated in the case of **Gathoni v Kenya Co-operative Creamerie Ltd (1982) KLR 104** where the Court of Appeal held that: -“The *law on limitation of actions is*

*intended to protect defendants against unreasonable delay in the bringing of suits against them.”*

Further in the case of ***Iga v Makerere University [1972] EA 65***, the court held that: - *“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 when a suit is time barred the court cannot grant the remedy or relief sought.”*

As already submitted the cause of action arose in the year 2012. This means that the suit has been filed 7 years after the alleged breach of contract. The Plaintiff ought to have instituted a claim against the defendant by 2018 as provided under **section 4 (1) of the Limitation of Actions Act**. These proceedings were filed on the 16<sup>th</sup> May 2019 which period was beyond the 6 years from the date when the breach happened. The plaintiff has not offered any explanation as to why it took him all that time to initiate the recovery action. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. On the basis of the facts and evidence presented before the court, I find that this suit is time barred by virtue of the

provisions of section 4(1) (a) of the Limitation of Actions Act and the court lacks the jurisdiction to entertain the same.

**Final disposition.**

The upshot of the foregoing is that I make the following orders: -

- a. This suit against the defendant is struck out on account of being statute barred
- b. The Defendant shall have costs

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **6<sup>TH</sup>** day of **FEBRUARY 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Judgment delivered in the presence of: -**

**Mr. Kamau**..... for the Plaintiff

**Mr. Ouma**..... for the Defendant

**Philomena W.**..... Court Assistant