

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. E151 OF 2025**

**DEVSHIBHAI & SONS  
LIMITED.....PLAINTIFF**

**VERSUS**

**MAJOR (RTD) MARSDEN H.  
MADOKA.....DEFENDANT**

**RULING**

**Background**

1. **Devshibhai & Sons Limited** (the Plaintiff) brought the present suit against **Major (Rtd) Marsden H. Madoka** (the Defendant) vide a Plaint dated 3.06.2025 seeking payment of a sum of Kshs. 26,876,068.90 plus costs and interest thereon, in respect of a claim founded on an alleged breach of contract.
2. Upon service of Summons to enter Appearance, the Defendant filed the instant Notice of Preliminary Objection (PO) dated 9.07.2025. The Defendant is seeking to have the Plaintiff's suit struck out with costs on grounds that the suit is time barred, by dint of Section 4(1)(a) of the Limitation of Actions Act Cap.

22 Laws of Kenya and that the suit is frivolous, vexatious and an abuse of the court process.

### **Parties' Submissions**

3. The PO was canvassed through written submissions.
4. In support of the PO, the Defendant has cited **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** where the court defined what constitutes a PO and submitted that the Plaintiff's claim which is premised on an alleged Deed of Settlement dated 22.06.2018 and which was brought on 2.06.2025, is time barred by dint of Section 4(1)(a) of the Limitation of Actions Act for having been brought outside a period of six (6) years from the date the cause of action accrued.
5. The Defendant relied on the case of **Mukuru Munge v Florence Shingi Mwawana & 2 others [2016] KECA 54 (KLR)** where the Court of Appeal reasoned, in sum, that the law on limitations is intended to prevent persons from instituting stale claims and to prompt parties to take proactive steps in bringing their claims without delay.

6. The Defendant has argued that while the Plaintiff has alleged in its pleadings, that the debt in question was acknowledged by the Defendant, the material being referenced in the said pleadings does not amount to an acknowledgment of debt in the manner prescribed under Section 23(3) and 24 of the Limitation of Actions Act and therefore, no part of the claim has been acknowledged by the Defendant.
7. The Defendant has also cited **Thuranira Karauri v Agnes Ncheche [1997] KECA 77 (KLR)** in which the Court of Appeal stated that the issue of limitations touches on the jurisdiction of a court to handle a matter; and the case of **Lumfa Self Help Group v Mwangi [2024] KEHC 6093 (KLR)** where the High Court sitting on appeal, upheld the decision of the subordinate court dismissing a claim for being statute barred and for being filed without leave of the court.
8. On those grounds, the Defendant has urged that the PO be upheld and the Plaintiff's suit be struck out with costs pursuant to Section 27 of the Civil Procedure Act (CPA).
9. On the other hand, the Plaintiff has submitted that the Defendant herein acknowledged the debt in question on

7.03.2025 after the lapse of the statutory timelines, thereby reviving the statutory timelines and that, in the circumstances, this court ought to be guided by Section 23(3) of the Limitation of Actions Act which provides that where a debt is acknowledged, the right of action accrues on the date of the acknowledgment. This was the position held by the court in **Telkom Kenya Limited v Kenya Railways Corporation [2018] KEHC 8424 (KLR)** and **Express Kenya Limited v East African Breweries Limited [2019] KEHC 11438 (KLR)**.

10. The Plaintiff has submitted that the time began to run afresh from the date of the acknowledgment of the debt by the Defendant, thereby causing the present suit to be properly before this court.

11. Overall, it is the Plaintiff's contention that the PO ought to be dismissed with costs for want of merit.

### **Determination**

12. I have carefully considered the PO and rival submissions of the parties as well as the various authorities cited.

13. A PO is defined in **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** as follows:

*“.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”*

14. The Supreme Court in **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others [2015] eKLR** stated thus:

*“It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.”*

15. Examples given that can give rise to a preliminary objection are, inter alia, issues of jurisdiction of the court especially where a party comes to court after the lapse of the statutory timelines.

16. The PO before me is challenging the competency of the present suit on grounds that it is statute barred by dint of

**Section 4(1)(a)** of the **Limitation of Actions Act**. This provision, under Section 4 (1) (a) prohibits bringing actions founded on contract after the expiry of six (6) years.

17. I have read the Complaint filed by the Plaintiff herein. It is pleaded that the alleged breach of contract arose from the Defendant's refusal and/or neglect to pay a sum of Kshs. 13,420,691/- to the Plaintiff pursuant to a Deed of Settlement dated 22.06.2018 for construction works undertaken by the Plaintiff on a residential property registered in the Defendant's name. As argued by the Defendant, the Plaintiff was required to bring the claim within six (6) years from August 2018, the date stated as the time when the breach of contract occurred.

18. The Plaintiff has argued that the debt was acknowledged by the Defendant thereby affecting the timelines. The Plaintiff has urged that this court considers the instant Motion in line with **Section 23(3)** of the Limitation of Actions Act which expresses thus:

***Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to***

***movable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:***

***Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt.***

19. The acknowledgement referred to above must meet the threshold set out under **Section 24** of the same Act, which provides that:

***(1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.***

***(2) The acknowledgement or payment mentioned in section 23 of this Act is one made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be, and it may be made by the agent of the person by whom it is required by that section to be made.***

20. My understanding of the above provisions is that any acknowledgment of a debt owed ought to be clearly set out in writing and bear the signature of the person acknowledging the debt in question.
21. In the present instance, the Plaintiff is primarily relying on various email correspondences as well as letters exchanged between the parties' respective advocates, to support the claim that the debt owed was acknowledged and therefore the cause of action arose from the date of such acknowledgement.
22. I have carefully perused the record. I have observed that the Plaintiff indicated that the Defendant had proposed to offer his property known as Kwale/Golini/599 (the subject property) to the Plaintiff for purposes of transfer. A copy of the title document together with an official search undertaken thereon, constitute part of the Plaintiff's list and bundle of documents.
23. I have further perused various email correspondences, also forming part of the Plaintiff's list and bundle of documents. I have noted that these emails refer to discussions between the parties' advocates as pertains to the disposal of the subject

property for purposes of paying the outstanding amount, the subject of this litigation.

24. In particular, I have read a copy of the email sent by the Defendant's advocate to counsel for the Plaintiff dated 7.03.2025, conveying his client's willingness to settle the matter by either having the subject property sold and the proceeds thereof remitted to the Plaintiff as settlement of the outstanding amount, or by effecting a transfer thereof. In view of the above exchanges of correspondences between counsel for both parties, it is my considered view, that by his own conduct and communication by the Defendant's advocate on his behalf, the Defendant acknowledged the debt.

25. I have not material placed before the court to demonstrate that the Defendant has disputed the contents or veracity of the correspondences mentioned between advocates for both parties. Neither, have I seen evidence refuting that the Defendant did not give instructions to his advocate to engage with the Plaintiff's advocate on the matter. The action of surrendering a copy of the title document relating to the subject property, coupled with the detailed exchange of email

correspondences between the two advocates, further demonstrate the acknowledgement of existence of a debt and the willingness of the Defendant to settle the same through disposal of the subject property.

26. I am alive to the requirement that the acknowledgment of a debt explicitly prescribed under **Sections 23 and 24** of the Act must be in writing and signed by the person acknowledging the debt, in order for the same to meet the legal requirements. In the present instance, the acknowledgment was made by the Defendant's advocate by way of written email correspondences. I want to believe that the advocate was acting on Defendant's instructions given that there is no evidence to the contrary.

27. I have also noted that the email correspondences, particularly the one dated 7.03.2025, though not bearing a signature in the strict sense of the term, contained the details of the Defendant's advocate. I take the view that it cannot have been the intention of the legislature to limit **Section 24** to signatures by hand, or in the traditional sense, especially in these times of technological advancement.

28. I have seen the certificate of electronic evidence on the issue of the email printouts attached to the Plaint. The author of the emails is identifiable. Besides, there is no denial that the email exchanges exhibited did not take place.

29. In the circumstances and in the absence of any material to the contrary, I am persuaded that the Plaintiff has reasonably demonstrated that the email correspondence dated 7.03.2025 amounts to an acknowledgment of a debt on the part of the Defendant thereby reviving the claim.

30. The legal position is that even where the statutory timelines for bringing a claim may have expired, an acknowledgment of debt would kick-start one's right to claim and hence the limitation timelines would begin to run afresh. I am guided by the decision in **Telkom Kenya Limited v Kenya Railways Corporation [2018] KEHC 8424 (KLR)** where it was stated that:

***“In both Laemthong Rice Co. Ltd v Principal Secretary Ministry of Finance [2002] 1 EA 119 and Shire v Thabiti Finance Co. Ltd [2002] 1 EA 279, the appellate courts of both Tanzania and Kenya***

*respectively addressed the issue of revival of a cause of action post the limitation period. Both courts held that an acknowledgment of debt made after the expiry of the limitation period gave rise to a fresh period of limitation.*

*The court in Shire (supra) was more explicit. The court held that an acknowledgment under S.23 resulted in not only the accrual of a fresh action which meant the revival of an otherwise statutorily barred claim but also the extension of limitation period where the acknowledgment was made prior to expiry of the limitation period. The court in citing, with approval, the English case of Bush v Stevens [1963] 1 Q B 1 quoted Lawson J as follows:*

*“ It seems to me as a matter of syntax the right which shall be deemed to have accrued is a right of action to recover any debt or any other liquidated pecuniary claim. The subsection does not change the nature of the right; it provides that in specific circumstances of an acknowledgment or payment, the right shall be given a notional birthday and on that day, like the Phoenix of fable, it arises again in renewed youth and also like the Phoenix, it is still itself.” ”*

31. In view of the foregoing circumstances, therefore, I am satisfied that the Plaintiff's claim is competently before this court and I see no reason to strike it out. I find the PO dated 9.07.2025 lacking in merit and dismiss the same. Costs will abide the outcome of the main suit.

32. It is so ordered.

**Dated, signed and delivered this 23<sup>rd</sup> February 2026.**

**S. N. MUTUKU  
JUDGE**