



**2. The plaintiff's suit against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants is incompetent as no privity of contract exists between the plaintiff and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.**

**3. The principle of estoppel operates against the plaintiff's claim.**

2. The preliminary objection was canvassed by way of written submissions. The 1<sup>st</sup> defendant filed its written submissions dated 27<sup>th</sup> November, 2025. The 1<sup>st</sup> defendant submitted in favour of the preliminary objection, that together with the plaintiff, they entered into a contract for the purchase of an off-plan office space on 3<sup>rd</sup> of June, 2012.

3. The 1<sup>st</sup> defendant submitted that it failed to complete the project and sold the property to the 2<sup>nd</sup> defendant in the year 2019. For this reason, it has been 13 years since the cause of action arose and thus the suit offends **Section 4(1) of the Limitation of Actions Act**. The 1<sup>st</sup> defendant submitted that limitation is not a mere procedural technicality, as it goes to the root of the court's authority and relied on the authority in **Owner of Motor Vessel Lillian "S" V Caltex Oil (Kenya) Ltd (1989) KLR**.

4. The 1<sup>st</sup> defendant relied on the statutory limitation periods under both the **Limitation of Actions Act Cap. 22** and the **Public**

**Authorities Limitation Act Cap. 39**, and submitted that these laws impose an unequivocal six-year limitation period for actions founded on contract. Further reliance was placed on the cases of:-

**Iga –Vs- Makerere University [1972] and EA Macharia & another v Katua & 4 others (Environment & Land Case E205 of 2023) [2024] KEELC 4808 (KLR).**

5. It was further submitted that the 2<sup>nd</sup> to 4<sup>th</sup> defendants being government institutions, are public authorities as contemplated under the **Public Authorities Limitation Act**. Further, that **Section 3(2)** of the **Act** provides a strict and non-extendable limitation period of twelve months for any action against a public authority for any act, neglect, or default in execution of a written law. In conclusion, the 1<sup>st</sup> defendant submitted that the delay is inordinate and inexcusable and that the plaintiff slept on their rights for 13 years.
6. The 2<sup>nd</sup> to 4<sup>th</sup> defendants filed their written submissions dated 24<sup>th</sup> October, 2025. While relying on the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. (1969)EA 696**, the 2<sup>nd</sup> to 4<sup>th</sup> defendants submitted that the substantive relief in the suit is refund of Kshs.4,750,000/= paid to the 1<sup>st</sup> defendant herein pursuant to an agreement dated 23<sup>rd</sup> April, 2012 thus is statute barred as having been instituted contrary to the provisions

of **Section 4(1) of Limitation of Actions Act** and **Section 3(2)** of the **Public Authorities Limitation Act**, and also that there is no privity of contract between the plaintiff and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants. To buttress on this issue, they relied on the cases of **Alba Petroleum Limited v Total Marketing Kenya Limited [2019] eKLR** and **Bosire Ongera v Royal Media Services [2015] eKLR**.

7. On privity of contract, they submitted that it is not in dispute that there was a contract between plaintiff and the 1<sup>st</sup> defendant which the 2<sup>nd</sup> to 4<sup>th</sup> defendants were not parties to and prayed that the suit be dismissed with costs.
8. The plaintiff did not file its written submissions. Be that as it may, I have considered the preliminary objection and the written submissions filed by the defendants/ respondents. It is quite evident that the issue for determination is *whether the instant suit is statute barred*.
9. This suit was instituted by way of plaint dated 26<sup>th</sup> June, 2025. The plaintiff's firm of advocates pleaded that by the letter of offer dated 23<sup>rd</sup> April, 2012 the 1<sup>st</sup> defendant offered to sell and they agreed to purchase office numbers 8.6, 8.7 and 8.8 situated on the 8<sup>th</sup> floor of

Olympic Plaza on LR 209/12386, upper hill Nairobi, for the price of Kshs.47,500,000/=.

10. The vendor, who is the 1<sup>st</sup> defendant was to manage and complete the construction of the aforesaid offices, and in breach of the contract, the 1<sup>st</sup> defendant failed to complete the project while it was still under their name and transferred the title of the suit property to the 2<sup>nd</sup> defendant on 29<sup>th</sup> September, 2020.
11. Because of the said happenings, the plaintiff averred that they were entitled to a refund of the deposit monies paid to the 1<sup>st</sup> defendant, which was Ksh.4,750,000/= as at 23<sup>rd</sup> December, 2023 with interest.
12. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have filed the instant preliminary objection that the suit is now time barred. A preliminary objection was described in the famous case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696** as follows:-

*“So far as I am aware, 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. Examples are an objection to the jurisdiction of the court a plea of limitation, or a submission*

***that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

**13. Section 4(1)(a) of the Limitation of Actions Act Cap 22 provides that:-**

***“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;”***

**14. The contract referred to by the plaintiff began by a letter of offer dated 23<sup>rd</sup> of April, 2012 and the agreement for sale dated 3<sup>rd</sup> June, 2012. The plaintiff did not specify the date when the alleged breach occurred, which essentially constitutes the date the cause of action arose as it was held by Eboso J in the case of **Wainaina v Sunrise Synthetics Limited (Environment & Land Case 225 of 2018) [2023] KEELC 21669 (KLR)** that:-**

***“On my part, I would add that, a plain reading of both Section 4 and Section 7 of the Limitation of Actions Act clearly points to the fact that the date of accrual of a cause of action is the date when time starts running. Put differently, limitation period in a claim founded on contract is reckoned from the date when the cause of action accrues; not the date when the parties entered into the contract. Consequently, a***

***party invoking the statute of limitation in a claim founded on contract is obligated to demonstrate to the court the date when the breach occurred and, further, demonstrate to the court that at the time the impugned suit was initiated, the prescribed limitation period had lapsed. The limitation should be reckoned from the date when the alleged breach occurred.”***

15. The plaintiff however indicated the date that the 1<sup>st</sup> defendant changed ownership of the suit property to the 2<sup>nd</sup> defendant, which was on the 29<sup>th</sup> of September, 2020, which must have been after the alleged breach occurred.

16. **Section 3(2) of the Public Authorities Limitation Act Cap 39** provides that:

***“No proceedings founded on contract shall be brought against the government or a local authority after the end of three years from the date on which the cause of action accrued.”***

17. The 2<sup>nd</sup> to 4<sup>th</sup> defendants herein are all government agencies; therefore the cause of action is long overdue at this point. For this reason, the plaintiff’s claim is statutorily time barred, with no

further need to go into the 2<sup>nd</sup> and 3<sup>rd</sup> points of preliminary objection.

- 18.** From the above, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants notice of preliminary objection dated 15<sup>th</sup> September, 2025 is upheld and the suit is hereby struck out with no order as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
25/02/2026.**

***In the presence of:***

*Ms. Benson Agunga - Court assistant*

*Ms. Anyango holding brief for Mr. Kipkorir for the Plaintiff*

*Ms. Kiget holding brief for Arusei for the 1<sup>st</sup> Defendant*