



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NUMBER E030 OF 2025

ALFRED KIPSABUL MELI
.....PLAINTIFF

=VERSUS=

KEFA OMBATI OUKO T/A
KEFA OMBATI & CO. ADVOCATES
DEFENDANT

-AND-

THE CHIEF LANDS REGISTRAR.....1ST
INTERESTED PARTY

KOBIL PETROLEUM LIMITED
(now known as RUBIS KENYA PLC)2ND
INTERESTED PARTY

RULING

1. Before me for determination is a Chamber Summons dated 2nd April 2025, brought under Section 1A, 1B, and 3A of the Civil Procedure Act, Order 1 Rule 10(2) and Order 51 Rule 1 of the Civil Procedure Rules, in which the 2nd Interested Party seeks the following orders:

a. This Honourable Court be pleased to strike out the name of the 2nd Interested Party from the suit.

b. That the costs of this application be borne by the Plaintiff.

c. That this Honourable Court be pleased to make and give such orders and give such directions as may be just and fair in the interest of these proceedings.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Nelson Owiye, the Retail Development Manager, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that on 26th January 2015, the Plaintiff entered into an Agreement for Sale with the 2nd Interested Party for the sale of Land Reference Number 209/12036
4. He further averred that pursuant to the Agreement for Sale, the 2nd Interested Party remitted the full purchase price to the Plaintiff's advocates, Messrs Kefa Ombati & Company Advocates, the Defendant herein, for transmission to the Plaintiff.
5. It was further deponed that on 26th January 2025, the Plaintiff filed the present suit, which is premised on the allegation that the Defendant breached its fiduciary duty by failing to remit a portion of the purchase price received from the 2nd Interested Party to the Plaintiff.

6. It was contended that the dispute before this Court is strictly between an aggrieved client and his advocate, arising from their fiduciary relationship.
7. The deponent asserted that the 2nd Interested Party was improperly joined to the proceedings because it was not privy to the fiduciary relationship between the Plaintiff and the Defendant and has no identifiable or justiciable interest in the dispute.
8. It was further averred that, having fully discharged its obligations under the Agreement for Sale, the 2nd Interested Party is not a necessary party to these proceedings for the purpose of enabling the Court to adjudicate the issues raised by the Plaintiff effectively and completely.
9. The deponent asserts that the suit does not disclose a cause of action against the 2nd Interested Party and should be struck out as it constitutes an abuse of the Court's process.

THE DEFENDANT'S CASE

10. The Defendant filed a Preliminary Objection dated 24th April 2025, arguing that the Plaintiff's suit is barred by the Limitation of Actions Act, Cap 22 Laws of Kenya.
11. The Defendant contends that the cause of action arose on 28th May, 2015, and that the Plaintiff's claim, based on breach of fiduciary duty and breach of contract, is statute-barred because it was filed outside the statutory limitation period and without leave of the Court.
12. The Defendant urged the court to strike out the suit with costs.

13. The application and preliminary objection were canvassed by way of written submissions.

THE PLAINTIFF'S SUBMISSIONS

14. The Plaintiff filed his submissions dated 28th September 2025. On behalf of the Plaintiff, Counsel submitted that the only issue for determination is whether the Preliminary Objection meets the threshold for a proper preliminary objection.
15. Counsel relied on the Limitation of Actions Act and the Advocates Act, and cited the settled jurisprudence on preliminary objections as articulated in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, Attorney General & another v Andrew Mwaura Githinji & another [2016] eKLR, and Mwangi View Point Lodge Limited & Others v Attorney General & another [2024] KEELC.**
16. Counsel submitted that a preliminary objection must raise a pure point of law, argued on the assumption that all pleaded facts are correct, and must not require the ascertainment of facts or the exercise of judicial discretion.
17. Counsel contended that the objection does not meet the threshold because it involves contested factual issues regarding when the cause of action arose and whether the claim stems from breach of contract, breach of fiduciary duty, or an ongoing advocate-client relationship under the Advocates Act.

18. Counsel submitted that the existence, nature, and duration of the fiduciary relationship are factual issues that cannot be determined at the preliminary stage.
19. Counsel argued that the Preliminary Objection improperly invited the Court to examine disputed facts, contrary to established principles.

THE DEFENDANTS SUBMISSIONS

20. The Defendant filed his submissions dated 13th May 2025. On behalf of the Defendant, Counsel asserted that the Preliminary Objection is grounded in Section 4(1) of the Limitation of Actions Act.
21. It was submitted that the Plaintiff's cause of action arose on 28th May, 2015, and is based on breach of fiduciary duty and breach of contract.
22. Counsel argued that a contract-based action must be brought within six years of accrual. The suit, filed on 26th January, 2025, was brought approximately four years after the limitation period had expired. Counsel contended that the suit is therefore barred by statute and constitutes an abuse of the court process.
23. To support this argument, reliance was placed on **Pioneer Holdings (Africa) Ltd v Francis Thuo & Partners Ltd & 2 Others (2019) eKLR** and **I&M Shah v Deposit Protection Fund Board as Liquidator of Trust Bank Ltd (in liquidation) (2016) eKLR**.

24. Counsel submitted that even when a claim is framed as a breach of fiduciary duty, the statutory limitation period applies if the claim arises from a contractual relationship.
25. It was further submitted that the Agreement for Sale was executed on 26th January 2015, and that the last payment on 28th May 2015 crystallized the cause of action.
26. In conclusion, Counsel urged the Court to uphold the Preliminary Objection and to strike out the suit with costs.

ANALYSIS AND DETERMINATION

27. Having considered the application, the preliminary objection, and the rival submissions, the following issues arise for determination:
 - i. Whether the Defendant's Preliminary Objection is merited; and*
 - ii. Whether the 2nd Interested Party should be struck out from the proceedings.*
28. Regarding the first issue, the law on preliminary objections is well settled. A preliminary objection must be based on a pure point of law. In **Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696**, Law JA held 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 the pleadings, and which if argued as a preliminary objection may dispose of the suit.

Examples are an objection to the jurisdiction of the court, or 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."

29. **Sir Newbold P.** stated thus in the same decision:

"A preliminary objection is in the nature of what used to be a demurrer. 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 is 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 issues. This improper practice should stop."

30. The Defendant's Preliminary Objection is based on the grounds that the Court lacks jurisdiction to hear and determine the instant suit because it is statute-barred. The issue of jurisdiction and whether a suit is time-barred is a pure point of law that can determine the matter without considering the merits of the case. The Preliminary Objection is on a point of law, and the Court is satisfied that it has been properly and validly taken.

31. **Section 4(1)** of the **Limitation of Actions Act**, which provides that:

(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.

32. The object of the law of limitation was stated in the case of **Gathoni Vs Kenya Co-operative Creameries 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.”

33. Similarly, in **Rawal Vs Rawal (1990) KLR 2**, the Court held that:

“The object of any limitation is to prevent a plaintiff from prosecuting stale claims on the

one hand and, on the other hand, protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. It is to extinguish claims.”

34. Further in **Iga vs 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.”

35. The Defendant asserts that the cause of action accrued on 28th May 2015. In the case of **Edward Moonge Lengusuranga Vs James Laniyara & Another (2019) eKLR**, the Court defined a cause of action as follows:

“A cause of action is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another

party. The term also refers to the legal theory upon which a plaintiff brings a suit.”

36. Although the Plaintiff admits entering into an Agreement for Sale dated 26th January 2015, he neither pleads nor admits that the alleged breach of fiduciary duty crystallized on 28th May 2015. On the contrary, the Plaintiff’s case centers on a breach of fiduciary duty arising from an advocate-client relationship, the nature and duration of which are contested.
37. Further, the Plaintiff pleads that he discovered the alleged collusion and breach on 5th May 2020.
38. Where a claim is based on fraud, mistake, or concealment of material facts, Section 26 of the Limitation of Actions Act provides that time does not begin to run until the plaintiff has discovered the fraud or, with reasonable diligence, could have discovered it. Whether the pleaded facts meet the statutory threshold under Section 26 is a matter for evidentiary inquiry and cannot be determined on a preliminary objection.
39. Determining when the cause of action accrued would require the Court to examine factual matters, including when the alleged fiduciary duty was breached, whether the advocate-client relationship had terminated, and whether the alleged failure to remit funds constituted a completed breach or a continuing obligation.

40. Accordingly, the question of limitation in the present case cannot be determined solely from the pleadings without examining the contested facts.
41. In light of the foregoing, I find that the Preliminary Objection fails to satisfy the threshold for a proper preliminary objection.
42. Regarding the second issue, the court has the power to strike out pleadings under Order 2, Rule 15(1) of the Civil Procedure Rules, which provides as follows:

15(1) At any stage of the proceedings, the court may order that any pleading be struck out or amended on the ground that:

- a) It discloses no reasonable cause of action or defence in law;***
- b) It is scandalous, frivolous, or vexatious; or***
- c) It may prejudice, embarrass or delay fair trial of the action; or d) It is otherwise an abuse of the process of the court and may order the suit to be stayed or dismissed or judgment to be entered accordingly as the case may be.***

43. In **Co-operative Merchant Bank Ltd v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)**, the Court of Appeal held that:

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a

matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action, or which is otherwise an abuse of the process of the court."

44. Striking out a pleading is a draconian act that may be resorted to only in plain cases. The court must therefore exercise the power to strike out a suit with the greatest care.
45. The 2nd Interested Party argued that the dispute before the Court is strictly between the Plaintiff and the Defendant, arising from an advocate-client fiduciary relationship. It is contended that the 2nd Interested Party was not privy to that fiduciary relationship and has no legal interest in the alleged breach.
46. A perusal of the Plaint confirms that no substantive or ancillary relief is sought against the 2nd Interested Party. The Plaintiff does not allege any wrongdoing by the 2nd Interested Party, nor does he seek any declaration, order, or remedy against it.
47. It is not in dispute that the 2nd Interested Party paid the full purchase price for the subject property. The gravamen of the Plaintiff's claim is the Defendant's alleged failure to remit a portion of those funds to the Plaintiff. In the absence of any

pleaded claim that implicates the 2nd Interested Party in liability, its presence is not necessary to resolve the issues framed by the pleadings.

48. Based on the foregoing, I find that the 2nd Interested Party has no direct or substantial interest in the relief sought and that its continued presence in the proceedings is unnecessary for the effective and complete determination of the issues in dispute.

49. In the end,

a. The Defendant's Preliminary Objection dated 24th April 2025 is hereby dismissed with costs.

b. The name of the 2nd Interested Party is hereby struck out from the proceedings.

c. Costs of the 2nd Interested Party's application shall be borne by the Plaintiff.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF FEBRUARY 2026.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF

Chirchir for the Plaintiff

Ms Oongo for the Plaintiff

Ms Musau for the 2nd Interested Party

Ms Awori holding brief for Kitheka for the Defendant

Ahmed - Court Assistant

ORIGINAL