

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**

**HCCOMM NO. E712 OF 2024**

KIRIKOINI INVESTMENT LIMITED.....PLAINTIFF

-VERSUS-

IMBANI DISPENSARY PROJECT.....DEFENDANT

-AND-

ABDULRAHAMAN MOHAMED ABDI.....INTERESTED PARTY

**RULING**

1. The plaintiff filed an Ex-parte Originating Summons application dated 27<sup>th</sup> November 2024 pursuant to the provisions of Order 50 Rule 6 of the Civil Procedure Rules, 2010, Section 4 of the Limitation of Actions Act, Sections 1A, 1B & 3A of the Civil Procedure Act, Article 159(2) of the Constitution of Kenya, 2010, and all other enabling provisions of the law. The plaintiff prays for orders for leave of this Court to institute proceedings against the defendant and the interested party after the expiry of the prescribed limitation period, an order that pending the hearing and determination of the main suit, the interested party be restrained from disbursing any monies owed to the defendant pursuant to the decree issued on 3<sup>rd</sup> November 2022, as amended on 12<sup>th</sup> April 2023, until the issues raised are determined by the Court or in the alternative, an order that a joint interest-earning account be opened in the names of the Advocates for the plaintiff and the defendant, into which any such disbursements shall be deposited, and an order that the plaint annexed to the affidavit be deemed as duly filed upon payment of the requisite Court fees.

2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Mr. Joseph Njuguna, a Director of the plaintiff company. Mr. Njuguna averred that the plaintiff entered into an Agreement with the defendant on 17<sup>th</sup> May 2015 to act as its agent in the recovery of land that had been fraudulently acquired by the interested party, with compensation agreed at 45% of the recovered property. He stated that the land dispute was subsequently determined by the National Land Commission, which held that the land belonged to the defendant and ordered monetary compensation *in lieu* of restitution. He contended that the plaintiff expected to receive 45% of the proceeds, but the defendant altered the contractual terms, leading to fresh agreements that were nonetheless breached, culminating in a negotiated settlement of 20% formalized on 24<sup>th</sup> April 2018.
3. Mr. Njuguna deposed that the defendant then engaged a Government Valuer to facilitate payment, prompting the plaintiff to institute High Court proceedings in 2018 and obtain restraining orders. He stated that further litigation ensued in **ELC Case No. 195 of 2019** to enforce the Commission's Award, in which the plaintiff sought joinder to protect its interests, and a decree was issued on 3<sup>rd</sup> November 2022 and amended on 12<sup>th</sup> April 2023 enforcing the Award as a Court decree. He explained that the intended suit was delayed pending enforcement of the Award, compounded by the demise of the plaintiff's manager and technical director, and that the limitation period lapsed due to circumstances beyond the plaintiff's control. He asserted that the said delay was neither intentional nor inordinate and that unless the orders being sought herein are granted, the plaintiff will suffer substantial economic loss, while no prejudice will be occasioned to the defendant and the interested party.

4. In opposition to the instant application, the defendant filed a replying affidavit sworn on 19<sup>th</sup> March 2025 by Mr. Chillion Bosire, the defendant's Secretary. Mr. Bosire denied the existence of any agency agreement or contract with the plaintiff, terming the instant application as an attempt to obtain pecuniary advantage through deception. He explained that the defendant is a society registered under the Societies Act and governed by a constitution that vests supreme decision-making authority in its members, with management exercised through an Executive Committee subject to members' resolutions, including through Special General Meetings, duly convened in accordance with the constitution.
5. He averred that no agreement authorizing the release of 20% of any proceeds relating to Land Reference No. 209/10772 was ever sanctioned by members, approved through a Special General Meeting, or executed by the Executive Committee, and no such resolution has been produced before the Court. Mr. Bosire disputed having filed **ELC Case No. 195 of 2019** and denied that the plaintiff acted as its agent before the National Land Commission. He instead asserted that the defendant represented itself through its officials. He faulted the plaintiff for failing to produce the alleged contract or any documentary proof of agency or services rendered, and claimed that the instant application is replete with false and misleading representations, including reliance on a purported WhatsApp service to a fictitious individual.
6. The interested party in opposition to the application herein filed a replying affidavit sworn on 24<sup>th</sup> September 2025 by Mr. Abdirahman Sheikh Muhumed Alzaley, the interested party herein. Mr. Alzaley also denied the existence or validity of any alleged agency agreement between the plaintiff and the defendant relating to the recovery of Land Reference No. 209/10772,

contending that any such agreement would in any event be null and void for illegality and fraud. He averred that the proceedings before the National Land Commission which declared the defendant the lawful owner of the aforesaid property were marred by irregularities, prompting him to file **ELC Petition No. E065 of 2025** challenging both the proceedings and the determination, together with an application for conservatory orders.

7. Mr. Alzaley stated that interim conservatory orders were granted on 8<sup>th</sup> August 2025 staying implementation of the Commission's determination. He further asserted that contrary to the defendant's affidavit, **Misc. ELC Case No. 195 of 2019**, was instituted by the defendant, but he (interested party) has since filed an application therein seeking to set aside the Ruling of 7<sup>th</sup> October 2021 and the amended decree of 12<sup>th</sup> April 2023, which he characterizes as enforcing an erroneous decision against him for an exorbitant sum. He further stated that his application before the Environment and Land Court is pending directions, and maintained that in light of the subsisting conservatory orders, the pending applications, and the fact that the plaintiff's intended suit is statute-barred, the orders sought in the instant application cannot issue.
8. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed by the law firm of Okatch and Partners Advocates on 29<sup>th</sup> August 2025. The respondent's submissions were filed on 19<sup>th</sup> September 2025 by the law firm of MM. Musumbate & Co. Advocates and the interested party's submissions were filed by the law firm of KRK Advocates LLP on 12<sup>th</sup> January 2026.
9. Mr. Okatch, learned Counsel for the plaintiff submitted that under Section 4(1) (a) of the Limitation of Actions Act, a contractual claim must be

brought within six (6) years. He argued that in this case, although the cause of action accrued in April 2018 following the revised agreement and the determination of the National Land Commission, the suit was filed in November 2024 outside the statutory period. Counsel contended that the aforesaid delay was neither intentional nor inordinate, having been occasioned by the death of the plaintiff's manager and technical director shortly after the Commission's determination, and by the need to await enforcement of the award, which culminated in an amended decree issued in April 2023. Mr. Okatch relied on the Supreme Court case of **County Executive of Kisumu v County Government of Kisumu & 8 others** [2017] KESC 16 (KLR), and submitted that this Court has the jurisdiction to enlarge time under Order 50 Rule 6 of the Civil Procedure Rules, 2010.

10. On the interlocutory reliefs being sought, Mr. Okatch cited the Court of Appeal case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR), and submitted that a *prima facie* case with a probability of success has been established through the production of the contracts between the parties and the determination and enforcement of the National Land Commission's Award. He further submitted that the plaintiff stands to suffer irreparable harm in the event that the compensation monies are disbursed before the dispute between the parties herein is resolved. Counsel referred to the case of **Pius Kipchirchir Kogo v Frank Kimeli Tenai** [2018] KEELC 2424 (KLR), to argue that an injunctive relief is not automatically denied merely because damages may be quantifiable. In the end, Counsel asserted that the balance of convenience tilts in favour of the plaintiff as the greater risk of injustice lies in disallowing the instant application.

11. Mr. Musumbate, learned Counsel for the defendant cited the Court of Appeal case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** [1989] KECA 48 (KLR), the cases of **Njuguna & 13 others v Faidisha Pamoja Housing Co-operative Society Limited & 5 others** [2025] KEELC 2872 (KLR) and **Denis Ksang Ripko v Kenya Commercial Bank Limited** [2016] KEELRC 1434 (KLR), and submitted that since the instant application was brought under Section 4(1) of the Limitation of Actions Act for a contractual claim, it falls outside the Court's jurisdiction because the Act does not empower the Court to extend the limitation period for actions founded on contract. Counsel stated that while the Supreme Court in **Salat v Independent Electoral and Boundaries Commission & 7 others** [2014] KESC 12 (KLR), recognized that extension of time is an equitable discretion, the plaintiff had not acted equitably nor provided a credible explanation for the delay, thus granting the orders being sought herein would prejudice the defendant who has relied on the National Land Commission's decision.
12. Mr. Musumbate submitted that the plaintiff had failed to establish a *prima facie* case as stated by the Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (supra), since it had not produced the alleged contract or documentation showing that it acted as an agent for the defendant at the National Land Commission, where the defendant was represented by its own officials. He further submitted that any claim for 20% of the proceeds of all that parcel of land known as L.R No. 209/10772 would have required approval via a Special General Meeting and resolution by society members, which had not been demonstrated. Counsel referred to the Court of Appeal case of **Nguruman Limited v Jan Bonde Nielsen & 2 others** [2014] KECA 606 (KLR) and contended that the

plaintiff's claim is purely pecuniary and adequately compensable by damages, hence it did not meet the threshold for irreparable harm. In the end, he asserted that the balance of convenience tilts in favour of the defendant.

13. Mr. Kuria, learned Counsel for the interested party submitted that the plaintiff's application under Section 4 of the Limitation of Actions Act, seeking enlargement of time to file a suit arising from an alleged contract dated 20<sup>th</sup> April 2018, is incompetent as it was filed on 27<sup>th</sup> November 2024, well after the statutory limitation period expired on 19<sup>th</sup> April 2024. He argued that Section 4(1) of the Limitation of Actions Act, which governs actions founded on contract, does not confer jurisdiction on the Court to extend the limitation period, a position reinforced by Section 27 of the Limitation of Actions Act, which allows time extensions only for tort claims involving negligence, nuisance, or breach of duty resulting in personal injury.
14. Counsel cited the case of **Wanjohi v Pharis** [2025] KEELC 679 (KLR) and stated that the procedural framework under Order 37 Rule 6 of the Civil Procedure Rules, 2010, applies only to claims listed under Section 27 of the Limitation of Actions Act and does not extend to contractual disputes. He emphasized that this Court lacks the jurisdiction to enlarge the limitation period for a contract-based claim. Mr. Kuria urged this Court to decline to entertain the application herein in light of the subsisting conservatory orders issued by Hon. Lady Justice T. Murigi in **ELC Petition No. E065 of 2025**, which stay the implementation of the National Land Commission's determination relating to L.R. No. 209/10772, the subject matter of the plaintiff's claim in its intended suit.

15. Counsel cited the case of **Invesco Assurance Co v MW (Minor suing thro' next friend and mother (HW))** [2016] KEHC 5318 (KLR), and stated that conservatory orders are public-law remedies intended to preserve the *status quo* and prevent execution of contested decisions pending judicial determination, and that they take precedence over collateral proceedings.
16. Mr. Kuria submitted that the interested party acquired the suit property in 2005, obtained full title and possession, and developed the land, while the defendant's alleged grant was declared a forgery in **Criminal Case No. 889 of 2005 - Republic v James Mativo & 3 others**, resulting in conviction of the defendant's directors for making documents without authority. He further stated that the National Land Commission subsequently issued a determination in favour of the interested party, which remains under challenge in ongoing ELC proceedings.

#### **ANALYSIS AND DETERMINATION.**

17. I have considered the application herein and the affidavit filed in support thereof. I have also considered the replying affidavits by the defendant and the interested party, and the written submissions by Counsel for the parties. The issues that arise for determination are -

- i) **Whether the application for extension of time for the plaintiff to file a suit against the defendant and the interested party is merited; and**
- ii) **Whether the plaintiff has made out a case to warrant being granted an order of interlocutory injunction.**

**Whether the application for extension of time for the plaintiff to file a suit against the defendant and the interested party is merited.**

18. The plaintiff seeks leave to file a suit outside the statutory limitation period under Section 4 of the Limitation of Actions Act. Section 4(1) of the Limitation of Actions Act, provides that actions founded on contract must be brought to Court within six (6) years from the date the cause of action accrued. The alleged cause of action arose on or about 20<sup>th</sup> April 2018, following the alleged revised agreement, and the National Land Commission's determination. It is further not contested that the statutory six-year period expired on 19<sup>th</sup> April 2024, yet the instant application was filed on 27<sup>th</sup> November 2024, seven (7) months later.

19. Part III of the Limitation of Actions Act grants this Court jurisdiction to extend the time within which a suit may be filed, but the said jurisdiction does not extend to actions founded on contract. Section 27 of the Limitation of Actions Act only allows for enlargement of time for tortious claims involving negligence, nuisance, or breach of duty resulting in personal injury. The said provisions state that-

**1) Section 4(2) does not afford a defence to an action founded on tort where –**

**a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and**

**b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and**

**c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and**

*d) the requirements of subsection (2) are fulfilled in relation to the cause of action.*

*2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which –*

*a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and*

*b) in either case, was a date not earlier than one year before the date on which the action was brought.*

*3) This section does not exclude or otherwise affect -*

*a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or*

*b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.*

20. In the case of **Divecon Limited v Samani** [1995-1998] 1 EA 48 at 54 cited by the Court of Appeal in **Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another** [2016] KECA 213 (KLR), the Court of Appeal in addressing the issue of whether the Limitation of Actions Act

grants the High Court jurisdiction to extend time for the filing of a suit based on a contract held that -

*no one shall have the right or power to bring an action after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action .....A perusal of Part III shows that its provisions do not apply to actions based on contract. In the light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that 'the wording of section 4(1) of the limitation of Action Act (Chapter 22) suggests a discretion that can be invoked'*

21. Similarly in **Mary Osundwa v Sugar Company Limited** [2002] KECA 203 (KLR), the Court of Appeal in addressing the import of Section 27(1) of the Limitation of Actions Act, held as follows-

*This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly Osiemo, J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent*

*can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent. Though Tanui, J. dismissed the suit on a different basis, we think the suit was bound to be dismissed in any event on the issue of limitation which was specifically pleaded in the defence. This appeal accordingly fails and we order that it be and is hereby dismissed but we make no order as to costs.*

22. It has been held time without number that Courts cannot assume jurisdiction beyond what is conferred by Statute or the Constitution. The plaintiff's intended suit is contractual in nature, relating to agency services and recovery of a percentage of land proceeds, and does not involve personal injury or tortious claims. Accordingly, this Court lacks jurisdiction to enlarge the limitation period.

23. The Court of Appeal in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** (supra), held that –

*...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.*

24. In light of the analysis I have made and the authorities I have cited, and also bearing in mind the finding by the Court of Appeal in the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** (supra), I decline to assume jurisdiction to determine the remaining issue previously identified for determination.

25. The instant application is not merited. It is hereby dismissed with costs to the defendant and the interested party.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 27<sup>th</sup> day of February 2026. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Ms Amutavi h/b for Mr. Okatch for the plaintiff/applicant

Mr. Mbakaya for the defendant/respondent

Ms Jaleba h/b for Mr. Kuria for the interested party

Ms B. Wokabi – Court Assistant.