



REPUBLIC OF KENYA



**Azima Sacco Society Limited v Mungai (Civil Case E002 of 2025)  
[2026] KEHC 1129 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1129 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL CASE E002 OF 2025  
FN MUCHEMI, J  
JANUARY 29, 2026**

**BETWEEN**

**AZIMA SACCO SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**ERIC MWAURA MUNGAI ..... DEFENDANT**

**RULING**

1. Coming up for determination is the defendant's Notice of Preliminary Objection dated 27<sup>th</sup> June 2025 based on the grounds that this Honourable court lacks jurisdiction to hear and determine the plaintiff's suit as the cause of action is based on the tort of negligence which occurred in the year 2019. Since then three years have passed rendering the suit time-barred.
2. Directions were issued that parties put in written submissions. The record shows that the defendant complied by filing submissions on 26<sup>th</sup> November 2025 as the plaintiff failed to comply.

**The Defendant's Submissions.**

3. The defendant submits that the plaintiff is a cooperative society registered under the *Cooperatives Societies Act* and the *Sacco Societies Act* carrying on business in Thika. The defendant further submits that he was employed by the plaintiff as an assistant accountant in 2012 and promoted to an accountant in the year 2014. The plaintiff alleges that between 1<sup>st</sup> December 2018 and 14<sup>th</sup> May 2019, he negligently and fraudulently failed to account for Kshs. 25,010,519/- following which his employment was terminated and criminal proceedings instituted in 2019. The defendant argues that despite knowledge of the alleged negligence and fraud, the plaintiff filed the instant suit in the year 2025 which is over six years after the alleged incidences but it did not obtain leave of the court to file a time barred suit considering the time limit is three years. To support his contentions, the defendant refers to the cases of *Patrick Kimani Njoroge v Jane Nduati Kimani* (Civil Appeal E789 of 2022) [2024] KEHC 7834



(KLR) and *Polly Wanjiru Kathura & 4 Others v Bernard Muriithi Gathura* [2011] KEHC 2093 (KLR).

4. The defendant relies on Section 27 and 28 of the *Limitation of Actions Act* and submits that the absence of leave renders the suit incurably defective and this court cannot assume jurisdiction over a matter that the plaintiff had no legal capacity to file in the first place. The defendant further relies on Section 26 of the *Limitations of Actions Act* and submits that the plaintiff commissioned and received a forensic audit report dated 27<sup>th</sup> September 2019 which expressly identified the alleged irregularities, negligence and fraud forming the basis of this suit and the ongoing case at the magistrates court in Thika. Therefore from September 2019 the plaintiff knew or ought to have known of all material facts necessary to institute a claim. Despite such knowledge, the plaintiff filed the current suit on 11<sup>th</sup> February 2025, a delay of approximately 6 years from the date the cause of action accrued. Thus, the plaintiff's suit is time barred and Section 26 cannot be invoked to revive a claim that was fully known and discoverable as early as September 2019.
5. The defendant refers to Section 3(2) of the *Limitation of Actions Act* and submits that the present claim relates to alleged financial loss arising from negligence/fraud and not personal injury. To support his contentions the defendant relies on the cases of *Raja Material Supplies v Joseph Kiarie Wagurab* [2021] KEHC 13468 (KLR) and *Janet Mwende v Mohammed Abdi Elmi & 2 Others* [2024] KEHC 14271 (KLR).
6. The defendant relies on Section 27(1) of the *Act* and the case of *Embakasi Sweet Waters Welfare Group v Matumaini Ventures Ltd & Another* [2016] eKLR and submits that all four conditions must be met conjunctively and that Section 27(1) does not permit extension of time in tort claims that do not involve personal injuries.

## The Law

### Whether the preliminary objection is sustainable.

7. The case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection. The court observed thus:-

“.....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.”

8. Sir Charles Newbold P. stated:-

“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 preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.”



9. Similarly the Supreme Court in the case of *Hassan Ali Jobo & Another v Suleiman Said Shabal & 2 Others* SCK Petition No. 10 of 2013 [2014] eKLR held that:-
 

“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.”
10. Further in the case of *Hassan Nyanje Charo v Khatib Mwashetani & 3 Others*, [2014] eKLR the court held that:-
 

“Thus a preliminary objection may only be raised on a ‘pure question of law.’ To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”
11. Evidently, 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.
12. The respondent argues that the instant court lacks jurisdiction to hear the suit as the suit is time barred under Section 4(2) and 26 of the *Limitation of Actions Act* and was further filed without the leave of the court making the suit defective.
13. Section 4(2) of the *Limitation of Actions Act* provides:-
 

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”
14. Section 26 of the *Limitation of Actions Act* provides:-
 

Where, in the case of an action for which a period of limitation is prescribed, either-

  - a. The action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - b. The right of action is concealed by the fraud of any such person as aforesaid; or
  - c. The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.
15. A reading of the plaint show that the plaintiff seeks to recover Kshs. 25,010,519/- being funds which the defendant, in his abdication of his responsibilities negligently and fraudulently failed to account for between the period of 1<sup>st</sup> December 2018 and 14<sup>th</sup> May 2019. It is evident that the plaintiff learnt of the alleged fraud on 27<sup>th</sup> September 2019 upon carrying out a forensic audit of the alleged loss of the sacco funds. Thus, time began to run from 27<sup>th</sup> September 2019 when the plaintiff discovered the fraud. Furthermore, the present matter arising from a tort of negligence ought to have been filed in court within three years from the date of discovery of the negligent act or from the date the cause of action arose. The plaintiff herein instituted this suit in February 2025 which is almost six years after the cause of action arose.



16. The *Limitation of Actions Act* provides that certain causes of action may not be brought after the expiry of a particular period of time. Section 27 of the *Limitation of Action Act* provides:-
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 contractor 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 purpose 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 include 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.
17. A cursory look at Section 27 of the *Act*, it is clear that the said provision does not permit extension of time in tort claims that do not involve personal injuries. Thus, the suit herein does not concern personal injury and thus falls outside the scope within which a court may extend time under Section 27 of the *Act*.
18. In conclusion, the plaintiff's suit herein is time barred and should not be entertained for hearing and determination. The action of admitting this suit would render the court's proceedings null and void. It is further noted that this suit would not be saved by Section 27 of the *Act*.
19. It is my considered view that the preliminary objection dated 27<sup>th</sup> June 2025 has merit and is hereby upheld.
20. Consequently, I declare this suit time-barred and strike it out accordingly.
21. The costs of this objection shall go to the defendant.
22. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29<sup>TH</sup> DAY OF JANUARY 2026.**

**F. MUCHEMI**

**JUDGE**

