



REPUBLIC OF KENYA



**Auma v Ndisya (Civil Appeal E039 of 2025)
[2026] KEHC 3414 (KLR) (Civ) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E039 OF 2025

WA OKWANY, J

MARCH 12, 2026

BETWEEN

CHARLES OKUMU AUMA APPELLANT

AND

JONATHAN NGENGA NDISYA RESPONDENT

*(Being an application for stay of execution from the judgment of
the Environment and Land Court of Kenya at Kabarnet (L. N.
Waithaka, J.) dated 30th September 2025 in ELCA No. E003 of 2025)*

JUDGMENT

1. The Appellant instituted proceedings before the Small Claims Court seeking compensation for material damage arising from a road traffic accident.
2. Upon service of the claim, the Respondent filed a Notice of Preliminary Objection dated 20th March 2025 contending that the claim was statute-barred.
3. On 1st April 2025, the trial court directed that the preliminary objection be canvassed through written submissions.
4. The Appellant filed submissions opposing the preliminary objection. The Respondent, however, did not file submissions but instead filed a Notice of Withdrawal of the Preliminary Objection dated 3rd April 2025.
5. In its ruling delivered on 11th April 2025, the trial court allowed the withdrawal of the preliminary objection but nonetheless considered the issue of limitation of time and held that the the cause of action having arisen on 2nd March 2022, the limitation period under Section 4(2) of the *Limitation of*



Actions Act expired on 1st March 2025. The trial court noted that since the claim had been filed on 3rd March 2025, the suit was filed two days outside the limitation period and consequently struck it out.

6. Dissatisfied with the trial court's decision, the Appellant lodged the present appeal through the Memorandum of Appeal dated 9th May 2025 wherein he raised several grounds of appeal contending that the trial court: -
 - i. misinterpreted Section 4(2) of the Limitation of Actions Act;
 - ii. failed to apply Section 57 of the Interpretation and General Provisions Act;
 - iii. failed to apply Order 50 Rule 3 of the Civil Procedure Rules on computation of time;
 - iv. disregarded the respondent's withdrawal of the preliminary objection;
 - v. failed to consider the appellant's submissions.
7. The Appellant seeks orders that the appeal be allowed, the ruling be set aside, and the suit be reinstated for hearing before a different adjudicator.
8. The appeal was canvassed by way of written submissions, however, only the Appellant filed submissions while the Respondent did not participate in the appeal despite proper service with all the pleadings and notices.

Appellant's Submissions

9. The Appellant submitted that the cause of action arose on 2nd March 2022, and that the limitation period therefore expired on 2nd March 2025. The Appellant argued that 2nd March 2025 fell on a Sunday, while 1st March 2025 fell on a Saturday, both being non-working days filing the suit on Monday 3rd March 2025 was lawful.
10. Reliance was placed on Section 57 of the Interpretation and General Provisions Act and Order 50 Rule 3 of the Civil Procedure Rules.
11. The Appellant also relied on the authority of *Mwangi vs. Maina* (Civil Appeal E281 of 2021) [2022] KEHC 15712 (KLR) where the court held:

“ August 3rd 2014 fell on a Sunday which is an excluded day... This automatically pushes the last date for filing the suit to Monday August 4th 2014... I find and hold that the suit in the lower court was properly filed.”
12. The Appellant therefore submitted that the claim filed on 3rd March 2025 was properly filed within time.
13. From the record of appeal and submissions, I find that the appeal revolves around the interpretation of statutory provisions on limitation periods, the computation of time where the last day falls on non-working days, and the procedural implications of the withdrawal of a preliminary objection.

Analysis and Determination

14. Section 4(2) of the Limitation of Actions Act provides that:

“ 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.”



15. Section 57 of the *Interpretation and General Provisions Act* provides:

“In computing time for purposes of a written law, unless the contrary intention appears—

- (a) A period of days from the happening of an event shall be deemed to be exclusive of the day on which the event happens;
- (b) If the last day of the period is Sunday or a public holiday or all official non-working days (which days are referred to as excluded days), the period shall include the next following day, not being an excluded day;
- (c) Where an act is directed to be done on a certain day which falls on an excluded day, the act shall be considered as done in due time if done on the next day afterwards not being an excluded day.”

16. Order 50 Rule 3 of the Civil Procedure Rules provides that: -

“Where the time for doing an act or taking any proceedings expires on a Sunday or other day on which the offices are closed... such act or proceeding shall be held to be duly done if done on the next day on which the offices shall next be open.”

17. In the instant case, it is not disputed that the cause of action arose on 2nd March 2022.

18. Under Section 4(2) of the *Limitation of Actions Act*, the limitation period for actions founded on tort is three years. This means that strictly computed, the limitation period would expire on 2nd March 2025.

19. The court must however consider the rules governing computation of time.

20. Section 57(b) of the *Interpretation and General Provisions Act* expressly provides that where the last day falls on a Sunday or official non-working day, the period shall extend to the next working day.

21. The appellant has invited the court to take judicial notice of the calendar under Section 60 of the *Evidence Act*. I note that indeed, 2nd March 2025 fell on a Sunday, while 1st March 2025 fell on a Saturday.

22. Consequently, the next working day was Monday 3rd March 2025.

23. This position is reinforced by Order 50 Rule 3 of the Civil Procedure Rules, which similarly provides that where the last day falls on a day when court offices are closed, the act may be performed on the next working day.

24. The authority of *Mwangi vs. Maina (2022) KEHC 15712 (KLR)* cited by the Appellant also affirms that where the last day of the limitation period falls on a Sunday, the filing done on the following Monday is valid.

25. In light of the foregoing provisions and authorities, the court finds that the limitation period extended to Monday 3rd March 2025.

26. The appellant’s claim was therefore filed on the next working day after the limitation period expired.

27. Having considered the record of appeal, the law, and the submissions of the appellant, I find that the trial court erred in computing the limitation period without considering the provisions governing computation of time.

28. The Appellant’s claim filed on 3rd March 2025 was filed within time.



29. Accordingly, I make the following orders:

- a. The appeal is allowed.
- b. The ruling of the Small Claims Court delivered on 11th April 2025 in Milimani SCCC No. E1145 of 2025 is set aside.
- c. The appellant's claim is reinstated for hearing on the merits.
- d. The matter shall be heard and determined before a different adjudicator other than Hon. V. K. Momanyi.
- e. The respondent shall pay the costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

12/03/2026

For Appellant Ontegi

For The Respondent No appearance

Court Assistant Abdirizak

File closed

