



Wide Kenya Limited v Thika High School for the Blind (Civil Appeal E312 of 2024) [2026] KEHC 3519 (KLR) (12 March 2026) (Judgment)

Neutral citation: [2026] KEHC 3519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E312 OF 2024
TW OUYA, J
MARCH 12, 2026**

BETWEEN

WIDE KENYA LIMITED APPELLANT

AND

THIKA HIGH SCHOOL FOR THE BLIND RESPONDENT

(Being an appeal from the Ruling of honourable M.W. Kamau dated and delivered on 31st October 2024 in Thika Small Claims Commercial Court SCCCOMM E799 of 2024)

JUDGMENT

1. Before this court is an appeal from the Ruling of the lower court delivered on 31st October 2024 allowing the Respondent's Preliminary Objection dated 15th October 2024 striking out the appellant's Claim.
2. A brief background to the matter is that the Appellant filed a Statement of claim dated 13th June 2024, in which he alleged that he rendered services to the Respondent between 2018 to 2020 to the value of Kshs. 940,280 by undertaking construction of four (4) classrooms at a cost of Kshs. 8,905,070. The appellant duly undertook the works as agreed to the Respondent's satisfaction. However, at the termination of the contract, the Respondent owed the Appellant Kshs. 940,280.00, which remains unpaid to date despite demand.
3. The Respondent denied the claim on the basis that he did not owe the Appellant as no contract existed between the Appellant and the Respondent. That the failure to pay the amount demanded was due to the fact that the Respondent was dissatisfied with the Appellant's work and that if any payment was not made, the same was occasioned by the Appellant's delay in tendering of all requisite surrender and payment documents. In any case, all the payments due to the Appellant were made prior to the termination of the contract and the Appellant was to prove any contrary allegation.



4. The Respondent also raised a Preliminary Objection on the basis that the suit was statute barred pursuant to Section 3 (2) of the *Public Authorities Limitation Act*, CAP 39. Any suit against the Respondent, a public entity, ought to have been instituted within three years. It was his position that the suit herein emanates from a contract entered into between 2018 and 2020. Therefore, any course of action arising out of the contract ought to have been instituted before the lapse of the limitation period. In the instant case, the suit was instituted five years after the contract period. Since the services were officially marked as complete on 26th February 2019, the project effectively terminated on the same day. The Appellant therefore, failed to demonstrate that he had acted with due diligence towards ensuring his claim is adequately addressed.
5. The Appellant on the other hand contended that a cause of action arises when a dispute arises and not when a contract commences. As a result, the course of action arose on 14th May 2024 when the dispute on payments arose and not when the work was terminated.
6. The trial court found that the Appellant ought to have instituted the suit on or before February 2022 which was within three years from when the cause of action accrued. The certificate of practical completion having been handed over on 26th February 2019.
7. Aggrieved and dissatisfied with the finding of the trial court, the appellant instituted the instant appeal on grounds that:
 - i. The learned adjudicator erred in law and fact in finding that the Respondent was bound by the *Public Authorities Limitation Act*.
 - ii. The learned adjudicator erred in law and in fact in finding that a cause of action arises from the date of the contract.
 - iii. The learned adjudicator erred in law and fact in finding that the Appellant's suit having been filed in the year 2024 was statute barred.
 - iv. The learned adjudicator failed to appreciate the fact that the dispute between the parties to the suit arose in the year 2024.
 - v. The learned adjudicator in making her ruling failed to consider the appellant's submissions.
 - vi. The learned adjudicator erred in law and fact in striking out the appellant's suit.
8. The appellant thus prayed that the ruling and its subsequent orders be set aside.
9. The court directed that the appeal be canvassed through written submissions.
10. The Appellant, while acknowledging the limitation period for institution actions for breach of contract against the government pursuant to Section 3 (2) of the *Public Authorities Limitation Act*, submitted that the Respondent does not qualify as the government or a local authority within the meaning of the Act. Reliance was placed on the case of Teachers Service Commission versus Okumu Civil Appeal E790 of 2021.
11. The Respondent cited Black's Law Dictionary's definition on government thus:

“The machinery by which the sovereign in a state expresses its will and exercises its functions: of the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative and administrative business of the state is carried on.”



12. Therefore, the Respondent submitted that it qualified to be referred to as government within the meaning of Section 3 (2) of the [Public Authorities Limitation Act](#). Moreover, its position as government is buttressed by the fact that it operates under the auspices of the Ministry of Education which formulates education policies, standards, curricula and manages public schools, including primary, secondary and special education institutions.
13. Citing Section 43 of the [Basic Education Act](#), the Respondent submitted that it fell within the meaning of public schools which are defined as schools established, owned or operated by the government and include sponsored schools. Reliance was placed on the case of *St. John Christosom Kudho Sec. School v Jemique Enterprises (Civil Appeal E063 of 2024)* to advance this position.
14. The Respondent thus prayed that the appeal be dismissed.
15. This being a first appeal, the court is under a duty to reconsider and re-evaluate the evidence and draw its own conclusions. The Court must take great exception with respect to the fact that it has neither seen nor heard the witnesses. These principles were set out in *Selle and another v Associated Motor Boat Company Ltd.& Others (1968) EA 123* by Sir Clement De Lestang, V. P. as follows:

“An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should made due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hameed Saif –v- Ali Mohamed Sholan (1955), 22 E.A.C.A. 270*).”
16. The issue for determination is whether the Respondent is government within the meaning of Section 3 (2) of the [Public Authorities Limitation of Actions Act](#) and if so a determination on whether the cause of action arose at the end of the contract period or the time of the dispute.
17. Section 3 (2) of the [Public Authorities Limitation of Actions Act](#) 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.
18. To determine the question of limitation, it is crucial to first establish whether the Respondent is government within the meaning of Section 3(2) of the [Public Authorities Limitation Act](#).
19. It is not in dispute that the Respondent is a public school. Section 43(1) of the [Basic Education Act](#) provides for Categories of schools as follows:
 1. Basic educational institutions shall be categorized as—
 - (a) public schools which are schools established, owned or operated by the Government and includes sponsored schools;
 - (b) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions.



20. A public body is defined under provisions of section 3(1) of the *Interpretation and General Provisions Act* as follows:

any authority , commission, committee or other body whether paid or unpaid which is invested with or is performing whether permanently r temporary functions of public nature.

21. In the persuasive case of Association of Retirement Benefits Schemes v Attorney General & 3 others (2017) e KLR the Judge cited with authority the Indian Supreme Court in the case of International Airport Authority(R.D Shetty) vs The International Airport Authority of Indian & Ors,[41] where the Court set the test for determining whether an entity is a government body or not and as follows:

- “(a) consider whether any share capital of the corporation is held by the Government and if so that would indicate that the corporation is an instrumentality or agency of Government;
- (b) where the financial assistance of the State is so much as to meet almost the entire expenditure of the Corporation, that fact would afford some indication of the corporation being impregnated with Governmental character;
- (c) it may also be relevant to consider whether the corporation enjoys monopoly status conferred by the State
- (d) whether the body has deep and pervasive State control,
- (e) whether the functions of the corporation are of public importance and closely related to Governmental functions then that would be a relevant factor in classifying the corporation as an instrumentality or agency of Government and
- (f) if a Department of a Government is transferred to a corporation then it becomes an instrumentality or agency of the Government. The Court went on to state that if after the consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would be an 'authority' and therefore, part of the definition of 'State' within the meaning of the expression used in *the Constitution*.”

22. It is the finding of this court that Thika High School is a Government institution/authority within the meaning of Section 3 (2) 2 of the Public Authorities *Limitation of Actions Act*.

23. Having found that the Respondent is government, it is crucial to determine whether the cause of action was barred by limitation of action.

24. The law of limitation of actions is intended to bar a plaintiff from instituting claims that are stale and aimed at protecting defendants against unreasonable delay in the bringing of suits against them.

25. In the instant case, the Appellant alleged that the course of action arose in 2024 after the Respondent failed to remit the outstanding balance, on the other hand, the Respondent contended that the project having been completed with finality in 2019, any cause of action could only have been brought within three years from when the cause of action accrued.

26. The test of whether an application is a proper preliminary objection has been stated in the case of Equity Bank Limited v Bryan Yongo & another [2014] eKLR where the court held that:

“ Any true Preliminary Objection should not be entangled with factual issues.”



27. In the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributor Ltd [1969] E.A 696, Law JA stated that:

“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.”

28. In Civil Suit No. 85 of 1992, Oraro v Mbaja [2005] KLR 141, Ojwang J, (as he then was), cited with approval the position in Mukisa Biscuit -vs- West End Distributors (supra) and stated as follows on the operation of Preliminary Objections:

“.... I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.”

29. Turning to this matter, the question of when the cause of action arose is one that requires factual evidence to determine. The court will need to look at the alleged contract and the terms and conditions applicable thereto. In the circumstances and as enunciated in the precedents cited above, the issues raised by the Respondent in the Preliminary Objection did not qualify to be categorized as preliminary objection.

30. The trial court therefore erred in striking out the appellant’s claim without conclusively determining it.

31. The upshot of the matter is that the ruling of the trial court is hereby set aside and the file is remitted to the Deputy Registrar to be reassigned to another judicial officer other than Hon M. W. Kamau to handle to its logical conclusion.

32. I make no order as to costs.

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

HON. T. W. Ouya

JUDGE

For Appellant.....No Appearance

For Respondent.....Ms Mbatiani

COURT ASSISTANT.....Brian

