REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. E768 OF 2024

SYNERGY INDUSTRIAL CREDIT LIMITED ……. PLAINTIFF

-VERSUS-

SIFA IMPORTS LIMITED……**1ST DEFENDANT**
ALI DUBOW ABDI……**2ND DEFENDANT**
ABDIKAHIM OSMAN MOHAMED……**3RD DEFENDANT**

RULING

Introduction

1. This ruling determines two matters arising in this suit:

    i. The Defendants' Preliminary Objection dated 12th February 2025; and
    ii. The Plaintiff's Notice of Motion dated 24th February 2025 seeking judgment on admission under Order 13 Rule 2 of the Civil Procedure Rules.

2. The dispute arises from a series of hire purchase facilities (HP Facility No. **2015/06/3229**; HP Facility No. **2016/03/2583**; HP Facility No. **2016/08/2588;** HP Facility No. **2016/12/2591**; and HP Facility No. **2016/11/3361)** advanced by the Plaintiff to the 1st Defendant between 2015 and 2016.

3. The facilities were secured and structured under various agreements, the particulars of which are not in dispute at this stage. It is also common ground that the 1st Defendant began experiencing difficulties in servicing the facilities from around January 2017, thereby triggering default.

4. The Defendants' objection is that the suit is statute-barred, having been filed on 22nd October 2024, more than six years after the cause of action accrued in or about January 2017.

5. In support of the objection, the defendants filed written submissions dated 4th August 2025.

6. The defendants submitted that the plaintiff had instituted the Suit by a Plaint dated 22nd October 2024 seeking special damages of **Kshs 392,443,448** for alleged breaches of the hire purchase agreements. They argued that the alleged default occurred on or about January 2017 and that the claim, being founded on contract, was subject to the six-year limitation period under section 4(1)(a) of the Limitation of Actions Act.

7. The defendants contended that the limitation period lapsed on or about January 2023, but the suit was filed on 22nd October 2024 without leave of the court. They asserted that the objection raised a pure point of law capable of disposing of the suit and relied on authorities to argue that courts cannot entertain claims filed outside the statutory limitation period or revive causes of action extinguished by law.

8. The plaintiff filed written submissions dated 20th July 2025 in opposition to the Preliminary Objection. The Plaintiff took the position that the limitation period was extended by written acknowledgements of debt, and Part payments made as late as April 2021, thereby bringing the claim within Sections 23 and 24 of the Limitation of Actions Act.

9. It was submitted that in April 2021, the 1st defendant made partial payments towards the outstanding hire purchase facilities, thereby reducing the balance to **Kshs 392,443,448** as at 30th April 2021, as reflected in the summary of account. It was further submitted that the 1st defendant had on several occasions acknowledged in writing that it was in repayment default and indebted to the plaintiff.

10. The plaintiff also relied on several statements of overdue accounts signed and acknowledged by the 2nd defendant in his capacity as director of the 1st defendant up to the year 2020. The plaintiff argued that under sections 23(3) and 24 of

the Limitation of Actions Act, the written acknowledgements and partial payments revived the cause of action, with time beginning to run from the date of the last acknowledgement or payment.

11. The plaintiff therefore maintained that the claim was not time-barred as it fell within the six-year limitation period provided under section 4(1)(a) of the Act.

12. On costs, the plaintiff submitted that costs should follow the event pursuant to section 27 of the Civil Procedure Act.

Analysis and Determination

13. Having carefully considered the submissions by the parties and the applicable law, I find that the primary issues for determination are (i) whether the instant suit is time-barred under section 4(1) of the Limitations of Actions Act (the Act); and (ii) whether judgment on admission ought to be entered in the circumstances of this case.

14. The defendant, in support of the objection, submitted that the cause of action accrued in January 2017, the date on which the 1st Defendant first defaulted on its contractual repayment obligations, as acknowledged in paragraph 30 of the Plaint and admitted by the parties.

15. They contended that the filing of the suit on 22 October 2024 falls outside the mandatory six-year limitation period prescribed under Section 4(1)(a) of the Limitation of Actions Act.

16. It is settled law that limitation statutes go to the jurisdiction of the Court. A claim filed outside the limitation period is incompetent, and the Court must down its tools. In Mary Osundwa v Sugar Company Limited [2002] KECA 203 (KLR), the Court of Appeal affirmed that the Limitation of Actions Act does not permit extension of time in contract matters and that parties cannot confer jurisdiction upon a Court by consent or conduct.

17. Similarly, the Supreme Court in County Executive of Kisumu v County Government of Kisumu & 8 others [2017] KESC 16 (KLR) underscored the strictness of statutory timelines, reiterating that a Court cannot validate a pleading filed out of time without leave. The Court stated that:

> "We are in total agreement with the respondent that an appeal filed in this Court out of time without leave of this Court is irregular and this Court will not invoke such 'novel' principles as urged by applicant so as to validate that petition and deem it as properly filed."

18. In the present case, Section 4(1)(a) of the Act indeed provides that no action founded on contract may be brought

after the end of six years from the date on which the cause of action accrued. If January 2017 is taken as the date of accrual, then the statutory period lapsed in January 2023, rendering the suit prima facie time-barred.

19. However, this is not the sole consideration, because the Plaintiff asserts that subsequent events reset the limitation period.

20. Section 23(3) of the Act provides that:

> "Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:
>
> Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt."

21. Further Section 24(1) of the Act states:

> "**Formalities as to acknowledgements and part payments**

(1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.

(2) The acknowledgement or payment mentioned in section 23 of this Act is one made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be, and it may be made by the agent of the person by whom it is required by that section to be made."

22. It is not in dispute that between the years 2015 and 2016, the 1st defendant was advanced several hire purchase facilities by the plaintiff under various reference numbers. It was further common ground that the 1st defendant began experiencing difficulties in servicing its monthly obligations from January 2017.

23. The evidence on record shows that following the onset of these financial difficulties, the 1st defendant engaged the plaintiff through a series of written requests seeking rescheduling of the repayment terms. The plaintiff acceded to these requests and restructured the facilities accordingly. Subsequently, by a letter dated 8th May 2017, the 1st defendant indicated that it was in advanced stages of arranging for a takeover of its liabilities and sought the plaintiff's indulgence pending finalisation of the same. A

meeting between the parties was held on 9th May 2017, the outcome of which was captured in the plaintiff's letter dated 10th May 2017, setting out, inter alia, the requirement for execution of rescheduling documents, payment of Kshs 15 million, and completion of the proposed takeover.

24. Notwithstanding these arrangements, the 1st defendant failed to regularise the account or make payments in accordance with the rescheduled terms, thereby falling into substantial default. The plaintiff communicated its concerns through correspondence dated 14th November 2017 and subsequently recalled the entire facility by a demand letter dated 6th December 2017. In response, the 1st defendant, by its letter dated 7th December 2017, acknowledged the outstanding indebtedness and outlined proposed steps towards settlement.

25. The record further demonstrates that despite repeated assurances, including those contained in letters dated 23rd March 2018 and 28th March 2018, the 1st defendant did not meet its repayment obligations. The plaintiff continued to issue demands, including a further demand dated 13th March 2018, and later correspondence highlighting persistent arrears. By 27th July 2021, the plaintiff issued a detailed demand outlining the various unfulfilled commitments by the defendants, evidencing a continued state of default.

26. It was also evident that the defendants made partial payments towards the outstanding sum, which reduced the indebtedness to Kshs 392,443,448 as at 30th April 2021. Additionally, the 1st defendant, through its directors, proposed to secure the outstanding debt by depositing a title to LR No. 209/8569, said to be valued at Kshs 550,000,000, with a view to applying the proceeds of sale towards liquidation of the debt. The parties thereafter engaged in negotiations, including exchanges via email up to the year 2022, in an attempt to agree on modalities for settlement. These negotiations, however, did not yield any resolution, ultimately leading to the institution of the present suit.

27. From the foregoing, it was apparent that the 1st defendant, on multiple occasions and through written correspondence, expressly acknowledged its indebtedness to the plaintiff. This acknowledgment was not only contained in letters but was also reflected in several statements of overdue accounts signed by the 2nd defendant in his capacity as a director of the 1st defendant, including as late as the year 2020.

28. In light of these facts, I am satisfied that the circumstances of this case fall within the ambit of section 23(3) of the Limitation of Actions Act. The evidence demonstrates both acknowledgment of the debt and part payment after the initial default.

29. Consequently, the right of action accrued from the date of such acknowledgment or the last payment made. Further, the requirements under section 24 of the Act were met, as the acknowledgments were in writing and duly signed by the 1st defendant's authorised agent and communicated to the plaintiff.

30. Accordingly, the Court finds that the present objection by the defendants does not meet the threshold for a preliminary objection within the meaning of **Mukisa Biscuit Mfg. Co. Ltd v West End Distributors Ltd [1969] EA 696**, where Law JA defined a preliminary objection as: "a pure point of law which is argued on the assumption that all the facts pleaded are correct." The preliminary objection, therefore, fails.

31. On the application for judgment on admission, the applicable legal framework is Order 13 Rule 2 of the Civil Procedure Rules, 2010 which states as follows; -

> "Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

32. In the case of Choitram & another v Nazari [1984] KECA 47 (KLR) the Court of Appeal expounded on the issue of judgment on admission, where Madan, JA, stated that:

> "For the purpose of Order XII Rule 6, admission can be expressed or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning."

33. In the same judgment, Chesoni Ag. JA made the following observation:

> "Admissions of fact under Order XII rule 6 need not be on the pleadings. They may be in correspondence or documents which are admitted or they may even be oral. The rules used words "otherwise" which are words of general application and are wide enough to include admission made through letters, affidavits and other admitted documents and proved oral admissions…It is settled that a judgment on admission is in the discretion of the court and not a matter of right and that discretion must be exercised judicially."

34. From the above statutory provisions and case law, it is clear that the principles governing such applications are settled: the admission must be clear, unambiguous, and unequivocal.

It must not require interpretation or qualification, and where there is any doubt, the matter should proceed to trial.

35. In this case, the Plaintiff seeks judgment for **Kshs. 106,725,378.00** on the basis that the Defendants admitted indebtedness in correspondence, particularly the letter dated 28th March 2018, in which the Defendants allegedly acknowledged arrears and outlined repayment efforts, including sale of assets and anticipated funding.

36. The Court notes that while that letter does constitute an acknowledgement of indebtedness at that point in time, it is evident that the letter is accompanied by proposals and contingent steps towards repayment, suggesting ongoing negotiations rather than a final, unconditional admission of liability.

37. Additionally, the Plaintiff's own submissions disclose a prolonged course of dealings, including rescheduling of facilities as well as further correspondence and negotiations extending up to 2021 and beyond. It is also evident from the record that the Plaintiff's claim in the Plaint is substantially higher (**Kshs. 392,443,448 as at 30 April 2021**), indicating that the debt position evolved over time.

38. In these circumstances, the Court is not satisfied that the admission relied upon is final and unequivocal, and therefore,

is sufficient to found judgment without a full inquiry into the accounts, payments, and contractual terms.

39. In any event, the Defendants have raised issues relating to limitation and the nature of the claim, which, though not successful at the preliminary stage, reinforce the need for a full hearing.

Disposition

40. In the result:

    i. The Defendants' Preliminary Objection dated 12th February 2025 is hereby dismissed**.**
    ii. The Plaintiff's Notice of Motion dated 24th February 2025 seeking judgment on admission is hereby declined.
    iii. The suit shall proceed to full hearing on a priority basis.
    iv. Costs of both the Preliminary Objection and the Application shall be in the cause.

41. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI
THIS 19TH DAY OF MARCH 2026

HON. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A – *Moses*

Chitichi.....for the Defendant

Sake h/b for Muriithi.....for the Plaintiff