

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J)**  
**CIVIL APPEAL NO. E034 OF 2024**

**KENYA POWER AND LIGHTING COMPANY LIMITED.....APPELLANT**

**-VERSUS-**

**CENTOIL LIMITED.....RESPONDENT**

**R U L I N G**

**The Application**

1. The applicant filed a notice of motion dated 28<sup>th</sup> July 2025 seeking the following orders:
  - 1) Spent;
  - 2) Spent;
  - 3) That this Honourable Court be pleased to stay the execution of decree in respect of the Judgement given in Embu HCCA NO. E034 of 2024, K.P.L.C vs Centoil Limited in favour of the Respondent against the Appellant/Applicant on 4<sup>th</sup> June 2025 and any other orders that may be issued pursuant thereto, pending the hearing and determination of this application;
  - 4) That the judgment issued in Embu HCCA No. E034 of 2024, K.P.L.C vs Centoil Limited by Hon. Justice Mwongo on the 4<sup>th</sup> June 2025 be vacated, reviewed and/or set aside;
  - 5) That the costs of this application be provided for; and
  - 6) That such further and other relief be granted as this court deems fit and expedient in the circumstances.
2. The application is supported by grounds set out on its face and in the supporting affidavit thereof. The crux of the matter is that the small claims adjudicator and the appellate court both erred in overlooking the fact that the contracts in question were from the years 2011 and 2012. That given these dates, no action could arise based on the contracts given the law on limitation of actions. It cited section 4 of the Limitation of Actions Act and section 3 of the Law of Contract Act. It argued that it had raised a preliminary objection based on the same issue of limitation of action but the objection was dismissed by the trial court. It raised the

issue as a ground of appeal but the court failed to find on the issue which now remains glaring as an error on the face of the record.

### **Written Submissions**

3. The application was canvassed by way of written submissions.
4. The applicant submitted that in its judgment, this court failed to determine the issue of limitation of action as raised, on grounds that the contracts were dated 2011 and 2012. That this is an error apparent on the face of the record. It relied on section 38 of the Small Claims Court Act and Order 45 Rule 1 of the Civil Procedure Act for the grounds of review. It also relied on the cases of **Edison Kanyabwera v Pastori Tumwebaze (2005) UGSC 1** and **Mohmed Dagane Falir aka Ali Dagane v Alfonse Mutuku Muli & another [2021] KEHC 1569 (KLR)**.
5. It submitted on section 4 of the Limitation of Actions Act and stated that the action was brought more than 6 years after the end of the contract, hence the claim itself ought to have been dismissed. That once the contract ended, it could not be held that breach of the same was continuous. It was its submission that limitation of time is not a procedural technicality to be overlooked. Reliance was placed on the case of **Michael Maina Nderitu v Kenya Power and Lighting Co. Ltd & another [2013] KEELRC 84 (KLR)**.
6. It relied on **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)** and argued that the court should not rewrite a contract between parties. Further reliance was placed on the case of **John Cornel v A. Grevo (T) Ltd, Civil Case No. 70 of 1998** where the High Court of Tanzania emphasized that no action could arise if bound by limitation of time. It urged the court to allow the application.
7. The respondent submitted that the Adjudicator found that the action was not time barred through a ruling made on 26<sup>th</sup> March 2025. That the applicant did not seek review of that finding by the adjudicator and that the appeal is already determined, hence the court has no further jurisdiction. It is the respondent's submission that the cause of action arose in 2019 even though the contracts were from 2011 and 2012. It stated that the subject of the claim before the adjudicator was based on invoices numbers 800 and 801 which were raised in 2019. It also argued that the cause of action in contract accrues upon breach and not at the end of the contract and it relied on the case of **Banaba O. Oyugi v**

**South Nyanza Sugar Co. Ltd [2019] KEHC 8955 (KLR).** It urged the court to dismiss the application.

### **Issue for Determination**

8. The issue for determination is whether the application has merit.

### **Analysis and Determination**

9. The application is founded on the law on review in civil proceedings. The High Court's power of review is provided for under Section 80 of the Civil Procedure Act as follows:

***“Any person who considers himself aggrieved—***

***(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or***

***(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”***

10. Similarly, Order 45 Rule 1 of the Civil Procedure Rules provides:

***“(1) Any person considering himself aggrieved—***

***(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or***

***(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”***

11. The Adjudicator heard and determined the applicant's preliminary objection founded on limitation of actions by rejecting it. The Adjudicator then heard the claim itself and determined it after the parties canvassed the same by way of documents.

12. The applicant thereafter appealed. Having failed in the appeal against the findings of the adjudicator, but was unsuccessful, this application followed,

through which the applicant claims that the court failed to determine the issue of limitation of actions. According to him, the contracts relied upon by the court in its judgment were made in 2011 and 2012 yet the suit was only filed in 2024. It stated that the claim before the Adjudicator was time barred under section 4(1)(a) of the Limitation of Actions Act which provides:

***“(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—***

***(a) actions founded on contract;***

***(b) .....”[Emphasis added]***

13. In the statement of claim, the respondent referred to invoice number 800 dated 29<sup>th</sup> November 2019 and invoice number 801 dated 30<sup>th</sup> November 2019, both made out to the applicant. These were claims made for the contractual amount. Section 4(1)(a) of the Limitation of Actions Act provides that time is limited from the time when the cause of action arose or accrued, not from the date of the contracts. The dates these invoices are dated was, in fact when the cause of action arose against the applicant.

14. That is to say, breach of the contracts dated 2011 and 2012 occurred through failure by the applicant to pay the respondent the contractual amount, and through the invoices, a cause of action arose following such breach. Such breach did not end with the end of the contract, rather, it is subject to the date when the cause of action arises, that is the date when the demand for the payment was made following breach of contract terms.

15. In the case of **Joseph Odira Ombok v South Nyanza Sugar Company Ltd [2018] KEHC 1315 (KLR)**, the court stated thus regarding similar arguments made by parties:

***“The question before the trial magistrate was when did the respondent’s cause of action accrue for purposes of section 4(1)(a) of the LAA. Two arguments, which had the support of decided cases, were made by the parties. The appellant took the position in South Nyanza Sugar Company Limited v Diskson Aoro Owuor MGR HCCA No. 85 of 2015 [2017] eKLR where the court held that;***

***“[17] There is no doubt in this matter that the parties entered into a contract and which contract was allegedly breached. What is for determination is when exactly the cause of action accrued since from that time the limitation period of 6 years starts running. I do not find that issue difficult to decide on. I say so because when a party enters***

*into a contract for a specific period of time, it does so in the understanding and belief that each of the parties to the contract will observe its part thereof until full execution of the contract. It is only when one of the parties happens to be in breach of the contract that a possible cause of action arises as at that date of the alleged breach and not at the end of the contract period.”*

### **Conclusion and Disposition**

16. Between the time of the cause of action arising against the applicant and the time of filing the claim before the Adjudicator, the period of 6 years given under the Limitation of Actions Act had not elapsed.
17. Therefore, there is no basis for reviewing the findings of the court in its judgment because the issues were determined holistically.
18. Accordingly, the application lacks merit and it is hereby dismissed.
19. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 22<sup>nd</sup> day of April, 2026.**

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**R. MWONGO  
JUDGE**

### **Delivered in the presence of:**

1. Ms. Kihara for Appellant
2. Ms. Nyaga holding brief for Mukami for Respondent
3. Stella Kithinji - Court Assistant