

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. E308 OF 2024

AZALEA HOLDINGS LIMITED	-	PLAINTIFF
VS		
MEHNAZ SARWAR T/A AFGHAN HOUSE	-	1ST DEFENDANT
MUNIB MOHAMED AFZAL DEFENDANT	-	2ND
AMJID MOHMOOD SARWAR DEFENDANT	-	3RD

RULING

(In respect to the 1st and 2nd Defendants' Preliminary Objection dated 5/1/2026 and the Plaintiff's Notice of Motion dated 23/1/2026)

1. This Ruling is in respect to the 1st and 2nd Defendants' Preliminary Objection dated 5/1/2026 and the Plaintiff's Notice of Motion dated 23/1/2026.
2. The Objectors seek an Order for striking out the entire suit on the following grounds:
 - a. The Plaintiff's suit, dated 24/7/2024, being founded on an alleged breach of a lease agreement and a default under a guarantee, was filed more than six years after the cause of action accrued, in gross violation of Section 4(1)(a) and Section 8 of the Limitation of Actions Act, Cap 22 Laws of Kenya.
 - b. All causes of action pleaded in the Plaint allegedly accruing between April 2017 and July 2018, being more than six years before the filing of this suit, are time-barred.
 - c. The Plaintiff's claims for unpaid rent in the sum of Kshs. 3,706,464.27 allegedly accruing between April 2017 and September 2018 are time-barred under the Limitation of Actions Act.

- d. The Plaintiff's claims for unpaid service charges totaling Kshs. 1,406,727.72 from April 2017 to September 2018, unpaid promotional levy totalling Kshs. 79,443.19 from October 2017 to September 2018, and unpaid utilities totalling Kshs. 55,026.65 from June 2018 to August 2018, are time-barred under the Limitations of Actions Act.
 - e. The Plaintiff's claims for interest at the rate of 24% per annum in the sum of Kshs. 7,128,343.14 as of 24th July 2024 on the alleged principal debts are equally time-barred.
 - f. The Plaintiff's claim for lease preparation and registration costs in the sum of Kshs. 196,560.00 is equally time-barred, having accrued more than six years before the filing of this suit.
 - g. The Plaintiff's claim for loss of business and rental income in the sum of Kshs. 11,448,901.74 allegedly arising from premature abandonment of the lease is time-barred under Section 4(1)(a) of the Limitation of Actions Act.
 - h. The Plaintiff's claim for expenses allegedly incurred in reinstating the premises to a tenable condition accrued more than six years before the filing of this suit and is time-barred under the Limitation of Actions Act.
 - i. The claim against the 2nd Defendant under the alleged Guarantee Agreement is time-barred under Section 4(1)(a) of the Limitation of Actions Act.
3. The Plaintiff's Notice of Motion is anchored on the provisions of Sections 1A and 3A of the Civil Procedure Act, Order 1 Rule 10 (2), Order 2 Rule 15, Order 7 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The Plaintiff prays for orders;
- a. This Honourable Court be pleased to strike out and expunge from the Court record the Defendants' Statement of Defence and Memorandum of Appearance irregularly filed on 14/12/2025 for having been filed out of time and in contravention with this Honourable Court's directions issued on 22/9/2025.
 - b. This Honourable Court be pleased to proceed with this suit as

undefended.

c. Costs of the application be borne by the Defendants.

4. The application is premised on the grounds set out on the face of it and in the supporting Affidavit of Valentine Ataka, dated the same day. The Plaintiff's claim is that on 22/9/2025, the Defendants were permitted to file their pleadings within Fifteen (15) days of the Ruling, and that the directions were clear and binding upon the Defendants.
5. The deponent contends that the Defendants failed to comply with the said directions and did not file their Defence and Memorandum of Appearance within the stipulated period. She argues that the Defendants did not seek or obtain any extension of time after the lapse of the Court-directed timelines. She further contends that the Defendants irregularly filed their Statement of Defence and Memorandum of Appearance on 14/12/2025, long after the time granted for compliance. She asserts that allowing the Defence to remain on record would not only undermine the authority of this Court but also create a bad procedural precedent.

The 1st and 2nd Defendant's Replying Affidavit

6. The 1st and 2nd Defendants vehemently opposed the application by reference to the Replying Affidavit of Stephen Barasa, their counsel on record, sworn on 11/2/2026. Counsel avers that after directions were issued, he contacted his clients and requested that they assemble and submit documents in support of their case. He further avers that he then instructed his legal assistant to file and serve the Defence and the accompanying documents. Unfortunately, the legal assistant left employment without notice. He further attributes the delay in filing the Defence to the 1st Defendant's illness and, given the time lapse since the execution of the contract, the retrieval of the documents became a challenge.
7. He states that he only realized on 14/12/2025 that the pleading had never been filed. He asserts that upon realizing the lapse, he

immediately filed the Statement of Defence and the Memorandum of Appeal.

8. Counsel deposes that the delay in complying with the Court's directions was inadvertent and regrettable. He contends that striking out the Statement of Defence and the Memorandum of Appeal is tantamount to condemning the Defendants unheard, on account of an inadvertent mistake by their Advocate, a mistake that should never be visited on an innocent litigant.
9. The deponent further avers that the Statement of Defence filed herein raises triable issues that go to the root of the Plaintiff's case; hence, it is only fair and just that the suit be determined on the merits. That, pursuant to Article 159(2)(d) of the Constitution, Section 95 of the Civil Procedure Act, and Order 50 Rule 6 of the Civil Procedure Rules, it is in the interests of justice that the Plaintiff's application be dismissed.
10. On 29/1/2026, the Court directed that the Preliminary Objection and the Notice of Motion be heard together and canvassed by way of written submissions. Both parties complied. The Plaintiff's submissions are dated 1/3/2026, whereas the 1st and 2nd Defendants' submissions are dated 11/2/2026.

The 1st and 2nd Defendants' submissions

11. In respect of the Preliminary Objection, the 1st and 2nd Defendants identify three issues for determination. The issues are; a) Whether the Plaintiff's suit is time-barred. b) Whether the Plaintiff's suit, by its bare allegation of acknowledgment in paragraph 10 of the Plaint, can defeat a limitation objection. c) Whether the Plaintiff's claim for interest and guarantee on time-barred principal debts (rent) is equally time-barred.
12. On the first issue, the 1st and 2nd Defendants cite the provisions of Section 4 (1) (a), Section 8 and Section 2 (4) (c) of the Limitation of Actions Act, which cap the period for the collection of rent to six (6) years, and aver that each instalment of rent creates its own separate

cause of action with its own independently running six-year limitation clock. They further aver that limitation is not a procedural technicality; it goes to the very jurisdiction of the Court to entertain it. That, on the Plaintiff's own pleaded case;

- a) Unpaid rent: KES 5,706,484.27 for the period April 2017 to September 2018 — time-barred under Section 4(1)(a) and Section 8 of the Act.
 - b) Unpaid service charges: KES 1,406,727.72 for the period April 2017 to September 2018 — time-barred under Section 4(1)(a) of the Act.
 - c) Unpaid promotional levy: KES 79,443.19 for the period October 2017 to September 2018 — time-barred under Section 4(1)(a) of the Act.
 - d) Unpaid utilities: KES 55,026.65 for the period June 2018 to August 2018 — time-barred under Section 4(1)(a) of the Act.
 - e) Interest at 24% p.a.: KES 7,128,343.14 — derivative of time-barred principal debts.
 - f) Lease preparation costs: KES 196,560.00 — time-barred under Section 4(1)(a) of the Act
 - g) Loss of remainder rental income: KES 11,448,901.74 — time-barred under Section 4(1)(a) of the Act
 - h) Reinstatement expenses: Unquantified — time-barred under Section 4(1)(a) of the Act
13. That under Section 2 (4) (c), each instalment of rent became a separate cause of action on the date it fell due. That the six-year limitation period for the earliest rental arrears claims expired on 1/7/2024. The suit filed on 24/7/2024 is therefore time-barred in respect of the rental arrears claim. That the claims for arrears of service charge, promotional levy and utilities accruing between April 2017 and July 2018 had already fallen outside the six-year limitation period by 17/7/2024.

14. Regarding the specific question of loss of rental income of Kshs. 448,901.74, the claim for premature abandonment is not at the end of the contract period. The lease was terminated by the Plaintiff's letter of 25/7/2018. The Plaintiff's suit was filed on 24/7/2024, six years and one day after the lease termination. On the face of its own pleadings, the Plaintiff's entire suit is statute-barred. The Court therefore lacks jurisdiction to entertain it.
15. As to whether the Plaintiff's bare allegation of "acknowledgement" in Paragraph 10 of the Plaint can defeat a limitation objection, the 1st and 2nd Defendants submit that the allegation cannot defeat the preliminary objection, as the 1st Defendant made a payment proposal, not an unconditional admission of a specified debt. Citing Section 24 of the Limitation of Actions Act, the Plaintiff's Plaint does not plead that the correspondence was signed, that it contained an unequivocal admission of a specified ascertained debt, or that it was unconditional. It is submitted that the exhibited emails, which are not signed, do not constitute an unequivocal acknowledgement of any alleged specified debts when read on their face.
16. On the last issue, it is submitted that the Plaintiff's claim for interest of Kshs. 343.14 at 24% per annum on the alleged principal debts is in question. Counsel cites Sections 2(4)(c) and 23(3) of the Limitations of Actions Act and avers that there is no independent cause of action for interest divorced from the principal obligation. It is argued that if the underlying principal debts are time-barred, the interest claim falls with them.
17. In the application, the 1st and 2nd Defendants identify four (4) issues for determination. The first issue is whether the delay in filing the Defence arose from inadvertence or from deliberate obstruction of justice. The 1st and 2nd Defendants submit that the delay was inadvertent and reiterate the reasons set out in their Replying Affidavit. They argue that, in the present circumstances, striking out the Defence would condemn

the Respondents unheard for a procedural lapse attributable entirely to administrative error beyond their control.

18. The second issue is whether the Court should exercise its discretion to regularise the Defence. Counsel cites Section 95 of the Civil Procedure Act, Order 50 Rule 6 of the Civil Procedure Rules, and the Court of Appeal decision in *Abdirahman Abdi -vs- Safi Petroleum Products Ltd. & 6 Others* (2011) KECA 183 (KLR). It is submitted that the delay is fully and candidly explained; that there is no abuse of Court process, as the Defendants have been keen to defend the suit; that whereas the Plaintiff will not suffer any prejudice, the Defendants stand to suffer grave prejudice, as judgment is likely to be entered against them without a hearing on the merits; that the enlargement is necessary, as the Defence raises triable issues; and that it is in the interests of justice and fairness to be administered under Article 159 (2) (d) of the Constitution. Therefore, striking out the pleadings would greatly disadvantage the Defendants.
19. The third issue is whether the Defence raises triable issues. It is argued that the Defence, filed on 14/12/2025, raises triable issues that go to the very foundations of the Plaintiff's case. For instance, the assertion that the suit is statute-barred cannot be wished away.
20. Finally, regarding whether the balance of prejudice favours regularization, it is argued that the balance of prejudice overwhelmingly favours the regularization of the Defence. The 1st and 2nd Defendants therefore urge the Court to dismiss the application with costs and to regularise the filed Defence and Memorandum of Appearance.

The Plaintiff's submissions

21. On the Preliminary Objection, the issue identified by the Plaintiff is whether it meets the threshold for a proper preliminary objection, as set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, ultimately rendering the Plaintiff's suit time-barred.

22. The Plaintiff submits that the Defendants, in correspondence dated 26/7/2018 and 6/8/2018, acknowledged arrears and even proposed payment. That the effect of the acknowledgment of debt gave rise to a fresh period of limitation. The Plaintiff cites the case of Laemthong Rice Co. Ltd. -vs- Principal Secretary Ministry of Finance (2002) 1 EA 119, as well as Telkom Kenya LTD. -vs- Kenya Railways Corporation (2018) KEHC 8424 (KLR), where it was held that, for the purposes of Section 23 (3) and Section 24 of the Limitation of Actions Act, an acknowledgment must be in writing and signed by the person making it. The Plaintiff argues that the acknowledgment of debt is an evidential matter not suitable for determination by way of a preliminary objection.
23. As to whether the Plaint is time-barred, the Plaintiff avers that the Plaint pleads a continuing breach arising from lease obligations that accrued periodically, and that it is therefore misleading for the Defendants to allege that the default commencing in April 2017 is time-barred.
24. Turning to the application, the Plaintiff identified two issues for determination; The first is whether a defence filed out of time and without leave of Court is competent. The Plaintiff submits that it is trite law that, where a party fails to comply with the set timelines, the proper course is to first seek leave to file a defence out of time. The Plaintiff cites the Supreme Court decision in Nicholas Kiptoo Arab Korir Salat -vs- IEBC & 7 Others (2014) Eklr, where the apex Court held that “where time has lapsed, one needs to first seek extension of that time before doing the act, and that a filing made out of time without leave is a nullity of no legal consequence.” It is contended that filing a defence out of time without leave is an illegality that the Court cannot cure, as espoused in the said decisions.
25. The second issue is whether the Defendant’s explanation for the delay can cure non-compliance. The Plaintiff cites Gerald Mwithia -vs- Meru College of Technology & Another (2018) e KLR, where the Court held that clients cannot continue to hide behind their advocates’ failures and

that it is incumbent on the client to follow up on the progress of their case. It is submitted that, while striking out pleadings is draconian, allowing the defence to stand would undermine the authority of this Court and create a bad precedent. The Plaintiff urges the Court to strike it out with costs.

Analysis and determination

26. I have considered the Pleadings, the preliminary objection, the application, the rival affidavits, as well as the submissions filed herein and the issues falling for determination are: -

- a. Whether the preliminary objection raises pure points of law;
- b. Whether the suit herein is statute barred
- c. Whether the 1st and 2nd Defendants' Statement of Defence should be struck out
- d. Which orders should the Court issue?

Whether the preliminary objection raises pure points of law;

27. The starting point is to define what a preliminary objection is. On what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -Vs- Suleiman Said Shabal & 2 others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukisa Biscuit Manufacturers Ltd -vs- West End Distributors Ltd (1969) E.A where the Court of Appeal said that:

“...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 need to be ascertained or if what is sought is the exercise of judicial discretion.”

28. Prior to determining a question raised as a Preliminary point, the Court is required to first satisfy itself that the issue raises a pure point of law.

29. The required threshold for distinguishing between questions of law and fact for purposes of sustaining a preliminary objection as is also a point

that is well crystalized. In the case of George Oraro -vs- Eston Mbaja [2005] eKLR where the Court held that: -

“A preliminary objection is ... 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...”

30. The Objector contends that the Court has no jurisdiction to hear and determine the instant suit, as it is statute-barred. The issue of jurisdiction and whether a suit is time-barred is a pure point of law that can determine the matter without considering the merits of the case. This was the holding in *Bosire Ongero v Royal Media Services* [2015] eKLR. The preliminary objection is on a point of law, and the Court is satisfied that it has been properly and validly taken.
31. Whether the Plaintiff's suit is time-barred by statute on account of limitation goes to the Court's jurisdiction to entertain the suit. If the suit is time-barred on account of limitation, the Court lacks jurisdiction to entertain it.

Whether the suit herein is statute-barred

32. Section 4 of the Limitation of Actions Act Cap 22 Laws of Kenya prescribes the limitation period for the institution of suits in respect of various causes of action. In respect of actions founded on contract, the limitation period is six years.
33. The object of the law of limitation was stated in the case of *Gathoni v Kenya Co-operative Creameries Ltd* (1982) KLR 104 where the Court of Appeal held that: -

“...The law on limitation of actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them.”

34. Similarly, in the case of *Rawal v Rawal* [1990] KLR 2 the Court held that:

- “The object of any limitation is to prevent a Plaintiff from prosecuting stale claims on the one hand and on the other hand protect a Defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. It is to extinguish claims.”

35. Further in the case of *Iga v Makerere University* [1972] EA 65, the Court held that: -

“A plaint which is barred by limitation is a plaint barred by law. Reading these Provisions together it seems clear that unless the applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought when a suit is time barred the Court cannot grant the remedy or relief sought.”

36. The Plaintiff instituted this suit against the Defendants on 25/7/2024.

37. The 1st and 2nd Defendants argue that the Plaintiff seeks to recover unpaid rent of Kshs. 5,706,484.27 for the period April 2017 to September 2018; unpaid service charges of Kshs. 1,406,727.72 for the period April 2017 to September 2018; unpaid promotional levy: KES 79,443.19 for the period October 2017 to September 2018; unpaid utilities: KES 55,026.65 for the period June 2018 to August 2018; interest at 24% p.a.: KES 7,128,343.00; lease preparation costs: KES 196,560.00; loss of remainder rental income: KES 11,448,901.74; and reinstatement expenses. That the said claims are statute-barred, having been filed outside the six-year period.

38. From the averments in the Plaintiff's claim is for the recovery of unpaid rent due under a Lease Agreement dated 28/3/2017 between

the parties, in which the Plaintiff was the Lessor and the Defendant was the Lessee. The Plaintiff also seeks compensation for loss and damage arising from the Defendant's breach of the terms of the Lease Agreement. It is alleged that the Lease was breached on or about 1/4/2017. The Plaintiff further alleges that, through correspondence, including correspondence dated 26/7/2018 and 6/8/2018, the 1st Defendant acknowledged the outstanding arrears and made payment proposals. The Plaintiff avers that the 1st Defendant's breach persists to date and that the Plaintiff has suffered loss amounting to Kshs. 23,824,906.71 as at 24/7/2024.

39. The issue that arises for determination is when did the cause of action accrue? In the case of Edward Moonge Lengusuranga -vs- James Laniyara & Another [2019] eKLR the Court defined a cause of action as follows: -

"A cause of action is a set of facts sufficient to justify a right to sue to obtain money, property or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings a suit."

40. Section 23 (3) of the Limitation of Actions Act states 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.

41. It is evident that the Defendants acknowledged the debt in various correspondences, the last of which was dated 6/8/2018. In my view, the cause of action started running from the date of the last acknowledgment. The instant suit was filed on 25/7/2024. Six years would have lapsed on 7/8/2024.

42. It is therefore my finding that the suit was not statute-barred. It was filed within the timeframe provided under the Act. The 1st and 2nd Defendants' Preliminary Objection is therefore unmerited and is hereby dismissed.

Whether the 1st and 2nd Defendants' Statement of Defence should be struck out

43. The Court's jurisdiction to strike out pleadings is found under Order 2 Rule 15 of the Civil Procedure Rules, which provides thus;

"Rule 15. (1) At any stage of the proceedings, the Court may order that any pleading be struck out or amended on the ground that—

(a) It discloses no reasonable cause of action or defence in law; or

(b) It is scandalous, frivolous or vexatious; or

(c) It may prejudice, embarrass or delay the fair trial of the action; or

(d) It is otherwise an abuse of the process of the Court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

44. The test for striking out pleadings is as reiterated in the case of Kenyariri -vs- Double Win Company Ltd and 2 others [2024] KEELC 1609 (KLR), the Court held that;

"It is trite that striking out pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham."

45. The Court of Appeal in Blue Shield Insurance Company Ltd -vs- Joseph Mboya Oguttu [2009] eKLR restated this principle thus;

“The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 Rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the Defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows: -“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”We too would not express our opinion on certain aspects of the matter before us.

In that judgment, the learned Judge quoted Dankwerts L.J in the case of Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others (No.3) (1970) ChpD 506, where the Lord Justice said: -“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”We may add that like Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

46. The rationale is that striking out a pleading and exercising the powers for summary procedure are draconian, coercive and drastic. Therefore, striking out a pleading must be done with tremendous caution, because a litigant should never be driven from the seat of justice without being

heard. See *Prafulla Enterprises Ltd v Norlake Investments Ltd*, Kisumu High Court Civil Case No. 145 of 1997; LLR 7412 (HCK).

47. The Court must therefore exercise the powers to strike out a pleading or case with the greatest care and circumspection and only in the clearest of cases should the Court strike out a pleading.
48. The Plaintiff seeks to have the 1st and 2nd Defendants' Defence filed on 14/12/2025 struck out on the grounds that it has been filed out of time.
49. Article 159 (2) (d) of the Constitution mandates that this Court administer justice without undue regard for procedural technicalities. It is true that the 1st and 2nd Defendants delayed in filing the Defence. On 22/9/2025, the Court allowed the Defendants to file and serve their Defence within 15 days. Leave of 7 days was also granted to the Plaintiff to file a response, if need be. Parties were granted leave to file their Bundle of Documents by 31/10/2025, and the suit was fixed for hearing.
50. The 1st and 2nd Defendants have blamed their Advocate's inadvertent mistake for the failure to file the Defence and have sought the Court's indulgence to consider the Defence as duly filed. In the case of *Gerald Mwithia Vs Meru College of Technology & Another* [2018] eKLR, cited by the Plaintiff, the Courts have held on several occasions that -

"Clients cannot continue to hide behind the failure of their advocates to perform certain required actions on their part and that it is incumbent upon the clients to follow up the progress of their case, this premised on the fact that the case does not belong to the advocate but the client."

51. It has not been shown that the Defendants attempted to check whether their pleadings and documents had been filed. They cannot therefore blame their counsel's mistake. The Defence was filed about 2 months and 24 days after the Court's directions on 22/9/2025. The delay is inordinate.
52. It is not in doubt that, in deciding whether or not to grant leave to extend time, the Court is called upon to exercise its discretion and to be

satisfied that there is sufficient cause to allow it to extend time. In this instant suit, the reasons given by the Defendants do not hold water. The Court is thus not satisfied that the Defendants have given sufficient reason to warrant the Court exercising its discretion in their favour.

53. However, as this is a land matter, the Court has perused the filed Defence and notes that it raises triable issues. I also note that no prejudice would be occasioned to the Plaintiff if the Defence filed out of time is allowed to stand.

54. The Court therefore finds and holds that, purely in the interests of justice, the 1st and 2nd Defendants' Defence, filed on 14/12/2025, be allowed to stand as filed, so that the case may be heard on the merits.

55. Final orders for disposal

a. The upshot of the foregoing is that the Plaintiff's Notice of Motion Application dated 23/1/2026 and the 1st and 2nd Defendants' Preliminary Objection dated 5/1/2026 are unmerited and are hereby dismissed.

b. Each party shall bear its own costs.

56. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF APRIL, 2026 VIA MICROSOFT TEAMS.

**J. G. KEMEI
JUDGE**

Delivered Online in the presence of:

1. Ms. Gichuki HB Dr. Ataka for the Plaintiff
2. Mr Barasa for the Defendants

3. CA - Ms. Yvette

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