



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI, NAIROBI

ELCLC SUIT NO E631 OF 2025

**LYDIA JEPKORIR LAGAT PLAINTIFF/
APPLICANT**

-VERSUS-

**TELEPOSTA PENSION SCHEME
TRUSTEES REGISTERED..... DEFENDANT/
RESPONDENT**

RULING

Introduction

1. The matter is coming up for determination on the notice of preliminary objection dated 12th February 2026 filed in opposition to the applicant's notice of motion application dated 16th December 2025, in which the Applicant herein seeks injunctive orders as against the respondent. The notice of preliminary objection raised the following grounds
 - a) **THAT**, this Honourable Court does not have the jurisdiction to hear the application and the entire suit as it offends the provision of section 4 of the limitations of Actions Act chapter 22 laws of Kenya after having been filed outside the 6-year time frame for institution of claims for breach of contract
2. The court directed for the notice of preliminary objection be dispensed off by written submissions and both parties complied with the applicant drafting submissions dated 31st March 2026 while the respondent drafted submissions dated 13th February 2026.

Respondent's submissions

3. In support of their notice of preliminary objection the respondent submitted that the issue raised was a pure point of law touching on jurisdiction and hence capable of disposing the suit property hence rightfully before this court as in the **Mukisa Biscuit Manufacturing Co Ltd Vs West End Distributors Ltd (1969) EA 696**

That the sale agreement being relied on by the applicant was entered into in the year 2026 which is 20 years after the cause of action arose outside of the 6-year limitation period hence time barred relying in what was stated in **Macharia & Another Vs Katua & 4 others (2024)KEELC (KLR)**

Applicant's submissions

4. The applicants submitted that the respondent's preliminary objection was not raising a pure point of law hence does not meet the definition of what constitutes a preliminary objection.
- That the cause of action arose in the year 2025 when the defendant attempted to dispose of the suit property.
- That the defendant continued to receive payment on the suit property well after the alleged lapse of the completion period which amounted to an acknowledgement of the continuing breach and hence cannot claim limitation of time relying on the case of **Serah Njeri Mwobi Vs John Kimani Njoroge (2013) KECA 501 (KLR)**

Analysis and determination

5. Having considered the Notice of Preliminary objection and the submissions herein the only issue for determination is whether the Notice of Preliminary Objection dated 12th February 2026 is merited. The threshold of a preliminary objection was set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd. - Vs- West End Distributors Ltd (1969) EA 696** as follows: "...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. "The Court went further to note 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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop."*
- The notice of preliminary objection dated 12th February 2026 is founded on the notion that the suit is improperly before this court as it lacks jurisdiction to entertain the same. It goes without saying

that without the requisite jurisdiction a court of law down its tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law. The question of limitation is not a mere technicality but goes to the jurisdiction of the Court. As held in **Bosire Ongero -Vs- Royal Media Services [2015] eKLR**, limitation “touches on the jurisdiction of the court, which means that if a matter is statute-barred, the court would lack jurisdiction to entertain it.” The Court of Appeal in **Owners of the Motor Vessel “Lilian S” -Vs- Caltex Oil (Kenya) Ltd [1989] KLR 1** famously stated: “Jurisdiction is everything; without it, a court has no power to make one more step.”

The respondent’s claim is that this is an action founded on contract based on a sale agreement entered into in the year 2006 when the cause of action arose and the applicant having filed this suit 20 years later makes it statute barred.

Section 4 of the *Limitation of Actions Act* provides for limitation of actions in contracts as follows:

Actions of contract and tort and certain other actions

(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) actions to enforce a recognizance;
- (c) actions to enforce an award;

(d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

6. The applicant however indicates that the conduct of the respondent leads to acknowledgement of the breach if at all the cause of action arose in the year 2006. That she has been in continuous possession of the suit property with the express knowledge of the respondent. That further the cause of action arose when she became aware that the respondent intended to dispose off the said property subject of the sale agreement which was not up until 2025. Notwithstanding that the notice of preliminary objection raises a pure point of law on the issue of jurisdiction, the point raised of it being statute barred and the rebuttal arguments that there was acknowledgement of the breach calls for this court's interrogation into facts and pleadings to establish whether indeed the respondent acknowledged the said breach keeping in mind that the applicant has been in possession for over 20 years

7. In the case of **Narne Rama Murthy vs Ravula Soma Sundarama and Others, Supreme Court of India, 2005** stated as follows: "*... the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and ...*

been stating that the purchase had been made on behalf of all. 5. We also see no substance in the contention that the suit was barred by limitation and that the Courts below...should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is”

8. Given the foregoing, the issue of limitation of actions is a mixed question of law and fact, requiring evidentiary proof, and cannot be properly raised as a Preliminary Objection. Therefore, whereas the question of whether the suit is time-barred is a factual matter, the determination of whether the cause of action accrued outside the prescribed statutory period requires an inquiry into the facts, which can only be determined upon evidence being adduced.
9. Therefore, a Preliminary Objection must be based on current law and be factual in its Constitution. It cannot be based on disputed facts or facts requiring further inquiry. In determining a Preliminary Objection, therefore, only three documents are required in addition to the Constitution – the impugned law, the Pleat, and the Preliminary Objection. If you have to refer to the Defence, then the Preliminary Objection is untenable.
10. As already stated above, a Preliminary Objection must raise pure points of law. This was held in **Mukisa Biscuit Manufacturing Co. Limited -Vs- West End Distributors Ltd (supra)**, and must consist of a pure point of law, and where facts

are disputed, the matter cannot be determined at the preliminary stage.

11. In my considered view, the Respondent has improperly invoked the Preliminary Objection procedure. The issue of limitation should be raised by way of a formal application supported by evidence and not as a Preliminary Objection, since the Preliminary Objection offends the principles of fair hearing and access to justice. Even if I was to assume that the limitation is a valid concern, the Plaintiff/applicant is entitled to be heard on any exceptional circumstances that may justify extension of time, which requires factual proof.

12. Thus, while some older cases suggested limitation as a pure point of law, recent jurisprudence emphasizes that if any evidence or factual dispute is involved, it must be dealt with through a proper application, not a Preliminary Objection, to uphold fair play and efficient justice.

Final disposition

13. The upshot of the above is that;
- i. That the notice of Preliminary Objection dated 12th February 2026 is not merited and the same is dismissed.
 - ii. Costs be awarded to the applicant.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **29th day** of **April 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Gakunju for Elijah Mwago..... for the Applicant

Ms. Kimara for Bundotich..... for the Respondent

Philomena W Court Assistant