

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL & TAX DIVISION  
HCC NO. E703 OF 2024

SYNERGY INDUSTRIAL CREDIT LIMITED.....PLAINTIFF

-VERSUS-

METRO LOGISTICS LIMITED.....1ST DEFENDANT

JOHN MBURU NJOROGE.....2ND DEFENDANT

BEATRICE WANJIKU MBURU.....3RD DEFENDANT

**RULING**

1. Before the court for determination is the defendant's preliminary objection dated 30/1/2025. The defendants raised a preliminary objection and sought to have the entire suit struck out on the following grounds that: -

- i. There is no cause of action against the 2nd and 3rd Defendants;
- ii. The suit offends the doctrine of separate corporate personality;  
and
- iii. The claim is statute-barred under Section 4(1) of the Limitation of Actions Act.

2. The defendants argued that under the principle in Salomon vs Salomon & Co. Ltd (1897) AC 22, a company is a distinct legal entity separate from its directors and shareholders, and therefore, liability cannot attach to the

latter unless the corporate veil is lifted. They submitted that no basis had been laid to justify piercing the corporate veil, as there was no evidence of fraud or illegality.

3. The defendants further contended that the plaintiff's attempt to lift the corporate veil through an affidavit was procedurally improper, and cited Daniel Ogare vs Herne Limited; Gopal Dhanji Patel (Applicant) (2021) eKLR to demonstrate that execution against directors without prior lifting of the veil is irregular.
4. On limitation, the defendants submitted that the claim was statute-barred under section 4(1) of the Limitation of Actions Act, which prescribes a six-year limitation period for contractual claims. They noted that the cause of action arose from agreements entered into in 2015 and/or 2016, while the suit was filed on 25/11/2024, well outside the statutory period, and no leave had been sought to extend time. They maintained that the claim, therefore, offended mandatory statutory provisions and deprived the court of jurisdiction.

### **Plaintiff's opposition to the Preliminary Objection**

5. The plaintiff filed written submissions dated 15/7/2025 in opposition to the Preliminary Objection. It was submitted that there existed a valid cause of action against the 2nd and 3rd defendants, relying on the principle that courts do not rewrite contracts as affirmed in National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another (2001) and

*Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited (2017)*. They contended that the hire purchase agreements entered into between 2015 and 2016 were undisputed and legally binding.

6. It was further submitted that, in addition to the agreements with the 1st defendant, the 2nd and 3rd defendants executed personal guarantees and undertakings in their individual capacities, thereby assuming liability for any default. The plaintiff argued that these guarantees created separate and enforceable obligations, establishing contractual relationships between the plaintiff and the 2nd and 3rd defendants independent of the 1st defendant.
7. On limitation, the plaintiff submitted that the claim was not time-barred. They contended that pursuant to sections 23(3) and 24 of the Limitation of Actions Act, time began to run afresh from the date of the last acknowledgment or payment. It was argued that the 1st defendant made partial payments in 2020 and subsequently acknowledged the debt through written correspondence in 2022, 2023, and 2024, as well as signed statements of account.
8. Accordingly, the plaintiff submitted that the claim fell within the statutory period and was properly before the court.

### **Analysis and Determination**

9. From the submissions, the sole issue for determination is whether the preliminary objection is merited.
10. From the pleadings, it is evident that the plaintiff instituted the present suit against the defendants vide a plaint dated 14/11/2024. Its case was that it entered into 6 hire purchase agreements with the 1st defendant, whereby it was the financier while the 1st defendant was the hirer.
11. The plaintiff asserted that the hire purchase facilities were secured by, *inter alia*, the personal guarantees given by the 2nd and 3rd defendants who are directors and shareholders of the 1st defendant.
12. In the plaint, the plaintiff asserted that the defendants failed to fulfill their repayment obligations as required under the hire purchase agreements, thus they jointly breached the said agreements.
13. The first ground of objection is that there is no cause of action against the 2nd and 3rd defendants.
14. From the record, there is no dispute that the plaintiff and the 1st defendant entered into several hire purchase agreements between 2015 and 2016. It is also clear that in respect of each of those facilities, the 2nd and 3rd defendants executed personal guarantees. The documentary evidence contained in the plaintiff's bundle dated 14/11/2024 clearly demonstrates that the guarantees were executed by the 2nd and 3rd

defendants in their individual capacities, thereby creating binding and enforceable obligations separate from those of the 1st defendant.

15. In KCB Bank Kenya Limited v Charingcross Communication Agency & another [2025] eKLR, the court affirmed that a guarantee creates a secondary obligation on the part of the guarantor to answer for the debt of the principal debtor, and that such obligation constitutes a continuing security for all sums due.

16. In the premises, the Court finds that the 2nd and 3rd defendants' liability arises not from their status as directors of the 1st defendant, but from the personal guarantees they executed. The doctrine of separate corporate personality is therefore of no avail to them.

17. It therefore follows that the plaintiff has disclosed a valid and sustainable cause of action against the 2nd and 3rd defendants.

18. Concerning the objection that the claim is statute-barred, the material on record shows that the 1st defendant made part payments towards the outstanding debt in August and September 2020. Further, the 1st defendant acknowledged the debt on multiple occasions through written correspondence dated 10/2/2022, 30/3/2023, and 4/10/2024, in which it admitted its default and indebtedness to the plaintiff.

19. There are also signed statements of account, including those acknowledged as late as 2023 by the 2nd defendant on behalf of the 1st defendant, confirming the subsistence of the debt.

20. These acknowledgements and payments bring the claim squarely within the scope of **section 23(3) of the Limitation of Actions Act**, which provides that time begins to run afresh from the date of the last acknowledgement or part payment. The provision 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 to or accountable therefore 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 payment of interest is treated as a payment in respect of the principal debt.”*

21. In **Telkom Kenya Limited v Kenya Railways Corporation** [2018] eKLR, the court adopted the decision in **Shire v Thabiti Finance Co. Ltd** [2002] 1 EA 279 and further stated thus –

*“The decision in Shire (supra) is binding upon this court. I am also convinced with the reasoning and would agree with it wholly. An acknowledgement in the absence of a contrary provision in the statute gives an already barred action a new birthday. The action is revived de novo. The acknowledgement need not be made when the time is running. It may be made after expiry of time and will still suit the purposes of Section 23 of Limitations of Actions Act.”*

22. The effect thereof is that the limitation period was extended, and the cause of action accrued from the date of the last acknowledgment or payment.
23. In the circumstances, the claim as instituted by the plaint dated 14/11/2024 falls within the prescribed statutory period and cannot be said to be time-barred.
24. The upshot of the foregoing is that the Court finds the Preliminary Objection dated 30th January 2025 unmeritorious. The same is hereby dismissed with costs in favour of the Plaintiff.
25. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI  
THIS 17<sup>TH</sup> DAY OF APRIL 2026

A handwritten signature in blue ink, appearing to be 'J. J. Mwangi', written over a light-colored rectangular stamp or background.

HON. MR. JUSTICE MOSES ADO  
*Judge of the High Court*

In the presence of: -

*C/A – Moses*

*Muriithi..... for the Plaintiff*

*Ms. Tuwei..... for the Defendants*