

**IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: MURGOR, LAIBUTA & NGENYE,
J.J.A.) CIVIL APPEAL NO. E118 OF 2023**

BETWEEN

ABDULLA ALI TAIB (*Sued as the Legal Representative of the Estate of SHEIKH ALI TAIB BAJABER - Deceased*).....**APPELLANT**

AND

**MAYFAIR ESTABLISHMENTS LIMITED1ST
RESPONDENT KENNEDY ELLAM WEKESA**
*(Sued as the Legal Representative of the Estate of
GEORGE ELLAM WEKESA-Deceased).....2ND
RESPONDENT*
**SELINA WEKESA 3RD
RESPONDENT CATHERINE WEKESA
4TH RESPONDENT**

(Being an appeal against the Ruling and Orders of the Environment and Land Court of Kenya at Mombasa (L. L. Naikuni, J.) delivered on 30th May 2023

in

**ELC Cause No. 99 of
2022)**

**JUDGMENT OF THE
COURT**

1. This is an appeal against the ruling and orders of the

Environment and Land Court at Mombasa (L. L. Naikuni, J.) dated 30th May 2023 in ELC Cause No. 99 of 2022 in which, by a Plaint

dated 7th September 2022, the 1st respondent (Mayfair Establishments Limited) instituted a suit against the appellant (Abdulla Ali Taib, sued as the legal representative of the estate of Sheikh Ali Taib Bajaber - deceased); the 2nd respondent (Kennedy Ellam Wekesa, sued as the legal representative of the estate of George Ellam Wekesa - deceased); the 3rd respondent (Selina Wekesa); and the 4th respondent (Catherine Wekesa).

2. The 1st respondent's case was that it purchased and became the registered proprietor of the suit property known as Mombasa/Block X/97 on 11th May 2020; that the property was transferred to it subject to the then existing terms and covenants affecting the property; that, prior to its acquisition from the previous freehold proprietors, the suit property was subject to a long-term lease for the remainder of the term of 99 years commencing on 1st January 1948 and due to expire in 2047; and that the lease had been granted in favour of the late George Ellam Wekesa, whose estate was represented by the 2nd respondent.

3. The 1st respondent averred that it was a material term of the lease between the then freehold proprietor and the late George Ellam Wekesa that the lessee was prohibited from subletting, transferring or otherwise disposing of the leasehold interest without the consent and authority of the freehold proprietor; that, in breach of this term and without the requisite consent, the late George Ellam Wekesa purported to transfer or dispose of the remainder of the leasehold interest to the late Sheikh Ali Taib Bajaber (whose estate was represented by the appellant) with effect from 25th November 2002; that this transaction was unlawful, null and void, and incapable of conferring any enforceable interest in the suit property; and that the alleged breach had the effect of terminating the lease previously held by the late George Ellam Wekesa.

4. The 1st respondent further averred that the registration of the lease or sub-lease in favour of the appellant's predecessor was fraudulent, illegal and invalid; and that the purported leasehold interest in favour of the appellant's predecessor ought to be revoked and cancelled.

5. In addition to the foregoing, the 1st respondent averred that, upon purchase of the freehold interest on 11th May 2010, it became entitled to receive rent reserved under the lease from the lessee and any successor in title; that neither the appellant nor his predecessor paid rent or rates as required under the lease, thereby acting in breach of its terms; that, on 25th February 2021, the appellant deposited Kshs. 6,480 on account of rent arrears, and in admission that rent had not been paid when due; that, by that time, the lease had been automatically determined by reason of the default; and that non-payment of rent and rates constituted additional breaches which entitled the 1st respondent to re-enter and repossess the suit property.

6. The 1st respondent contended that, having disposed of the leasehold interest, the late George Ellam Wekesa ceased to have any rights in the suit property; that neither his estate nor his beneficiaries were entitled to remain in occupation thereof; that the 3rd and 4th respondents (the wife and daughter of the late George

Ellam Wekesa) had unlawfully continued in occupation, committed waste and damaged the suit property, and refused to surrender vacant possession despite persistent demand; and that the appellant and the 2nd to 4th respondents were jointly and severally guilty of trespass upon the suit property.

7. By reason of the matters aforesaid, the 1st respondent sought declarations that the lease in favour of the appellant's predecessor in title and the earlier lease held by the late George Ellam Wekesa were determined by the fundamental breach of the lease terms; that it was entitled to re-enter and repossess the suit property; that the respondents had no rights to occupy or otherwise deal with the land; and that the Land Registrar do cancel the lease registered in favour of the appellant and his predecessors. The 1st respondent also sought a mandatory injunction compelling the appellant and the 2nd to 4th respondents to vacate the suit property, eviction orders in default, and costs of the suit.

8. The appellant entered appearance and filed a Notice of Preliminary Objection dated 7th October 2022 challenging the 1st respondent's suit on the following grounds:

"1. THAT this Honourable Court lacks the Jurisdiction to hear and determine this suit, the same having been filed outside of the time period provided for under Section 7 the Limitations of Actions Act.

2. THAT the Plaintiff's Complaint dated 7th September 2022 and filed on the same date is time barred and grossly offends the Mandatory provisions of Section 7 of the Limitation of Actions Act Chapter 22 of the Laws of Kenya, the same having been filed out of the prescribed time limit under the Law.

3. THAT from the foregoing the entire suit is incurably and fatally defective and the same having been filed without leave of the Court being sought and or granted as required under the law and the same should be struck out with costs to the 1st Defendant.

4. THAT the Complaint is therefore misconceived, bad law, and an abuse of court process."

9. When the suit came up for mention on 14th November 2022 for pre-trial directions, the ELC (L. L. Naikuni, J.) directed that the preliminary objection be disposed of by way of written submissions.

10. In their written submissions dated 14th December 2022, learned counsel for the 1st respondent submitted that the appellant had failed to file written submissions in compliance with the directions given on 14th November 2022; that, other than citing section 7 of the Limitation of Actions Act (the Act), the appellant had not provided any evidence that the suit was time-barred; that the 1st respondent's claim as pleaded against the appellant was uncontroverted, and that the preliminary objection was misconceived in both fact and law; and that the claim as pleaded should be allowed and the preliminary objection dismissed with costs.

11. On their part, learned counsel for the appellant filed written submissions dated 7th February 2023 contending that, prior to its alleged purchase of the suit property in 2010, the 1st respondent was aware of the existence of a lease over the property as admitted in the Plaint, but chose not to institute any action against the appellant; that time began to run in May 2010 when the 1st respondent executed the agreement for sale and became aware of the appellant's alleged breach; that the 1st respondent had 12 years

to approach the court in exercise of their right to ownership; that the 1st respondent instead slept on its right and instituted the suit after the 12 year statutory limitation period; that leave was not sought to file its claim out of time; and that the appellant's Plaint was therefore time barred and ought to be dismissed. Notably, their submissions were accompanied by a Statement of Defence dated 24th January 2023 and filed on 8th February 2023.

12. In its ruling on the preliminary objection dated 30th May 2023, the ELC (L. L. Naikuni, J.) found that, although the impugned transfer or sub-lease occurred in 2002, the 1st respondent only became the registered proprietor of the suit property in May 2010; that the 1st respondent only acquired *locus standi* and an enforceable right to sue upon becoming the registered owner; and that the allegations of illegality of the transfer of the lease in issue, knowledge of the parties, and the nature of the rights claimed were all factual matters requiring evidence, and could not be conclusively determined at the preliminary stage.

13. On the question as to whether the 1st respondent's suit was time-barred, the court held that, although a simple arithmetic calculation suggested that more than twelve years had elapsed between May 2010 and September 2022, limitation could not be determined in the abstract without examining evidence on when the right of action actually accrued; and that, since such determination would require factual proof, the issue was unsuitable for resolution by way of a preliminary objection.

14. Accordingly, the learned Judge found that the appellant's preliminary objection was not sustainable, dismissed it and directed the appellant and the 2nd to 4th respondents to comply with the Civil Procedure Rules by filing their pleadings and documents; ordered that the suit be expeditiously heard and disposed of within 180 days; and that each party do bear their own costs.

15. Aggrieved by the learned Judge's decision, the appellant moved to this Court on appeal vide a Memorandum of Appeal dated 18th July 2023 on a whopping 15 grounds against the grain of Rule 88 of the Court of Appeal Rules, 2022 which enjoins

appellants to

concisely set out the grounds of objection to the decision being appealed against, under distinct heads, and without argument or narrative. The grounds on which the appeal is anchored are:

“1. THAT the Honourable Judge erred in law and in fact in disallowing the Appellant’s Preliminary Objection dated 7th October 2022.

2. THAT despite having rightfully found that the Preliminary Objection satisfied the legal requirements as espoused in the case of **Mukisa Biscuit Manufacturing Company Limited vs West End Distributors**, failed to allow the said Objection.

3. THAT despite having rightfully held that the plea of limitation is a pure point of law that goes to the jurisdiction of the Court, the learned Judge erred in law and in fact in converting it into a factual issue.

4. THAT despite having rightfully held that 1st Respondent's cause of action was filed outside the prescribed time limits as provided for under the Limitation of Statutes [sic] Act, the learned Judge erred in law and in fact in failing to allow the Preliminary Objection by striking out the entire suit.

5. THAT despite having rightfully determined, from the Plaintiff, when the 1st Respondent’s cause of action arose (being 11th May 2010), the learned Judge erred in law and in fact in failing to strike out the 1st Respondent’s suit.

6. THAT the learned Judge erred in law and in fact in failing to strike out the 1st Respondent's suit despite having rightfully determined that the 1st Respondent's suit was filed after 12 years 3 months and 27 days after the cause of action arose.

7. THAT despite having easily ascertained time from the Plaintiff, the learned [Judge] erred in law and in fact in holding that the issue of time lines ought to be determined at the hearing of the suit.

8. THAT despite having rightfully held that the suit was filed outside the time limits as prescribed by Section 7 of the Act, the learned Judge erred in law and in fact in holding that the Appellant would be required to produce evidence to demonstrate that the suit is time barred.

9. THAT the learned Judge erred in law and in fact in extending the scope of the objection by dealing with extraneous factual factors not raised by the Appellant.

10. THAT despite finding that the 1st Respondent got the *locus standi* to institute the suit on 11th May 2010 when it claims to have become the registered owner of the suit property being, Land Reference Number Mombasa/ Block X/ 97, the learned Judge erred in law and in fact in finding that these are matters of pure conjecture and may not be adequately determined through a Preliminary Objection but from a full trial.

11. THAT notwithstanding having confirmed that the 1st Respondent's claim was time barred at the time of filing the suit on

7th September 2022 as per the requirements of Section 7 of the Limitation of Actions Act the learned Judge erred in law and in fact in holding that these are matters of facts and there is need of production of empirical documentary evidence.

12. THAT despite having determined the timelines demonstrating that the suit is statute barred, the learned Judge erred in law and in fact in holding that the 1st Respondent's claim was capable of being heard despite having been brought after the 12 years contrary to the provisions of Section 7 of the Limitation of Actions Act.

13. THAT consequently, the Honourable Judge failed to appreciate that the provisions of Section 7 of the Limitation of Actions Act provide that an action to recover land may not be brought after the end of twelve years from the date of which the right of action accrued to them or through the person they claim from.

14. THAT despite having held that the 1st Respondent's suit was time barred, the learned Judge erred in law and in fact in further holding that evidence need be produced by the Appellants by virtue of Section 7 of the Limitation of Actions Act.

15. THAT the Honourable Judge thus erred in law and in fact in placing too much reliance on the statements by the 1st Respondent instead of placing reliance on the law, substance and weight of the adduced by the Appellant.”

16. On the grounds aforesaid, the appellant prayed that the appeal be allowed with costs; that the ELC's decision be set aside; that the appellant's preliminary objection be allowed in its entirety; and that the 1st respondent's suit be dismissed with costs.

17. When the appeal came up for hearing on the Court's virtual platform on 16th December 2025, the appellant withdrew its appeal as against the 3rd respondent, who was unrepresented, and who did not participate in the proceedings in the superior court.

18. In support of the appeal, learned counsel for the appellant, M/s. Khalid Salim & Company, filed written submissions and a list of authorities dated 11th July 2024 while learned counsel for the 1st respondent, M/s. Asige Keverenge & Anyanyzwa, filed their written submissions dated 25th July 2025.

19. On their part, learned counsel for the 2nd and 4th respondents, Mr. Wameyo of M/s. Wameyo Onyango & Associates,

did not file written submissions, but indicated that the 2nd and 4th respondents

supported the appeal and associated themselves with the appellant's submissions.

20. To our mind, only one determinant issue commends itself for our consideration, namely whether the learned Judge erred in dismissing the appellant's preliminary objection, and in failing to pronounce himself on the pertinent questions as to whether the court had jurisdiction, and whether the 1st respondent's suit was time-barred under and by virtual of section 7 of the Limitation of Actions Act, Cap. 22.

21. In the impugned ruling, the learned Judge appreciated that the appellant had challenged the suit on the ground that it was statute-barred, contending that the 1st respondent's pleadings were filed outside the twelve-year limitation period prescribed under Section 7 of the Act.

22. According to the learned Judge, the central issue as to whether the suit was statute-barred required determination of the

question as to when the appellant's cause of action accrued in view of the fact that time for purposes of limitation would begin to run from that date. He observed that, according to the plaint dated 7th September 2022, the 1st respondent had pleaded that it became the registered owner of the suit property on 11th May 2010 when a certificate of title was issued. However, he found that the matters raised in both the pleadings and the preliminary objection were largely factual and required interrogation at a full trial. He noted, for example, that the appellant had alleged that the 2nd respondent, in defiance of a lease agreement with the freehold proprietor, had unlawfully transferred the remainder of the lease to the 1st respondent on 25th November 2002. The validity and effect of that transfer, he observed, were contested factual issues.

23. The Judge further expressed the view that, although the impugned transfer occurred in 2002, the appellant may only have acquired *locus standi* to institute the suit on 11th May 2010 when it became the registered proprietor. In his assessment, it was possible that the cause of action matured only upon acquisition of title. He described these conclusions as matters of conjecture that

could not

be properly resolved through a preliminary objection, but required a full evidentiary hearing.

24. While acknowledging that a strict computation from 11th May 2010 to 7th September 2022 would exceed twelve years by three months and twenty-seven days, the Judge emphasized that such a determination depended on factual findings supported by documentary evidence. He agreed with counsel for the 1st respondent that the appellant would need to adduce evidence to demonstrate that the suit was indeed barred under Section 7 of the Act. He added that, once factual proof was required, the issue ceased to be a pure point of law capable of disposal by way of preliminary objection.

25. In conclusion, the learned Judge held that determining whether the suit was time-barred would necessitate an analysis of contested facts, which the Court could not properly undertake at the preliminary stage. On that basis, he found the preliminary objection unsustainable and dismissed it. Hence the instant appeal.

26. Taking issue with the learned Judge’s decision, counsel for the appellant began by citing this Court’s seminal decision in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**

(1969) EA 696 where the Court held that:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... 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.”

27. On the authority of **Mukisa Biscuit Manufacturing Co.**

Ltd v West _____ **End**

_____ **Distributors**

Ltd (ibid), counsel faulted the

learned

Judge for holding that the issue of limitation of action was one

that required determination at the trial

and submitted that the

limitation period with regard to an action to recover land is stipulated in section 7 of the Act; that the stipulated period is twelve years; that at the time of its purported purchase of the suit property in 2010, the 1st respondent was aware of the existence of the appellant herein; and that, therefore, time started running in the year 2010 when it became aware of the alleged breach of the terms of the said lease.

28. Counsel further submitted that the 1st respondent's rights over the property accrued from the date it signed the agreement for sale in May 2010; that, according to the Limitation of Actions Act, the 1st respondent had 12 years to approach this Honourable court in exercise of its right to ownership; and that the 12 years period lapsed in May 2022.

29. Citing the case of ***Mehta v Shah*** (1965) EA 321, counsel highlighted the proposition that the object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand and, on the other hand, protect a defendant after he

has lost evidence for his defence from being disturbed after a long lapse of time; and that the effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.

30. In addition, counsel cited the case of **Gathoni v Kenya Co-operative Creameries Limited** [1982] KLR 104 for the

proposition

that the law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them; and that the statute expects the intending plaintiff to exercise reasonable diligence and take reasonable steps in their own interest.

31. As learned counsel contended, it was evident that the 1st respondent slept on their alleged right arising out of the suit property; that, in this regard, equity aids the vigilant and not the indolent; that the 1st respondent's suit was time barred; and that the issue was not whether the 1st respondent had a cause of action or not, but whether or not, at the time of filing the suit, the

time within which the suit should have been brought had already lapsed.

32. Counsel cited the case of **Iga v Makerere University** [1972] EA for the proposition that a Plaint which is barred by limitation is a Plaint barred by law; that the Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought; and that, when a suit is time barred, the Court cannot grant the relief sought.

33. In rebuttal, learned counsel for the 1st respondent submitted that the preliminary objection was urged on the basis of having the Plaint as the only pleading then on record; that there were no agreed facts between the appellant and the 1st respondent at the date of hearing of the preliminary objection; that the doctrine in the **Mukisa Biscuit** case (supra) requires, *inter alia*, that before a preliminary objection is lodged, the facts pleaded by the other side are correct; and that a Preliminary Objection raises a pure point of law which is urged on the assumption that the facts pleaded by the other side are undisputed, and cannot be raised if any fact has to

be ascertained, or if what is sought is the exercise of judicial discretion.

34. Counsel further submitted that, in the absence of any pleading filed by the appellant in the superior court at the time when the preliminary objection was urged on 14th November 2022, the superior court ought to have ascertained the facts and exercise its judicial discretion; that, in the circumstances of this case, the preliminary objection was unavailable to the appellant; that there were no facts agreed between the parties; that the appellant filed his Statement of Defence on 8th February 2023 denying the date when the 1st respondent became the owner of the suit land; and that, therefore, the appellant could not raise a preliminary objection premised upon a disputed fact. Though unrelated to the preliminary objection on the grounds of limitation period, counsel further contended that the 1st respondent's pleadings regarding the appellant's failure to pay rent was also contested; and that a preliminary objection could not arise over those disputed facts.

35. Counsel cited the case of **Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 Others** [2015]

KESC 23 (KLR)

for the proposition that a preliminary objection may only be raised on a “pure question of law”; that, to discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts; and that the facts are deemed agreed, as they are *prima facie* presented in the pleadings on record.

36. In conclusion, counsel submitted that the appellant’s Statement of Defence was filed out of time and did not specifically plead the defence of limitation of time under section 7 of the Act; that the issues raised in the preliminary objection could only be determined in a full trial; that the objection was and is not sustainable; and that the suit is part heard and the 1st respondent has closed its case.

37. We take to mind the fact that section 7 of the Act sets a limitation period of 12 years for actions to recover land, such as the 1st respondent’s suit herein. The section reads:

“7. Actions to recover land

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

38. In its Complaint, the 1st respondent pleaded that the lease made in favour of the 2nd respondent's predecessor (the late **GEORGE ELLAM WEKESA**) was null and void upon its purported transfer to the appellant's predecessor (the late **SHEIKH ALI TAIB**) on 25th November 2002, and having been effected in breach of the terms of the lease. However, the 1st respondent was only entitled to the land on 11th May 2010 when the suit property was transferred to it. The 1st respondent additionally pleaded that the appellant and his predecessor had also breached the terms of the lease by failing to pay rent to the 1st respondent and its predecessor in title, and by failing to pay rates due to the County Government of Mombasa and to its predecessor.

39. Reading from the 1st respondent pleadings in the Complaint, the right of action in this case accrued on 11th May 2010 when it

became the registered proprietor of the suit property. The appellant's preliminary objection was premised on the ground that the 1st respondent's suit was filed outside the statutory period stipulated in section 7 of the Limitation of Actions Act. This submission was founded on the 1st respondent's pleadings in its Complaint to the effect that the 1st respondent's right of action accrued on 11th May 2010, the date from which the limitation period started to run.

40. It bears emphasis that the two-fold test set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd** (supra) to establish whether a preliminary objection is sustainable is that, in addition to raising a pure point of law, the preliminary objection is argued on the assumption that the opponent's pleaded facts are correct. In effect, the objection cannot be sustained if any fact has to be ascertained, or where the court is invited to exercise its judicial discretion.

41. As the Supreme Court held in **Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 others** (supra):

“15. ... a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

42. Pronouncing itself on the purpose served by a preliminary objection, the Supreme Court had this to say in **Independent Electoral & Boundaries Commission v Cheperenger & 2 others** [2015] KESC 2 (KLR):

“21. The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a

case otherwise destined to be resolved judicially, and on the merits.”

43. The date on which the 1st respondent’s right of action accrued was expressly pleaded in the Plaint as the 11th day of May 2010 when it became the registered proprietor of the suit property. It was on this pleaded fact that the preliminary objection turned and, accordingly, the court ought to have assumed that the pleaded fact was correct for the purposes of determining the appellant’s objection. To our mind, this was not a case in which the parties held contested positions as to when the cause of action accrued as was the situation in other cases, such as ***Janendra Raichand Shah & 2 others v Mistry Valji Naran Mulji*** [2011] KECA 117 (KLR); and ***Kigwor Company Limited v Samedy Trading Company Limited*** [2021] KECA 810 (KLR) where the date when the cause of action arose was in dispute.

44. In our considered view, the appellant was not required to file any further pleadings in order to establish facts already agreed

by

the parties before filing the preliminary objection as was suggested by the 1st respondent. The objection was properly grounded on the assumption that the 1st respondent's own pleaded facts were correct, and that no factual inquiry was required to sustain it.

45. To our mind, the appellant's Statement of Defence (which was filed several months after the preliminary objection had been raised and argued) merely denied the date on which the 1st respondent became the owner of the suit property, but made no factual plea in that regard. In our considered view, that bare denial, which came too late in the day, was inconsequential to the preliminary objection, which had already been raised, fully canvassed, and awaiting determination on whether the 1st respondent's suit was filed out of time. Indeed, the appellant's averment that he was a stranger to the allegation that the suit property was transferred to the 1st respondent on 11th May 2010 and put the 1st respondent to strict proof thereof cannot be equated to, or deemed as giving rise to, a factual dispute capable of defeating the preliminary objection within the meaning of the ***Mukisa Biscuits*** test, particularly since

the defence did not plead any alternative date as to when the
1st

respondent acquired ownership of the suit property so as to call for an inquiry on evidence as to whether the 1st respondent's suit was statute-barred.

46. In view of the foregoing, we reach the inescapable conclusion that the learned Judge was at fault in concluding that the date pleaded as the one on which the 1st respondent's right of action accrued amounted to pure conjecture requiring determination at full trial, and in holding that the objection involved disputed facts necessitating the production of evidence. On the contrary, the preliminary objection was properly grounded on the 1st respondent's pleadings alone and was sustainable as a pure point of law.

47. Turning to the question as to whether the preliminary objection was merited, we take to mind the fact that the Plaint was filed on 7th September 2022, 12 years, 3 months and 27 days after the 1st respondent's right of action accrued on 11th May 2010. Accordingly, the suit was instituted outside the twelve-year limitation period prescribed under section 7 of the Act without leave to enlarge time. Consequently, the ELC lacked jurisdiction

to

entertain the suit. In the circumstances, the preliminary objection ought to have been allowed.

48. Having considered the record of appeal, the impugned ruling and orders, the grounds on which the appeal is anchored, the rival submissions of the respective counsel, the cited authorities and the law, we find that the appeal succeeds and is hereby allowed with costs to the appellant.

49. Orders accordingly.

Dated and delivered at Mombasa this 15th day of May, 2026.

A. K. MURGOR

.....
JUDGE OF APPEAL

DR. K. I. LAIBUTA CARb, FCIArb.

.....
JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR