



Habashow v Hilltop Engineering and Technical Services Limited (Land Case E029 of 2024) [2025] KEELC 5455 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E029 OF 2024
LC KOMINGOI, J
JULY 17, 2025**

BETWEEN

ISSAK ABDI HABASHOW PLAINTIFF

AND

**HILLTOP ENGINEERING AND TECHNICAL SERVICES
LIMITED DEFENDANT**

RULING

1. This is the Ruling in respect of the Preliminary Objection dated 26th April 2024. The Defendant seeks for dismissal of the suit with costs on grounds that it is statute barred pursuant to Section 4(1)(a) and (e) of the Limitation of Actions Act.
2. This Preliminary Objection was canvassed by way of written submissions.

The Defendant’s submissions

3. Counsel submitted that under Section 4 (1) (a) of the Limitation of Actions Act a claim founded on a contract could not be brought after the end of six years from the date which the cause of action accrued. From the Plaintiff’s pleadings it was clear that this suit was pursuant to a contract which was entered more than 10 years ago. Counsel made reference to paragraphs of the plaintiff’s pleadings which indicated that he entered a sale agreement with the Defendants for the sale of properties Kajiado/ Kaputiei Central/2353, Kajiado/Kaputiei Central/2358 and Kajiado/Kaputiei Central/2356 but the Defendant had failed to give vacant possession for over 10 years constituting a breach of contract. This suit should therefore not be entertained with reference to Michael Benhardt Otieno v National Cereals & Produce Board (2017) eKLR where it was held that: “...no court may or shall have the right or power to entertain what cannot be done, namely an action that is brought in contract six years after the cause of action...” and Gathoni v Kenya Cooperative Creameries Ltd (1982) KLR 104 where it was held: “... The law of Limitation of Actions is intended to protect defendants against unreasonable delay in the



bringing of suits against them. The statute expects the intended plaintiff to exercise reasonable diligence and take reasonable steps in his own interest...”

The Plaintiff’s submissions

4. Counsel submitted that the objection was contrary to *Mukisa Biscuits Manufacturing Company v West End Distributors* [1969] E.A because an objection should be on a point of law. However, this objection would require the Court to look at documentary evidence to determine the nature of the dispute. It was also submitted that this being a suit for recovery of land, it fell under Section 7 of the [Limitation of Actions Act](#) and the time limitation is 12 years. Counsel submitted that this is because the transaction was completed and titles issued between 2012 and 2013. As such, the Plaintiff was within his rights to claim the suit properties. The objection should therefore be dismissed with costs.

Analysis and determination

5. I have considered the Preliminary Objection, the grounds, the rival submissions, and the authorities cited. I find that the issues for determination are;

- i. Whether the Respondent’s Preliminary Objection dated 26th April 2024 is merited;
- ii. Who should bear costs?

6. It is a settled principle that a Preliminary Objection should be made on a pure point of law. The Supreme Court of Kenya in [Odinga v Independent Electoral & Boundaries Commission & 3 others](#) [2013] KESC 8 (KLR) held:

“The nature and scope of a “preliminary issue” is cogently defined in the statement of Law, JA, in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696 at 700:

“So far as I am aware, 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...”

7. The Defendant has objected to the suit on the grounds that it offends Section 4(1)(a) of the [Limitation of Actions Act](#) because the suit is premised on the grounds that the Defendant breached the terms of the sale agreement.
8. The Plaintiff has contested the objection on grounds that his claim was one for recovery of land because the Defendant was to give vacant possession of the suit properties. Further that this should be brought within 12 years as per Section 7 of the [Limitation of the Actions Act](#). It is his submission that, the suit was not time barred.
9. The Plaintiff’s claim is based on breach of Contract as shown in paragraphs 8 and 9 of the Plaintiff.
10. I agree with the Defendant’s submissions that the Plaintiff’s claim is time barred.

In the case of [Michael Benhardt Otieno v. National Cereals & Produce Board](#) (2017) eKLR the Court observed as follows;

“As regards the applicability of Section 4(1) it is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely an



action that is brought in contract six years after the cause of action..... In light of these clear provisions it should be unacceptable to imply as the learned judge of the superior court did that the wording of Section 4 (1) of the *Limitation of Actions Act* suggests a discretion can be invoked.”

11. It should be noted that the Plaintiff states that the Defendant has failed to give vacant possession of the suit properties for over ten (10) years. The suit is clearly time barred.
12. I find merit in the Preliminary Objection and the same is upheld. The suit is hereby dismissed out with costs to the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. Komu for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mateli.

