



**Regional Container Freight Station Ltd v Kenya Pipeline Co. Ltd & another (Environment & Land Case E120 of 2022) [2024] KEELC 4637 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4637 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E120 OF 2022**

**NA MATHEKA, J**

**JUNE 13, 2024**

**BETWEEN**

**REGIONAL CONTAINER FREIGHT STATION LTD ..... PLAINTIFF**

**AND**

**KENYA PIPELINE CO. LTD ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The suit is time barred having been brought outside the statutory limitation in view of Sections 4(2) and 32 of the [Limitation of Actions Act](#), 2012.
2. The Plaintiffs suit is incompetent, barred in law, an abuse of the Court process and should be dismissed with costs to the 1<sup>st</sup> Defendant.
3. This court has considered the application and the submissions therein. Before I delve into the Preliminary Objections raised by the Defendant, it is important that I establish if they meet the test laid down in the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, the court stated that;

A Preliminary Objection is in the nature of what used to be a demurer. 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.”

In [Oraro v Mbaja](#) 2005 eKLR, Ojwang J (as he then was) described it as follows;

I think the principle is abundantly clear. A “Preliminary Objection” correctly understood, is now well identified as, and 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 process of evidence. An 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.”

4. It is clear therefore that a Preliminary Objection must only be based on pure points of law and if for any reason facts are involved, then they must not be contested.
5. On the issue of the suit being time barred by dint of Sections 4(2) and 32 of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya the Plaintiffs submitted that the cause of action is one of trespass which is a tort and should have been brought within three years. That the Plaintiff has brought this suit after more than 12 years. Section 32 of the [Limitation of Actions Act](#) on easements is also applicable as the 1<sup>st</sup> Defendant has enjoyed the way leave since 1978 which is over 20 years. In the [Limitation of Actions Act](#) and within the provisions of section 4 it provides that;

“ 4. 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.

(2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

6. Section 28 of the [Limitation of Actions Act](#) allows for the extension of time where a party found himself unable to file suit for good cause. However, the court has to be moved in this regard to allow for the filing of any claim arising under the provisions of Section 4 thereof be filed out of time. Such provisions have not been invoked. The Applicant states that they became aware of the claim in January 2022 when they did a search and found that the 1<sup>st</sup> Respondent had registered an easement. That they were registered owners from 2009 and 2008. That the 2<sup>nd</sup> Respondent did not initiate any acquisition and compensation process nor notify them of the intended acquisition of a way leave by the 1<sup>st</sup> Respondent on the suit property as required by law.
7. The rationale for these time limitations is that there should be no unreasonable delays in filing claims to allow the respondent address in good time as held in In [Gathoni v Kenya Co-Operative Creameries Ltd.](#) [1982] KLR 104,
8. 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 intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.



9. On the issue of Section 32 of the *Limitation of Actions Act* the 1<sup>st</sup> Respondent states that enjoyed the way leave since 1978 which is over 20 years. In the case of *Kamau v Kamau* KLR EA 105, the Court held that;

“How are easements created? At common law only by Deed and Will.....

At equity however if there is an agreement whether under seal or not to grant an easement, for valuable consideration, equity considers it as granted between the parties and persons taking with notice and will either decree a legal grant to restrain a disturbance by injunction”

10. Further Section 32 of the *Limitation of Actions Act* creates an indefeasible right to an easement where a person enjoys the easement peacefully and openly as of right without interruption for twenty years. The said Section 32 of *Limitation of Actions Act* Cap 22 provides as follows;

“1) Where

a) ....

b) ....

c) any other easement has been enjoyed;

peaceably and openly as of right and without interruption, for twenty years the right to such access and use of light or air, to such way on water course, or use of water, or to such other easement, is absolute and indefeasible.”

11. I find that whether the suit is time barred or that an easement has been created over the suit land is a matter of fact which cannot be established at this preliminary stage. No evidence has been established as to when this easement was registered or when exactly the Applicant came to be aware of the same or when the cause of action started. It would be premature for me to strike out this matter at this preliminary stage without having the benefit of going through the evidence. I find this application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**N.A. MATHEKA**

**JUDGE**

