



**Wanjohi v Pharis (Environment and Land Miscellaneous Application  
E001 of 2025) [2025] KEELC 679 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 679 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025  
BM EBOSO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**JOHN WANJOHI ..... APPLICANT**

**AND**

**SAMUEL KINYUA PHARIS ..... RESPONDENT**

**RULING**

1. Through an originating summons dated 20/1/2025, expressed as brought under Section 4 (1) (a) of the *Limitation of Actions Act* (Cap 22) and Order 37 rule 6 of the *Civil Procedure Rules*, the applicant urged this Court to grant him an order enlarging the time within which to file a suit against the respondent. The said originating summons is the subject of this ruling. The originating summons was premised on the grounds outlined therein and in the applicant’s supporting affidavit dated 20/1/2025.
2. The case of the applicant is that “the intended suit arises out of a sale of land agreement dated 14/12/2011 and 22/12/2011 entered into with the respondent.” He has indeed exhibited the two agreements. He contends that the respondent has refused, neglected and/or ignored to transfer the land subject matter of the contract. He adds that his advocate has advised him that the limitation period relating to his cause of action lapsed upon expiry of six years. He asserts in one of the grounds in the originating summons that this Honourable Court has jurisdiction to enlarge time. His counsel, Mr Omari, reiterated the applicant’s case at the ex-parte hearing of the originating summons on 18/2/2025.
3. The Court has considered the application, the cited legal provisions and the prevailing jurisprudence on the jurisdiction of our courts in relation to enlargement of limitation period in claims seeking enforcement of contracts (specific performance of contracts).
4. Section 4(1) of the *Limitation of Actions Act* under which the applicant invited the Court to exercise jurisdiction provides as follows:-



- (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.
5. Clearly, the above framework does not confer on this Court jurisdiction to enlarge limitation period. It simply provides that a claim founded on contract may not be brought after expiry of six (6) years from the date when the cause of action accrued.
6. Order 37 rule 6 of the [Civil Procedure Rules](#), which is the other framework under which the applicant invited this Court to exercise jurisdiction provides as follows;
  - “(1) An application under Section 27 of the [Limitation of Actions Act](#) made before filing a suit shall be made ex parte by originating summons supported by affidavit.
  - (2) Any such application made after the filing of a suit shall be made ex parte in that suit.”
7. Section 27 of the [Limitation of Actions Act](#) provides as follows:
  - (1) Section 4(2) does not afford a defence to an action founded on tort where:
    - (a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
    - (b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and
    - (c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and
    - (d) the requirements of subsection (2) are fulfilled in relation to the cause of action.
  - (2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which:
    - (a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and
    - (b) in either case, was a date not earlier than one year before the date on which the action was brought.



- (3) This section does not exclude or otherwise affect
- (a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or
  - (b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period.
8. This Court's interpretation of Order 37 rule 6 of the Civil Procedure Rules is that it provides a procedural framework on how an application for extension of limitation period under Section 27 of the Limitation of Actions Act should be made. The Court's understanding of the framework in Section 27 of the Limitation of Actions Act is that it confers on ordinary civil courts jurisdiction to enlarge limitation period in claims which: (i) are for damages for negligence, nuisance or breach of duty; and (ii) the claimed damages consist of or include damages in respect of personal injury or injuries of a person.
9. For decades, our Superior Courts have emphasized that if a claim does not meet the threshold in Section 27 of the Limitation of Actions Act, the court has no jurisdiction to enlarge time. In Mary Osundwa v Nzoia Sugar Company [2002] eKLR the Court of Appeal rendered itself on this section as follows:

“This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo, J. had no jurisdiction to extend time as he purported to do on 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent. Though Tanui, J. dismissed the suit on a different basis, we think the suit was bound to be dismissed in any event on the issue of limitation which was specifically pleaded in the defence. This appeal accordingly fails and we order that it be and is hereby dismissed but we make no order as to costs.”

10. The cause of action in relation to which the applicant seeks an order enlarging the limitation period does not entail a claim for body injuries. It is a claim for specific performance of a contract. Clearly, this court does not have jurisdiction to enlarge time under Section 27 of the Limitation of Actions Act.
11. Umpteen times, our courts have emphasized that jurisdiction to enlarge limitation period is donated by the Constitution, statute or subsidiary legislation. Where limitation period has been set by the law and the courts have not been granted jurisdiction to enlarge that limitation period, the courts have no jurisdiction to enlarge the limitation period. The Supreme Court of Kenya emphasized this point in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR in the following words:

“A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with



the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

12. In the originating summons under consideration, the applicant has failed to demonstrate that this court has jurisdiction to enlarge limitation period in relation to the cause of action disclosed in the application. For the above reason, the originating summons dated 20/1/2025 is rejected and dismissed for lack of merit. This being an ex-parte application, there will be no order as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the presence of

Court Assistant - Doris

