



**Chase Bank Limited (In Liquidation) v Morven Developers Limited (Commercial Case E410 of 2024) [2025] KEHC 1344 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E410 OF 2024  
FG MUGAMBI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**CHASE BANK LIMITED (IN LIQUIDATION) ..... PLAINTIFF**

**AND**

**MORVEN DEVELOPERS LIMITED ..... DEFENDANT**

**RULING**

**Background and Introduction**

1. For determination is the Notice of Motion application dated 28<sup>th</sup> October, 2024 brought under Order 2 Rule 15, Order 51 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Section 4 of the *Limitation of Actions Act*.
2. The applicant seeks to strike out the plaint dated 24th July 2024 and filed on 25th July 2024 on the grounds that it is time-barred under the *Limitation of Actions Act* (hereinafter the Act). The applicant argues that the loans and overdraft facilities at the center of the suit were advanced in 2004, placing the claims beyond the six-year limitation period prescribed under Section 4 of the *Act* for actions related to the recovery of a debt or money. Consequently, the applicant asserts that the claims are no longer actionable.
3. In opposing the application, Geoffrey Nyakundi, the Liquidation Agent of the respondent (the Bank) filed a Replying Affidavit sworn on 8th November 2024. He argues that the plaint raises issues of fraud, which impacts when the limitation period begins to run. He asserts that the Bank only discovered the alleged fraud in December 2019, thereby resetting the clock for the limitation period. He further contends that striking out the plaint would undermine justice by preventing the matter from being fully heard and determined.



## Analysis and Determination

4. I have carefully considered the application, response and submissions made by the parties on this issue. Section 4(1) of the Act prescribes the limitation period for certain actions and states in part;
  - (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. Section 26 makes provides exceptions to these limitation periods and states;

Where, in the case of an action for which a period of limitation is prescribed, either—

  - (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - (b) the right of action is concealed by the fraud of any such person as aforesaid; or
  - (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:
6. The effect of Sections 4 and 26 is that in a case such as the present one, which concerns the recovery of funds from a contractual loan agreement, the standard six-year limitation period applies unless the claim is based on fraud or concealment, in which case time begins to run from the date of discovery of the fraud or when it could have been discovered with reasonable diligence.
7. The core issue in this dispute concerns various facilities advanced to the applicant by the Bank. The Bank asserts that these facilities were not serviced, causing the applicant's account to fall into arrears. Notably, the Bank alleges fraud, with the specific particulars outlined in paragraph 8 of the plaint. Based on these allegations, the Bank seeks to recover Kshs. 945,989,769.50 from the applicant.
8. The Bank argues that the fraud was discovered in December 2019, after the applicant failed to perfect the securities and became unreachable along with his legal representatives.
9. Looking at the totality of the evidence before me, the Bank's position, that the fraud was discovered in December 2019 lacks evidentiary support beyond the pleadings. The Bank has not provided any investigation report, audit findings, or concrete documentation detailing how and when the fraud was uncovered. Instead, it merely asserts that the fraud was discovered in 2019, an assertion that requires more than mere pleading.



10. In *Jubilee Insurance Company Limited v Nyaema & 4 others* [2024] KEHC 6803 (KLR) the court observed;

“It was never the intention of the legislature to condone fraud. However, plaintiff must be vigilant on their claims. Sometimes parties just sit on their claims until it is stale. In other times, it is the potential defendants who conceal fraud”.

Equally in *Gathoni v. Kenya Co-Operative Creameries Ltd* [1982] KLR 104, Potter, JA at page 107 expressed himself thus:

“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.”

11. While the elements of fraud are ordinarily to be established at the hearing, the plaintiff must prove on the face of it that the allegations are substantiated. The account statements alone do not establish fraudulent conduct on the part of the applicant. Furthermore, the first loan disbursement was made in 2004, and the account was a running account with multiple facilities extended over time. The Bank has not explained how these facilities continued to be disbursed if the applicant was in default from the outset.
12. More significantly, there is no clear link between the alleged fraud and the supposed discovery date of 2019. The first reference to title documents only appears in correspondence from 2024, long after the alleged fraud was supposedly discovered. The allegation of fraud has to be supported. The absence of any forensic or financial investigation report undermines the credibility of the Bank’s claim that the fraud was concealed until 2019.
13. Fraud must be pleaded with specificity and proved with evidence; it is not enough to simply allege fraud so as to circumvent the limitation period. In this case, the Bank has failed to demonstrate that the alleged fraud was actively concealed or that it could not have been discovered earlier with reasonable diligence.

### **Disposition**

14. In light of the foregoing analysis, I find that the plaintiff has not established a valid basis to invoke the exception under Section 26 of the *Limitation of Actions Act*. The claim remains time-barred under Section 4(1), as the cause of action accrued in 2004, and no sufficient evidence has been provided to justify an extension of the limitation period.
15. Accordingly, the Notice of Motion dated 28<sup>th</sup> October 2024 is hereby allowed, and the plaint dated 24<sup>th</sup> July 2024 is struck out for being statute-barred. The respondent shall bear the costs of the application.

**SIGNED IN NAIROBI**

**F. MUGAMBI**

**JUDGE**

**DATED AND DELIVERED IN NAIROBI THIS 27<sup>th</sup> DAY OF FEBRUARY 2025.**

**A. VISRAM**

**JUDGE**

