



Disney Insurance Brokers Limited v County Government of Narok (Constitutional Petition E003 of 2023) [2025] KEHC 2536 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 2536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CONSTITUTIONAL PETITION E003 OF 2023
CM KARIUKI, J
FEBRUARY 27, 2025**

BETWEEN

DISNEY INSURANCE BROKERS LIMITED PETITIONER

AND

COUNTY GOVERNMENT OF NAROK RESPONDENT

JUDGMENT

27/02/2025

1. Vide a constitutional petition dated 22/03/2023 the petitioner has sought the following reliefs.
 - a. A declaration be made that the respondent has violated the petitioner's rights as enshrined in *the Constitution* of Kenya 2010.
 - b. An order be made directing the respondent to settle the debt owed to the petitioner in the sum of Kshs. 15,184,779/= being the total value of the outstanding insurance premiums for Tender No. CCN/T2012/2013/38 and Tender No. NCG/PREQ/37/2015-2017.
 - c. Interest on (b) above from 10th February 2015 which is the date the said money was due and owing until payment in full.
 - d. The costs of the petition.
 - e. The honourable court do issue such orders and give such directions as it may deem fit to meet the ends of justice.
2. The petition is supported by an affidavit in support sworn by Charles Kanyi, the petitioner's managing director on 22/03/2023 and the annexures thereto.
3. The respondent entered the appearance but did not file any replies.



Background of the case

4. In 2012, the respondent advertised a tender for interested parties to bid for the provision of insurance brokerage services under Tender No. CCN/T2012/2013/38. The petitioner participated in the said bid and was awarded the said tender vide a letter of offer dated 03/09/2012. The petitioner accepted the said award, which was communicated via a letter dated 10/09/2012.
5. The petitioner provided the services advertised for in the said tender and the respondent voluntarily extended the period of the said tender to the 2014-2015 financial year.
6. The petitioner also participated and won Tender No. NCG/PREQ/37/2015-2017 floated by the respondent for the provision of general insurance cover. The said tender was equally awarded to the petitioner via a letter of offer dated 14/10/2015 and the petitioner accepted the said offer.
7. The petitioner secured insurance cover from Monarch Insurance Company Limited for the benefit of the respondent for cover against fire and perils, fire consequential loss, money (cash in transit), public liability, burglary, all risks, fire insurance, group personal accident, work injury benefit, employee's liability, fidelity guarantee, motor commercial, motor private and motor special type.
8. The petitioner procured the said services for the said tenders at a cost of Kshs. 15,184,779/= for a period of two years in 2014 and 2015.
9. Vide a letter dated 23/02/2015, the respondent directed the petitioner to avail all the insurance policies taken with regards to all the respondent's vehicles to enable the respondent to facilitate payment. The petitioner complied with and forwarded all the requested documents vide a forwarding letter dated 08/04/2015. Unfortunately, the respondent did not make any payment at all.
10. The respondent severally assured the petitioner of payment of the debt in due time and that filing a suit would not be of any use as all the pending bills relating to the supply of services and goods to the county government had to go through a vetting process.
11. On 18/12/2018, the office of the auditor general issued a notice on the e-government newspaper directing all suppliers or contractors for goods and services with outstanding claims (pending bills) in any county government to present their claims to the CEC-Finance based at the respective county government headquarters for the same to be settled.
12. The petitioner responded to the said notice on 20/12/2018 and forwarded its claim with all the relevant supporting documents as directed in the said notice to the respondent. Surprisingly, the respondent never took any action to pay the money due.
13. The petitioners contend that in all circumstances, the conduct of the respondent amounts to a violation of the petitioner's right to fair administrative action and the right to be treated in a credible manner.
14. The petitioner contends that the actions of the respondent violate Articles 10, and 47 of *the Constitution*.
15. The petitioner contends that the actions of the respondent violate their rights under articles 28, 40(3), and 43 of *the Constitution*.

Directions of the court.

16. The petition was canvassed by way of written submissions.



The Petitioner's Submissions

17. The petitioner submitted that there was a contractual agreement between the petitioner and the respondent for the provision of various insurance covers by the petitioner for the benefit of the respondent.
18. The petitioner submitted that failure by the respondent to refute or respond to the claim by the petitioner herein can only be construed to reach an inescapable conclusion that the petitioner's assertion remains to be the truth. Therefore, the petitioner's testimony given by way of the supporting affidavit and the annexed documentary evidence adduced therein remains uncontroverted. The petitioner relied on the case of *Linus Nganga Kiongo & 3 Others V Town Council of Kikuyu* [2012] eKLR.
19. The petitioner submitted that even though a long period of time has lapsed from the time the petitioner executed the contract which is the subject matter of the petition herein, it would be an injustice to allow the respondent to get away with its wrongdoing on account of lapse of time. The petitioner contends that this would amount to unjust enrichment on the part of the respondent as the respondent received the services offered by the petitioner and retained the payment due and owing. The petitioner prayed that the petition be allowed as prayed. The petitioner relied on the case of *Madhupaper International Ltd & Another V Kenya Commercial Bank Ltd & 2 Others* [2003] eKLR.

Analysis and Determination.

20. This court considered the Petition, the Affidavit in support, and the submission by the petitioner.

Issues

21. The main issues for determination: -
 - i. Whether there was a contract between the petitioner and the respondent.
 - ii. Whether the petitioner is entitled to the reliefs sought.

I. Whether there was a contract between the petitioner and the respondent.

22. The petitioner has produced a letter of offer and acceptance of Tender No. CCN/T2012/2013/38 and Tender No. NCG/PREQ/37/2015-2017. The petitioner then procured insurance cover from Monarch Insurance Company Limited for the benefit of the respondent. The petitioner forwarded all the insurance policy documents to the respondent vide dated 08/04/2015. The respondent acknowledged receipt of the said letter together with all the policy documents enclosed therein.
23. The petitioner has also produced insurance policy documents which depict the respondent as the insured party. The said insurance policy documents are stamped at the bottom by the petitioner who verified the authenticity of the same as the insurance broker.
24. The respondent has not tendered any evidence to rebut the assertions by the petitioner. Therefore, the evidence tendered remains uncontroverted.
25. This court finds that there was a contract between the petitioner and the respondent.

II. Whether the petitioner is entitled to the reliefs sought.

26. From the pleadings, the claim brought by the petitioner against the respondent is founded on an alleged breach of contract. It arose out of a tender for the supply of insurance covers to the respondent. The



petitioner accepted the offer vide a letter dated 10/09/2012. The statutory timelines for bringing claims relating to contracts are set out under section 4(1) of the Limitation of Actions Act thus:

“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;”.

27. Pursuant to the afore-cited provisions, actions founded on contract may not be brought after the end of six (6) years from the date when the cause of action accrued.

28. Firstly, the term ‘cause of action’ was defined by the Court of Appeal in the case of D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & Another [1980] eKLR as follows:

“Per Lord Pearson in Drummond-Jackson V.B.M.A. (1970) 1 W.L.R. 688 at p. 696.

“A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint.”

29. Furthermore, Black’s Law Dictionary, 10th Edition defines the term ‘accrue’ as follows:

“to come into existence as an enforceable claim or right.”

30. The petitioner has only raised the point that it will be an injustice to allow the respondent to get away with its wrongdoing. The petitioner has not raised any defence for its delay in filing the suit because there were several promises of payment.

31. Upon considering the pleadings, the applicable provisions, and authorities this court is of the view that the cause of action accrued on 08/04/2015, the date when the petitioner forwarded the requested documents to enable payments to be facilitated. That marked the accrual point from which time started running in respect of the Appellant’s cause of action.

32. The court has also noted that this was purely a matter of contractual legal obligation which should not have been clothed as a constitutional dispute. This is barred by the doctrine of constitutional avoidance. In Petition No. 45 of 2017 – Maya Duty-Free Limited v Hon. Attorney General & 3 Others: The Principle of Constitutional Avoidance was upheld. Kenyan Courts have also relied on the doctrine of constitutional avoidance to strike out claims presented before Court where it is shown that there exist alternative, sufficient and adequate avenues for parties to ventilate their grievances. The Courts have consistently maintained that when a party has an appropriate forum before which to seek redress, it is incumbent upon them to raise their concerns before the said forum as opposed to invoking the constitutional jurisdiction of the Court at the outset.

33. Bearing in mind the overarching nature of the Constitution of Kenya 2010 (the Constitution), it is not uncommon for parties to file constitutional petitions whereas their disputes have civil or contractual features. This notwithstanding, it is well-established under case law that Courts should not entertain such disputes as it would amount to diminishing the safeguards created for parties with legitimate constitutional issues and result in clogging-up of the Court’s diary. Scholars have argued that constitutional Courts are enticing to litigants as – (a) these Courts hear disputes expeditiously; and (b) the filing fees charged for these matters are relatively lower than ordinary civil matters.

34. Based on these facts and the statutory timelines for bringing an action founded on contract, the court finds that the Appellant ought to have brought his claim before the lapse of six (6) years from 08/04/2015, at the very latest on 08/04/2021. In filing the on 28/03/2023, the petitioner



moved the court outside the stipulated statutory timelines, which rendered its claim time-barred and incompetent.

35. Consequently, this court finds that this petition is without merit and makes the orders.

i. The petition is hereby struck out with costs to the respondent.

ii. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
27TH DAY OF FEBRUARY, 2025**

CHARLES KARIUKI

JUDGE

