



**Arimus Media Limited v Kenya Broadcasting Corporation (Civil Case 354 of 2018)
[2025] KEHC 3726 (KLR) (Commercial & Admiralty) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL CASE 354 OF 2018
AA VISRAM, J
MARCH 25, 2025**

BETWEEN

ARIMUS MEDIA LIMITED PLAINTIFF

AND

KENYA BROADCASTING CORPORATION DEFENDANT

RULING

Introduction

1. I have considered the Notice of Preliminary Objection dated 5th November, 2024, together with the submissions filed in support and in opposition to the same, and the applicable law.

Background

2. The Defendant's Preliminary Objection Application is premised on the following grounds of law:-
 - i. The Plaint dated 6th August, 2018, is fatally defective on account that the suit was commenced against the Defendant without serving upon the Managing Director at least one month written notice containing the particulars of the claim and of the intention to commence the action contrary to section 46(1) of the *Kenya Broadcasting Corporation Act*.
 - ii. The Plaintiff's claim under the first contract which ran from 1st June, 2015, to 30th May, 2016, is statutorily time barred and shall not lie having been instituted after the lapse of twelve months next after the act, and/or default complained of contrary to the provisions of section 46(2) of the *Kenya Broadcasting Corporation Act*.
 - iii. The Plaintiff's suit has not complied with the mandatory provisions of the law namely Section 46 of the *Kenya Broadcasting Corporation Act* and should therefore be dismissed in limine.



Issues for Determination

a. Whether the Preliminary Objection has merit.

3. Black's Law Dictionary, 11th edition defines a Preliminary Objection as:-
...an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary. An objection to the court's jurisdiction is an example of a Preliminary Objection.
4. In the locus classicus case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696 it was observed that:-
“...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. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.
5. The Preliminary Objection challenges the Court's jurisdiction to hear this matter on account of statutory limitations as stipulated in Section 46(a) and Section 46(b) of the *Kenya Broadcasting Corporation Act*. The same is therefore a proper objection in the terms contemplated by *Mukisa Biscuits Supra*.
6. In opposition to the contention that the Plaintiff failed to serve in accordance with Section 46 (1) of the *Kenya Broadcasting Corporation Act*, which provides that a 30 days' notice of intention to sue be served upon the Managing Director before any pleadings that are instituted against the Corporation, the Plaintiff submitted that the same is an afterthought, and has been brought late in the proceedings, with an intention to scuttle the process.
7. Further, the Plaintiff submitted that the Defendant did not have a Managing Director at the time, in 2018. The Plaintiff submitted that it notified senior management available that it wished to start utilising its earned minutes, and therefore the requirement had been met. In the alternative, the Plaintiff submitted that in the absence of the office holder, the provision no longer applied.
8. From the outset, I do not think that a letter indicating that the Plaintiff intended to utilize its earned minutes may qualify as the Statutory Notice contemplated under the Act. In my view, the notice ought to have been drafted properly, and placed on record, and addressed to the attention of the Managing Director even if the office holder was not available at the time. The absence of the individual does not, in my view, vacate the statutory provisions which are express.
9. It is also clear from the pleadings that the said Statutory Notice has never been served upon the Managing Director of the Defendant before commencement of the suit, on account of which, the whole suit is defective.
10. Section 46 (a) of the *Kenya Broadcasting Corporation Act* states that:-
Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect;
 - a. the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim and of the intention to



commence the action or legal proceedings, has been served upon the Managing Director by the Plaintiff or his agent;

11. Reading the above, it is evident that the wording of the statute is mandatory. Section 46(a) of the [Kenya Broadcasting Corporation Act](#) makes it compulsory for any person who wishes to commence legal proceedings against the Defendant to serve a one month's written notice to the Defendant's Managing Director indicating the particulars of the claim and of the intention to commence the action or legal proceedings.
12. In the case of Jackson K. Mathenge vs. Kenya Broadcasting Corporation [2018] eKLR it was held that:-
 - “9. The provisions of Section 46 above is very explicit and couched in mandatory terms. There is no indication that the Plaintiff served the requisite notice upon the Respondent as required by law. The claim was also filed after the 12 months period as provided herein.”
13. I take cognizance of the Plaintiff's submission that the late Majanja, J. found that Section 13A of the [Government Proceedings Act](#) violates the provisions of Article 48, and further, note the various decisions cited by the Plaintiff in relation to mandatory notice provisions arising under Section 65 of the [Kenya Ports Authority Act](#). However, the Plaintiff did not submit that the present notice requirement under the Act in question has been declared either as unconstitutional, or that the said section has been repealed. I am therefore of the view, that until such time, the same remains valid and mandatory.
14. The decisions in respect of those matters referred to by the Plaintiff were not, in my view, intended to operate as a blanket prohibition on all notice requirements arising in every other act of Parliament. In any event, this Court is not being called upon to make such a declaration of invalidity, and the process upon which such a declaration may be made is different from the present process.
15. Additionally, I take note of the decision of the court in Jaldesa Tuke Dabelo vs. Independent Electoral Boundaries Commission and Another [2015] eKLR where the Court of Appeal held as thus:-
 - “It has often times been stated that rules of procedure are handmaidens of justice; where there is a clear procedure for redress of any grievance prescribed by an Act of Parliament, that procedure should strictly be followed. (See National Assembly, In the Matter of James Njenga Karume Civil Application No. Nai. 92 of 1962. In the instant case, the [Elections Act](#) stipulates that the procedure to challenge membership to the County Assembly is by way of Petition. The appellant having chosen the wrong procedure cannot turn around and rely on Article 159 of [the Constitution](#). Article 159 was neither aimed at conferring jurisdiction where none exists nor intended to derogate from express statutory procedures for initiating a cause of action before courts.
 - “It is our considered view that the jurisdictional competence of a court and the statutory procedure for commencing a cause of action are aimed at facilitating and enabling a party to be heard. A litigant cannot ignore the jurisdictional competence of a court or the procedure for commencing a cause of action and then aver that he has not been heard. Article 159 of [the Constitution](#) or the Overriding Objective principles are not blanket provisions that shelter a party who disregards the proper forum or jurisdictional competence of a court or fails to follow the procedure for commencing a cause of action.”
16. Guided by the above, having found that the statutory procedure was not complied with, I find and hold that the suit was commenced irregularly and in breach of the mandatory provision of Section



46(1) of the *Kenya Broadcasting Corporation Act*. Accordingly, I find that the same is incompetently before this court.

17. The consequence of the above is that the remaining issues concerning the limitation period applicable to the first contract is moot.
18. The Preliminary Objection dated 5th November, 2024, is accordingly with merit. The same is upheld and the suit is hereby struck out with costs.
19. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 25TH DAY OF MARCH, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

.....Court Assistant

.....Plaintiff

.....Defendant

