



REPUBLIC OF KENYA



Koit Developers Limited & 7 others v National Bank of Kenya (Commercial Case E493 of 2022) [2025] KEHC 7808 (KLR) (Commercial and Tax) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E493 OF 2022**

A MABEYA, J

MAY 30, 2025

BETWEEN

**KOIT DEVELOPERS LIMITED 1ST PLAINTIFF
SAMAN DEVELOPERS LIMITED 2ND PLAINTIFF
KENETE ENTERPRISES LIMITED 3RD PLAINTIFF
GILERA LIMITED 4TH PLAINTIFF
MASOLE ENTERPRISES LIMITED 5TH PLAINTIFF
BAIA ENTERPRISES LIMITED 6TH PLAINTIFF
MARIMIO ENTERPRISES LIMITED 7TH PLAINTIFF
LINGALA ENTERPRISES LIMITED 8TH PLAINTIFF**

AND

NATIONAL BANK OF KENYA DEFENDANT

RULING

1. This ruling relates to the application dated 19/2/2025 brought by the defendant under sections 3A of the *Civil Procedure Act*, Order 8 Rules 3 and 5 of the Civil Procedure Rules 2010. It sought to arrest delivery of the judgment in this matter and leave to amend its Statement of Defence.
2. The application was based on the grounds set out on the body thereof and in the supporting affidavit sworn on 19/2/2025 by Chrispus Maithya, the defendant's Head of Commercial Transactions & Litigation. The defendant contended that the matter proceeded for trial on the 16th & 17th December 2024 when the plaintiff called their witnesses and proceeded to close their case.



3. That during the trial, it emerged from documents filed that the cause of action arose prior to the year 2014 and was thus barred by section 4 of the [Limitation of Actions Act](#). That the facts emanating in the course of trial made it necessary to amend the Statement of Defence so as to include an absolute defence of Limitation that was not available based on the contents of the plaint.
4. That the defendant stood to suffer a grave injustice if the application was not considered and determined prior to the filing of its written submissions and further that the plaintiffs will not suffer any prejudice if the application was allowed.
5. In response, the plaintiffs filed Grounds of Opposition dated 24/3/2025. They contended that at the time of the hearing of the suit, the defendant had all the information on which the current application was anchored and should have brought the application then.
6. That the defendant's application was grounded on falsehoods as when the matter came up for hearing the defendant raised objections to the production of some documents which objection was allowed by the Court. That the defendant was trying to amend its defence as it realized that the same constituted an admission to the plaintiffs' case. That having failed to file a witness statement, and thus lost the opportunity to call any witness at the trial, the defendant was trying to reopen a case that has fully been heard and concluded with a view to having the whole case heard de novo.
7. It was the plaintiffs' case that the application was therefore an abuse of court process and should be dismissed with costs.
8. The Court has considered the parties' contestations, their written submissions and authorities as highlighted by their respective Counsel on the 7/4/2025.
9. The defendant moved this Court to exercise its inherent power under section 3A of the [Civil Procedure Act](#) and arrest the judgment of this court that was scheduled to be delivered on the 14/2/2025. It also sought leave to amend its defence.
10. This Court has inherent powers to give orders which are necessary to meet the ends of justice. Section 3A [Civil Procedure Act](#) provides: -

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
11. This is further buttressed by section 1A & 1B of the [Civil Procedure Act](#) which provides for overriding objectives of the Act which is to facilitate the just, expeditious, proportionate and affordable resolution of disputes.
12. The main ground in support of the defendant's application to arrest this court's judgment was that, in the course of the hearing it emerged from documents filed that the cause of action arose prior to the year 2014. That the suit was therefore barred by section 4 of the [Limitation of Actions Act](#). That there had been another suit that had been dismissed and therefore there was a defence of res-judicata. The defendant referred specifically to the Further Supplementary Bundle of Documents that contained Certificates of Postal Search Results conducted on the properties subject of the suit transactions.
13. The Court notes that in its ruling of 16/12/2024, it observed that pre-trials were completed and the matter certified ready for hearing on 31/7/2024. As at that time, the defendant had not filed any witness statement or bundle of documents and despite being granted an additional 42 days to file the



- same. Then the plaintiffs filed a supplementary and further supplementary bundle of documents on 10/12/2024 and 15/12/2024, respectively.
14. During the hearing of the plaintiffs' case, the defendant's counsel objected to the production of supplementary bundle of documents filed on 10/12/2024. The Court struck out the said bundle of documents filed on 10/12/2024.
 15. In that ruling, the Court observed that the defendant did not object to the production of the documents filed on 15/12/2024 as were mere searches of the subject properties. That ruling is on record and has not been appealed against or set aside. In this regard, the defendant cannot turn around and seek to object to those documents when the parties have already closed their cases and judgment on the matter reserved.
 16. The defendant contended that from the documents produced at the trial, it realized that the cause of action arose prior to the year 2014 and was thus barred by section 4 of the *Limitation of Actions Act*. In my view, this is a matter that could be raised in the submissions as it is alleged that it arose from the evidence produced at the trial. It cannot be reason enough to for the Court to invoke its inherent powers and arrest its judgement.
 17. The other ground was that the matter was res-judicata. The record shows that this matter was raised as a preliminary objection dated 15/6/2023. The Court ruled on it vide a ruling dated 30/4/2024. The same is on record and it is not clear whether it was appealed against or set aside.
 18. Accordingly, the Court finds no reason to arrest the judgment on the alleged grounds of defences of limitation and res-judicata.
 19. As to whether the defendant merits leave to amend its Statement of Defence, the Court notes that leave was sought on the basis that facts emanating in the course of trial made it necessary to amend the Statement of Defence so as to include an absolute defence of Limitation.
 20. The Court has already held that the issue of limitation could be raised in the submissions and that it is not necessary for the amendments to be effected. In any event, I doubt if the general power to amend pleadings as set out section 100 of the *Civil Procedure Act* and Order 8 Rules 3 – 5 of the Civil Procedure Rules 2010 would permit an amendment post trial.
 21. The letter and spirit of Article 159(2)(b) of the *Constitution* and sections 1A and 1B of the *Civil Procedure Act*, enjoins courts to determine cases without undue delay. That courts should be bound by the overriding objective which is to facilitate the just, expeditious, proportionate and affordable determination of disputes.
 22. The question is, this is a 2022 matter. It had been in the courts for over 2 years by the time it came up for trial. The Court has spent time hearing the witnesses and is at the tail end of making its determination. Will it be just, expeditious and affordable to start de novo? I don't think so. That would not be either just, expeditious or affordable.
 23. Parties to a suit have a right to amend their pleadings at any stage of the proceedings. However, that right is not absolute. It is in the discretion of the court. That discretion is not elastic or capricious. It is judicious. It will not be exercised if it will cause prejudice. In the present case, the suit has been concluded. The defendant had all the time to exercise its right to amend the defence. It did not. It well knew that the plaintiffs' claim was the alleged wrongful sale of the plaintiffs' properties. It was within its knowledge when it sold the properties. It cannot wait until the conclusion of the suit to claim that it is now discovering that the cause of action arose out of time. That won't do.



24. In the premises, the Court finds that the application dated 19/2/2025 is meant to delay the process of justice. It lacks merit and is therefore dismissed with costs to the plaintiffs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF MAY, 2025.

A. MABEYA, FCI Arb

JUDGE

