



Winston International Limited v County Government of Mombasa (Civil Suit E072 of 2024) [2025] KEHC 12123 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 12123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E072 OF 2024
F WANGARI, J
JUNE 30, 2025**

BETWEEN

WINSTON INTERNATIONAL LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF MOMBASA DEFENDANT

RULING

1. The Plaintiff herein commenced suit through a plaint dated 4th November, 2024 which sought for several reliefs among them an order directing the Defendant to pay to the Plaintiff the contract sum of Kshs. 32,796,000/= . Together with the plaint, the Plaintiff filed an interlocutory application dated 11th November, 2024 which sought among other reliefs that the court be pleased to direct the Respondent to pay 30% of Kshs. 141,479,590/= which is equivalent to Kshs. 42,443,877/= until the application is heard.
2. Upon service of pleadings upon the Defendant, it raised a Notice of Preliminary Objection contending among other grounds that the plaint dated 4th November, 2024 and the application dated 11th November, 2024 are in substance incompetent and fatally defective they are contrary to the provisions of section 3 (1) if the *Public Authorities Limitation Act* and that the suit is time barred by virtue of the same provision of Cap. 39, Laws of Kenya. It contends that as such, the court’s jurisdiction has been erroneously invoked. Therefore, the suit and the application ought to be dismissed.
3. This being the position, the court directed that both the application and the Notice of Preliminary Objection be argued together. The Plaintiff filed a replying affidavit to the Notice of Preliminary Objection. It raised several grounds among them that this law (*Public Authorities Limitation Act*) is draconian and discourages trade and enterprise.
4. Directions were taken to have the two be canvassed by way of written submissions. Both parties complied with the directions. The Plaintiff’s submissions are dated 17th March, 2025. It cited several



decisions including *Senate & 2 Others v Council of Governors & 8 Others* [2022] eKLR for the proposition that in enacting the *County Governments (Amendment) Act*, the Legislature may have had the noblest. However, the said intention did not meet the Constitutional test of validity.

5. Further reliance was placed on the decision of *Njoya & Others v Attorney General & 3 Others* [2004] eKLR. It concluded that the Notice of Preliminary Objection was invalid as it undermines the objectives, principles and values of the *Constitution* of Kenya.
6. The Defendant's submissions are dated 19th March, 2025. It restated its objection contending that the suit and the application are time barred by virtue of section 3 (1) of the *Public Authorities Limitation Act*. The provision was reproduced in extenso. Several decisions among them *Kenya Ports Authority v Modern Holdings (E.A) Limited* [2017] eKLR were cited on the applicability of section 3 (1) of the *Public Authorities Limitation Act*. It concluded that the suit and application were misguided and ought to be dismissed.

Analysis and Determination

7. I have considered the pleadings, parties respective rival submissions, authorities cited and the law and the issues falling for the court's determination are: -
 - a. Whether the Preliminary Objection dated 09/10/2024 has merits;
 - b. Whether the entire suit is time barred; and
 - c. Who bears the costs?
8. The parameters for consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696. At page 700, Law, JA stated: -

“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 the contract giving rise to the suit to refer the dispute to arbitration.”

At page 701, Sir Charles Newbold, P added: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

9. This point was underscored by J B Ojwang, J (as he then was) in the case of *Oraro v Mbaja* [2005] eKLR where the court held as follows: -

“...I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual



aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed...”

10. For a Preliminary Objection to succeed the following tests ought to be satisfied; Firstly, it should raise a pure point of law; Secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and Finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit or application.
11. The Defendant submitted that the suit and application in issue is time barred as per the rigors of section 3 (1) of the *Public Authorities Limited Act*. This provision provides as follows: -
 - “ 1. No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.
 2. No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”
12. Limitation of actions presupposes that a lawsuit or legal claim must be filed after a cause of action arises. Essentially, it establishes a deadline for taking legal action. If a lawsuit is not filed within the prescribed time, the right to sue may be lost even if the claim is valid. Limitation periods are intended to ensure fairness to both Plaintiffs and Defendants.
13. They prevent the indefinite pursuit of claims which could be difficult to defend against due to fading evidence or the passage of time. They also promote the timely resolution of disputes. Section 3 of the *Public Authorities Limitations Act* is a statutory limitation and as such, it must be given its intention by the Legislature.
14. As decreed by the cited authorities, I need not consider anything beyond the pleadings to satisfy myself whether the Notice of Preliminary Objection is well founded. Time bar is a point of law and I return a finding that the issue raised is a pure point of law.
15. Having found as above, is the suit and the application caught by latches? At paragraph 3 (d) of the plaint, the Plaintiff was issued with a Local Purchase Order for four (4) units of motor vehicles on 7th October, 2015. The consideration was a sum of Kshs 32,796,000/=. According to the Plaintiff, it delivered the units but to date, has not been paid. Therefore, the cause of action arose from the time the Plaintiff was issued with the LPO.
16. A County Government is government within the meaning of the *Government Proceedings Act*. The preamble to the *Public Authorities Limitation Act* provides as follows: -
 - “ An Act of Parliament to provide for the limitation of proceedings against the Government and a local authority, and for purposes incidental to and connected with the foregoing.”
17. Having found that the Defendant is subject to this *Act*, section 3 thereof provides that in case of proceedings founded on tort, an action against Government can only be brought within twelve (12) months from the date the action accrued. Having looked at the claim, the cause of action is founded on contract. Accordingly, the provisions of section 3 (2) come into play. An action against government founded on contract must be brought within three (3) years from the date the course of action accrued.



18. This being the case, three (3) years from 7th October, 2015 lapsed on 8th October, 2018. Even if we were to consider the provisions of section 4 (2) of the Limitation of Actions Act, the suit and the attendant application would still be time barred since six (6) years ended on 8th October, 2021.
19. As much as the court sympathizes with the Plaintiff's plight, its hands are tied. Unfortunately, the Plaintiff mounted the wrong horse and based on the foregoing, the only thing it can do to the Plaintiff is to ask it to dismount and see whether the correct horse is available.
20. Lastly, even if I were to find the Notice of Preliminary Objection not merited, the prayers sought by the Plaintiff could not issue in the interim. The amounts sought can only be granted once they are proved in the standard way. Additionally, any execution not compliant with section 21 of the Government Proceedings Act and Order 29 of the Civil Procedure Rules would be a nullity. In the end, the Notice of Preliminary Objection dated 10th December, 2024 is sustained with the attendant consequences that the suit dated 4th November, 2024 and the application dated 11th November, 2024 are struck out.
21. On costs, the same follows the event. However, the court retains discretion whether to award the same or not. Though the Notice of Preliminary Objection has succeeded, it would be onerous to condemn the Plaintiff to costs. In the circumstances, I direct each party to bear own costs.
8. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. The Notice of Preliminary Objection dated 10/12/2024 has merits and is hereby upheld;
 - b. That this suit and the attendant application having been found to be time barred, the same are hereby struck out; and
 - c. Each party to bear own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

N/A by the Applicant.

Ms. Masibo Advocate for the Defendant

Ms. Getrude, Court Assistant

