



REPUBLIC OF KENYA



**Transafrica Motors Limited v County Government of Mombasa (Commercial Case E050 of 2024) [2025] KEHC 9448 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9448 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
COMMERCIAL CASE E050 OF 2024**

**J NGAAH, J  
JUNE 27, 2025**

**BETWEEN**

**TRANSAFRICA MOTORS LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... DEFENDANT**

**RULING**

1. Before court is the plaintiff/applicant's application dated 22 August 2024 expressed to be brought under Order 35 of the Civil Procedure Rules. The application prays for the order that:
  - “1. That summary judgment be entered for the Plaintiff in the sum of Ksh. 51,844,965.75.”
2. The application is supported by the affidavit of Mohamed Yusuf who has introduced himself as the plaintiff's General Manager.
3. According to Yusuf, during the years 2018 and 2019, the Plaintiff, at the request of the Defendant, supplied to the defendant 22 Trucks make Faw CA 3223 at a total cost of Ksh. 188,848,000/=.
4. The Defendant paid a total of Ksh. 137,3030,034.25 leaving a balance of Ksh. 51,544,965.75 which the Defendant is said to have refused or neglected to pay, despite what Yusuf has described as “many demands” hence the suit against the defendant.
5. It is the plaintiff's case that the defendant's defence to its claim is a sham only calculated to delay or deny the plaintiff its lawful claim.
6. The defendant has not only opposed the application but has also filed a preliminary objection against the entire suit on the ground that the suit is time-barred under section 3 of the *Public Authorities Limitation Act*, cap. 39.



7. Copies of the documents exhibited on the affidavit of Yusuf are barely legible. But even if they were legible, the plaintiff's suit is not sustainable because the plaintiff has been caught out by time. Section 3 of the *Public Authorities Limitation Act* states that the sort of suit filed by the plaintiff ought to be filed within three years of the date when the cause of action arose. This provision of the law reads as follows:

3(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.

8. In the plaint filed by the plaintiff, it has been admitted that the cause of action arose in May 2021. In paragraph 8 of the plaintiff's affidavit it has been pleaded as follows:

"8. The Defendant made a payment of Ksh. 16,872,000/= through a RTGS of 1.05.2021 leaving a balance of Ksh. 51,544,965.75 as at 1<sup>st</sup> May 2021. The Defendant has since refused and or neglected to pay the said sum of Ksh. 51,544,965.00."

9. If, as the plaintiff has pleaded that since 1<sup>st</sup> May 2021, the defendant has refused or neglected to pay the balance of the purchase price of the trucks, it means that the limitation period within which the suit ought to have been filed lapsed on in April or May 2024. So, by August 2024, when the suit was filed, the plaintiff was out of time and the suit was filed contrary to section 3 of the *Public Authorities Limitation Act*.

10. The plaintiff does not dispute this fact. In the submissions filed on the plaintiff's behalf, it has been urged that:

"All along, the Defendant had been promising to pay the Plaintiff but todate, the Defendant has not paid. The Plaintiff delayed to file the instant suit because, he believed that the Defendant being a Public Authority would keep its promise until on 1st August 2024 when the Plaintiff could not reach out to the Defendant and could not access the Defendant's offices for enquiries hence filing the case." (Emphasis added).

11. The fact of delay has, thus, been admitted. Unfortunately, for the plaintiff, negotiations are not an exception to the strict limitation period within which a suit against a public authority should be filed as prescribed under section 3 of the *Public Authorities Limitation Act*. Perhaps, a safer course for the plaintiff would have been to file the suit as prescribed and engage or continue with the alleged negotiations.

12. Reiterating the necessity to file a suit within the prescribed timelines Mustafa, J.A in IGA –vs- Makerere University [1972] E.A 65 held as follows:-

"A plaint which is barred by limitation is a plaint "barred by law". Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the court "shall reject" his claim. The appellant was clearly out of time, and despite the opportunity afforded him by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The Limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the court cannot grant the remedy or relief sought."



13. Law, Ag. V. P in the same case, inter alia, stated thus:-

“...The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, the plaint must be rejected.

14. In the case of Gathoni –vs- Kenya Co-operative Creameries Ltd, [1982] KLR 104, the Court of Appeal, while dismissing an appeal arising from an application for extension of time to bring a suit after the period of limitation had expired which the High Court had rejected stated 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. Special provision is made for infants and for the mentally unsound. But, rightly or wrongly, the Act does not help persons like the applicant who whether through dilatoriness or ignorance, do not do what the informed citizen would reasonably have done.” (Per Potter, J. A)

15. And in Mehta –vs- Shah (1965) E.A 321, Grabbie J.A in his judgment stated as follows: -

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

16. Taking cue from these decisions, and, of course considering the mandatory terms in which section 3 of the Act is couched, I need not belabour the point that the plaintiff's suit is not sustainable. It is statute-barred. It is hereby struck out with costs to the defendant.

**SIGNED, DATED AND DELIVERED ON 27 JUNE 2025**

**NGAAH JAIRUS**

**JUDGE**

