



**Roma Practitioners Limited v Muthoka (Civil Appeal E217 of 2024)  
[2025] KEHC 11636 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E217 OF 2024**

**EN MAINA, J**

**JULY 31, 2025**

**BETWEEN**

**ROMA PRACTITIONERS LIMITED ..... APPELLANT**

**AND**

**JACKTON WAMBUA MUTHOKA ..... RESPONDENT**

*(Being an Appeal against the Ruling of the Honourable S Kandie Mavoko  
Law Courts in MCCC No.E 1000 of 2023 delivered on 30/07/2024)*

**JUDGMENT**

1. This appeal emanates from a ruling which dismissed a preliminary objection dated 19<sup>th</sup> February 2024 which was based on the grounds that the court lacked jurisdiction to hear and determine the suit and that the suit offended the provisions of Section 4(2) of the Limitation of Actions Act.
2. The appeal is premised on grounds that:-
  - a. The learned Trial magistrate erred by not holding that the respondent's emails annexed to the replying affidavit sworn on 10<sup>th</sup> may 2023 were inadmissible without a certificate of electronic evidence as required by section 106B of the evidence Act.
  - b. The learned trial magistrate erred in finding that the respondent's pleadings were sent to court on 7<sup>th</sup> November 2023 without any evidence adduced in support thereof.
  - c. The learned trial magistrate erred in finding that the explanations given by the respondents for failing to file the suit within time were reasonable, when it was apparent that the said explanations were not supported by any evidence whatsoever.
  - d. The learned trial magistrate erred in finding that the matter of payment of court fees was a procedural issue that should not be adhered to.



- e. The learned Trial magistrate erred in applying Article 159 of *the Constitution* to override the express provisions of the Limitation of Action Act.
  - f. The learned trial magistrate erred in finding and clothing himself with jurisdiction to extend time for filing of the respondent's suit, in the absence of a formal application for extension of time for filing the suit out of time.
  - g. The learned trial magistrate erred in law in extending time for filing the suit out of time despite having found and deemed that the suit had been filed within the time prescribed under the limitation of Action Act.
  - h. The learned trial magistrate erred in finding that the notice of preliminary objection is without merit.”
3. The appeal was canvassed by way of written submissions.
  4. Learned Counsel for the Appellant submitted that the email annexures by the respondents were inadmissible due to the absence of a certificate of electronic evidence and placed reliance on the case of *Bhavna Patel Mandaliya vs Chetan Arron Solanki* [2021] eKLR.
  5. It was submitted that it was wrong for the trial court to invoke Article 159 of *the Constitution* with regard to payment of court fees which was made outside the limitation period within which the suit ought to have been filed.
  6. Counsel reiterated that the trial court lacked jurisdiction to extend time for filing of the respondent's suit in the absence of a formal application. Reliance was made to the case of *Mary Osundwa vs Nzoia Sugar Company Limited* [2002] eKLR which buttressed the circumstances which court would have jurisdiction to extend time.
  7. It was submitted that the inordinate delay by the respondent was pre judicial to the appellant and detrimental to the interest of justice. This court was urged to find that the trial court erred in dismissing the preliminary objection and to find that the suit was time barred.
  8. On their part, learned Counsel for the Respondent submitted that an email correspondence falls within the purview of section 106B. Reliance was placed in the case of *Parkar & another v NQ 2 others (Civil appeal 139 of 2020)* [2023] KECA 908 KLR.
  9. It was also submitted that the respondents filed the pleadings as well as the supporting documents within the stipulated time 7<sup>th</sup> November 2023 save for the mistake of the registry in delaying to assess the claim for payment. Reliance was placed to the case of *Nicholas Kiptoo Arap Salat vs IEBC and others* (2013) eKLR, *George Kagima Kariuki & Another vs George Gichima & others* [2014] e KLR, *County Executive of Kisumu v County Government of Kisumu & Others* [2017] eKLR. Further, that it would be unjust to penalize them for a delay caused by the court's administrative processes.

### **Analysis and determination**

10. I have carefully considered the impugned ruling, the rival submissions, the cases cited and the law. The issue that arises for determination is whether the preliminary objection was merited.
11. The preliminary objection was based on the grounds that the court lacked jurisdiction to hear and determine the suit and that the suit offended the provisions of Section 4(2) of the *Limitation of Actions Act*.



12. The Appellant also took issue with the trial court admitting the respondent's emails without a certificate of electronic evidence as required under Section 106 B of the Evidence Act.
13. The admissibility of electronic records is provided for under Section 106 B of the Evidence Act (Cap 80) Laws of Kenya in the following terms:-

“ 106B(1)Notwithstanding, anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as a computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.”
14. Under sub-section (4), where a party seeks to give evidence by virtue of section 106B he has, among other things, to tender a certificate dealing with any matters to which the conditions above relate. The certificate should further: “(a)identify the electronic record containing the statement and describing the manner in which it was produced; and (b)give such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer.”
15. In this case the respondent annexed a copy of the email correspondences between the court and her advocate and that being during the era of covid there was no doubt that communication in most courts was done electronically. I find that this email correspondences does not fall within the purview of Section 106 B of the Evidence Act.
16. On the issue of whether the suit was time barred, the explanation by the Respondent was that it had filed the suit in time but the court registry delayed in assessing the fees. It is not disputed that the Respondent made payment for the plaint on 8<sup>th</sup> November 2023. The suit ought to have been filed by 7<sup>th</sup> November, 2023. However, the Respondent did demonstrate that he sent his pleadings to the registry within time only that the registry delayed in assessing the fees and registering the case. The claim being one for material damage could of course not have been extended but in light of the explanation given and in view of the fact that this happened at the time when the courts were just embracing technology in the registries, I cannot fault the trial magistrate's finding and accordingly, the appeal is not merited and it is dismissed with costs to the Respondent.

Orders accordingly.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**E.N. MAINA**

**JUDGE**

In the presence of:

Mr. Matu for Wachira for Appellant

Ms Amesoro for Ms Otieno for Respondent

Geoffrey – Court assistant

