



**Fresco Freshpro Limited v Mediterranean Shipping Company SA & another
(Civil Suit E020 of 2024) [2025] KEHC 11359 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E020 OF 2024
G MUTAI, J
JULY 30, 2025**

BETWEEN

FRESCO FRESHPRO LIMITED PLAINTIFF

AND

MEDITERRANEAN SHIPPING COMPANY SA 1ST DEFENDANT

OCEANFREIGHT EA LIMITED 2ND DEFENDANT

RULING

1. Before this court is a notice of preliminary objection dated 15th May 2025 raised by the counsels for the defendants on the grounds that pursuant to Section 2 of the *Carriage of Goods by Sea Act* [COGSA] read together with Article 111, Rule 6[3] of the *Hague-Visby Rules* [The Hague Rules as amended by the Brussels Protocol 1968], this suit is time barred and the court lacks jurisdiction to entertain the same.
2. The preliminary objection was canvassed by way of written submissions. The defendants, through their advocates, Cootow & Associates Advocates, filed written submissions dated 26th May 2025 in support of the preliminary objection.
3. Counsel referred to paragraph 7 and 8 of the plaint, relied on Section 2 of the *Carriage of Goods by Sea Act* and Article 111 Rule 6[3] the *Hague-Visby Rules* and submitted that the provisions are very clear that the suit for loss or damage arising from carriage by sea must be commenced within one year and in default the carrier is discharged from liabilities. As a statutory provision, it is a jurisdictional provision, and the court has no business adjudicating matters that the statute states are discharged. It was thus urged that the court lacks jurisdiction to entertain the dispute herein and or even extend time.
4. The plaintiff, on the other hand, through their advocates, Mtalaki Law Advocates LLP, filed their written submissions dated 20th June 2025.



5. Counsel submitted that the High Court in Mombasa Misc. E042 of 2024 granted the plaintiff leave to institute the suit; therefore, it is properly filed before this honourable court. Counsel urged that the question that arises is whether the court has the power to extend time. He submitted that the overriding objective of this court is to facilitate the just, expeditious, proportionate and affordable resolution of disputes under Section 1B of the Civil Procedure Act.
6. Counsel urged the court to dismiss the preliminary objection with costs and set the matter to be heard on the merits.
7. I have considered the very concise submissions of the parties. The issue I must determine is whether the preliminary objection has merit and, if so, what orders should be issued.
8. The Court of Appeal in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696 stated as follows: -

“... 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”.

9. Sir Charles Newbold, P., who was part of the bench, added as follows in his concurring opinion: -

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issue, and this improper practice should stop.”

10. Although it would appear to me that the preliminary objection raised herein raises pure points of law, I note that the suit was filed on 30th March 2024 after the plaintiff obtained leave to file suit out of time. The leave was granted on 19th March 2024 by the Hon. Lady Justice Florence Wangari Macharia. A court with similar jurisdiction granted the said order. This Court cannot sit on appeal on the said decision. In my view, the best course of action for the defendants to deal with the issue would have been through an application for review or an appeal.
11. Under the circumstances, I find and hold that the preliminary objection has no merit. The same is hereby dismissed. The costs of the application will be in the course.
12. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 30TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Osewe, holding brief for Mr Wafula, for the Defendants;

No appearance for the Plaintiff; and



Arthur – Court Assistant.

