



**Stichting Medical Credit Fund v SBM Bank Kenya Limited (Civil Case E142 of 2020)
[2025] KEHC 12057 (KLR) (Commercial and Tax) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E142 OF 2020
PM MULWA, J
AUGUST 14, 2025**

BETWEEN

STICHTING MEDICAL CREDIT FUND PLAINTIFF

AND

SBM BANK KENYA LIMITED DEFENDANT

RULING

1. This ruling concerns the Defendant's Notice of Preliminary Objection dated 4th February 2025. The objection is taken on the grounds that this Court lacks jurisdiction to hear and determine the matter pursuant to Section 8 of the *Transfer of Businesses Act*, Cap 500 Laws of Kenya, and that the suit is consequently an abuse of the court process and ought to be struck out.
2. The Defendant's position is that the Plaintiff filed the present claim on 20th April 2020 seeking payment of funds allegedly deposited with the defunct Chase Bank Kenya Limited (in Liquidation). It is the Defendant's case that upon liquidation of Chase Bank and appointment of a receiver, the Defendant only acquired certain identified assets and liabilities of the said bank, and that the Plaintiff's claim does not fall among the assumed liabilities.
3. Further, relying on the Court of Appeal decision in *New Kenya Co-operative Creameries Limited v John Bari & Another* [2020] eKLR, the Defendant argues that the suit is time-barred. It contends that Section 8 of the *Transfer of Businesses Act* requires that any claim against a transferee be brought within six months of the transfer. In this case, the transfer was effected on 17th April 2018, and thus, any claim ought to have been lodged before 17th October 2018. The present suit, having been filed nearly two years later, the Defendant argues, is statute-barred and should be dismissed at the threshold.
4. The Plaintiff opposes the objection through written submissions dated 3rd March 2025. Counsel for the Plaintiff contends that the objection does not meet the threshold set out in *Mukisa Biscuit*



Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, since it raises factual issues requiring ascertainment through evidence. It is submitted that the objection is a tactical manoeuvre aimed at delaying the hearing of the substantive suit, the Defendant having previously raised a preliminary objection and an application for dismissal, both of which were dismissed on merit.

5. The Plaintiff further argues that Section 8 of the *Transfer of Businesses Act* must be read in tandem with Section 3 thereof, and that the Defendant, in its defence, admitted the jurisdiction of this Court and did not specifically plead limitation under Section 8. Reliance is placed on the decision in Shem Eric Arungu v SBM Bank Kenya Limited [2025] eKLR, where a similar preliminary objection was dismissed in circumstances akin to the present matter.
6. The sole issue for determination is whether the Defendant's preliminary objection meets the legal threshold and whether it is merited.
7. The principles governing preliminary objections are well settled in Mukisa Biscuit (supra), where 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...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 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.”
8. The Court agrees that jurisdiction is a pure point of law and may properly be taken as a preliminary objection. However, whether the limitation under Section 8 of the *Transfer of Businesses Act* applies in the present case depends on establishing the date of transfer, the nature of the assumed liabilities, and whether the Plaintiff's claim falls within them. These are factual matters that are not agreed upon by the parties and can only be determined upon production and scrutiny of evidence, including the transfer agreement and the liquidation records.
9. On the plea of limitation, Section 8 of the *Transfer of Businesses Act* provides for a six-month limitation period for actions against a transferee in respect of liabilities incurred by the transferor. However, as held in Shem Eric Arungu v SBM Bank Kenya Limited (supra), the provision must be read with Section 3, which defines the scope of assumed liabilities and requires factual determination of whether the claim is among them. This Court cannot, at this stage, without receiving evidence, conclusively determine the applicability of Section 8.
10. I am further persuaded by the fact that the Defendant, in its statement of defence, admitted this Court's jurisdiction and did not specifically plead limitation under Section 8. As limitation is a substantive defence which ought to be expressly pleaded, raising it midstream by way of preliminary objection, without the necessary factual foundation, amounts to trial by ambush.
11. In the premises, I find that the Defendant's preliminary objection, though framed as a jurisdictional point, in reality raises factual issues that require evidence. It therefore fails to meet the threshold and is without merit. Consequently, the preliminary objection dated 4th February 2025 is without merit and the same is hereby dismissed.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 14TH DAY OF AUGUST 2025.



PETER M. MULWA.

JUDGE.

In the presence of:

Mr. Echesa for Plaintiff

Ms. Wangare h/b for Ms. Mutisya for Defendant

Court Assistant: Godfrey

