



**Amanzee Investments (Kenya) Limited & another v Manuchar
Kenya Limited & another (Environment & Land Case 361 of 2017)
[2023] KEELC 15672 (KLR) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15672 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 361 OF 2017
NA MATHEKA, J
FEBRUARY 21, 2023
(FORMERLY HIGH COURT CIVIL SUIT NO 60 OF 2017)**

BETWEEN

AMANZEE INVESTMENTS (KENYA) LIMITED 1ST PLAINTIFF

AMANZEE INVESTMENTS LIMITED 2ND PLAINTIFF

AND

MANUCHAR KENYA LIMITED 1ST DEFENDANT

BUBBLES LOGISTICS (EA) LIMITED 2ND DEFENDANT

RULING

1. The 2nd Defendant raised a preliminary objection dated April 14, 2022 and applies for the suit to be struck out on the grounds that;
 1. That the claim against the 2nd Defendant as filed is statute barred by virtue of the provisions of section 4(2) of the *Limitation of Actions Act* (cap 22) of the Laws of Kenya.
 2. That the court does not have jurisdiction to hear and determine the suit as against the 2nd Defendant on account of ground (1) above
2. The 2nd Defendant submitted that the 1st Defendant filed an amended defence dated November 24, 2021 whereby it now enjoined the 2nd Defendant. In the amended defence the claim set out against the 2nd Defendant is that of negligence. That the 1st Defendant contends that the roof of the subject matter ware house which collapses on 23rd August 2016 due to negligence of the 2nd Defendant this matter was brought to court on November 29, 2021.



3. The 1st Defendant submitted that the suit was filed in 2017 and the cause of action was alive when the 2nd Defendant was joined in the existing suit. That the 2nd Defendant can raise the defence of time bar during the hearing and prosecute the same. That the 1st Defendant has a constitutional right to fair trial under article 25(c), access to justice under article 48 and the right to fair hearing under article 50(1) of the Constitution. That no prejudice will be caused to the 2nd Defendant if the suit proceeds to trial.
3. This court has considered the preliminary objection and submissions therein. The Court of Appeal in the case of Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696 laid down the principle as to what constitutes a preliminary objection. A preliminary objection to be valid must be on a point of law and must be founded on facts that are not in dispute. If evidence would require to be adduced to establish the facts, then a preliminary objection would not be sustainable. In the said case Law, JA stated as follows:

“so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the 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”

4. In the present matter the 2nd Defendant has hinged their preliminary objection on the fact that the 1st Defendant’s cause of action was time barred and that the suit was brought after the expiry or lapse of the period of limitation. The preliminary objection is on a point of law and the court is satisfied it has been properly and validly taken. The question whether or not the 1st Defendant’s claim is barred by statute on account of limitation goes to the jurisdiction of the court to entertain the suit. If the claim is statute barred on account of limitation, then the court lacks the jurisdiction to entertain the same. If the court were to proceed to hear and adjudicate the suit when it lacked the jurisdiction, its decision would be null and would be voidable. Section 4(2) of the Limitation of Actions Act (cap 22) provides that;

“(2). An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

5. From the 1st Defendant’s amended defence dated November 24, 2021 they enjoined the 2nd Defendant. In the amended defence the claim set out against the 2nd Defendant is that of negligence. That the 1st Defendant contends that the roof of the subject matter ware house which collapses on August 23, 2016 due to negligence of the 2nd Defendant this matter was brought to court on November 29, 2021 about 5 years later. In view of the foregoing, the court is satisfied that the preliminary objection is merited. The court hereby strikes out the 1st Defendant’s claim against the 2nd defendant with costs for offending section 4(2) of the Limitation of Actions Act.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 21ST DAY OF FEBRUARY 2023.

N.A. MATHEKA

JUDGE

