



**Santowels Limited v Stanbic Bank Kenya Ltd (Civil Case 648 of 2004)
[2025] KEHC 12413 (KLR) (Commercial and Tax) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 648 OF 2004
PM MULWA, J
SEPTEMBER 4, 2025**

BETWEEN

SANTOWELS LIMITED PLAINTIFF

AND

STANBIC BANK KENYA LTD DEFENDANT

RULING

1. The Defendant filed a Notice of Motion dated 17th November 2022 seeking seven (7) substantive prayers, including stay of execution of the decree. Most of the prayers have since been overtaken by events. The only surviving prayer for consideration is Prayer 4, which seeks that an account be taken and the final decretal sum, inclusive of interest, be limited to Kshs. 17,976,423.62 in accordance with section 4(4) of the *Limitation of Actions Act*.
2. The application is supported by the affidavit of June Opiyo. She depones that the decree herein was first executed pursuant to warrants dated 14th November 2019, whereupon the Defendant's tools of trade were proclaimed. Subsequently, stay of execution was granted by this Court on 30th July 2020 on condition that the Defendant deposited Kshs. 4 million as security in a joint account.
3. The matter proceeded to the Court of Appeal, which on 28th April 2022 allowed the Plaintiff's appeal and entered judgment in its favour for Kshs. 10,449,411.74 plus interest from the date of filing suit, while dismissing the Defendant's cross-appeal. Dissatisfied, the Defendant sought certification before the Supreme Court in Nairobi Civil Application (Sup) No. E196 of 2022, urging that the matter raised issues of general public importance.
4. The Defendant/Applicant now contends that the decree is being enforced on the basis of accumulated interest stretching back 18 years, resulting in a demand of Kshs. 32,518,569.33 as per the letter of 6th May 2022. It invokes section 4(4) of the *Limitation of Actions Act* to argue that interest recoverable is



limited to 6 years, and urges the Court to cap the final decretal sum at Kshs. 17,976,423.62. It further contends that the proclamation is null and void ab initio for contravening Order 22 Rule 18 of the Civil Procedure Rules as no Notice to Show Cause was taken out. The auctioneer has unlawfully proclaimed the bank's tools of trade on 16th November 2022 contrary to the provisions of Section 44(1) (ii) of the Civil Procedure Act. The attached computers contain customers sensitive information and attaching the same will expose the bank to colossal damages for breach of confidential information.

5. The Plaintiff opposed the application through the replying affidavit of Nikheel Raja dated 28th November 2022. The Plaintiff/Respondent contends that there is no pending appeal capable of attracting stay, that execution has been finalized and the decree satisfied. It argues that the Court of Appeal conclusively determined the applicability of section 4(4) of the Limitation of Actions Act, and this court cannot reopen that issue. Further, the decree adopted by this Court pursuant to the Court of Appeal's judgment is dated 18th October 2022, less than one year old, hence outside the scope of section 4(4). It is also averred that no goods were removed during the proclamation and that the decretal sum has since been paid. Any grievances regarding auctioneer's fees, the Respondent submits, should be pursued through a specific application against the auctioneer or before the Auctioneers Licensing Board.
6. Pursuant to directions, parties filed written submissions which I have carefully considered. The Defendant filed submissions dated 24th January 2023 and 15th February 2023 urging the court to order a refund of time-barred interest allegedly paid in excess of Kshs. 17,976,423.62 and refund of auctioneer's fees. The Plaintiff filed submissions dated 10th February 2023 urging dismissal of the application.

3 Analysis and determination

7. I have carefully considered the Application, affidavits and submissions. The primary issue for determination is whether this Court can limit the decretal sum to Kshs. 17,976,423.62 on the basis of Section 4(4) of the Limitation of Actions Act.

7. Section 4(4) of the Limitation of Actions Act provides:

An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

9. The interpretation of this section has been the subject of various decisions. In *M'ikiara M'Rinkanya & Another v Gilbert Kabeere M'mbijiwe* [2007] KECA 115 KLR, the Court of Appeal held that execution proceedings founded on a judgment more than twelve years old are barred by section 4(4).
10. The Applicant argues that the decree is being enforced on the basis of interest older than six years. However, the Court of Appeal expressly addressed this issue of limitation in its judgment of 28th April 2022. In dismissing the Defendant's cross-appeal, the Court held as follows:

“...we do not fault the trial court's finding that the time for purposes of limitation started running in terms of section 4(1)(a) and 4(3) of the Limitation of Actions Act from 16th September 2003 when the Respondent first indicated that it would confine itself to verification on the interest from the year 1997 up to and including 2000. Therefore, the



suit was filed within the prescribed time, contrary to the submissions of the Respondent. Accordingly, the ground on limitation of time raised by the Respondent in the cross-appeal fails.”

9. The effect of this finding is that the Court of Appeal conclusively determined the applicability of the *Limitation of Actions Act* to the dispute before it. This Court, being bound by Article 163(7) of *the Constitution*, cannot reopen or vary that determination.
10. It follows that the Applicant’s reliance on section 4(4) is misplaced. The decree being enforced is one issued pursuant to the Court of Appeal’s judgment dated 28th April 2022 and adopted by this Court on 18th October 2022. The Court of Appeal entered final judgment in favour of the Plaintiff for Kshs. 10,449,411.74 plus interest from the date of filing suit, and dismissed the Defendant’s cross-appeal. The decree is therefore less than one year old. The argument that the decree is based on 18 years of accumulated interest does not alter the fact that the Court of Appeal pronounced itself on the issue of interest, and this Court, being bound by Article 163(7) of *the Constitution*, cannot sit on appeal over that decision.
11. The Court of Appeal is superior to this Court, and once it has pronounced itself, the principle of finality applies. In *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd* [2014] KECA 872 KLR, the Court of Appeal emphasized that a lower court cannot sit on appeal over or vary the express terms of a superior court’s judgment. This Court lacks jurisdiction to vary or cap the decretal sum and interest awarded by the Court of Appeal.
8. In my view therefore, once interest is awarded by a judgment, it continues to accrue until the judgment debt is paid in full, unless expressly curtailed by the court issuing judgment. The effect is that the limitation in section 4(4) applies to execution of judgments after 12 years, not to truncate interest expressly awarded by a superior court.
9. On the question of proclamation of tools of trade, the record shows that no goods were actually removed from the Applicant’s premises, and the decretal sum was subsequently settled. Any dispute over auctioneer’s conduct and fees is governed by Rule 55 of the Auctioneers Rules, 1997, which requires a specific challenge before the court or the Auctioneers Licensing Board. This application, framed as it is under section 4(4), is not the proper avenue to ventilate those complaints.
10. The prayer for refund of auctioneer’s fees and time-barred interest is also not tenable in the absence of a specific order of the appellate court varying its decree. This Court cannot grant relief that would in effect vary or nullify the judgment of the Court of Appeal. I find that the Defendant/Applicant has not satisfied the threshold for the orders sought. The issue of section 4(4) of the *Limitation of Actions Act* was conclusively dealt with by the Court of Appeal. The decree herein is less than one year old and is therefore valid and enforceable.
11. Prayer 4 of the Defendant’s application seeking to limit the decretal sum to Kshs. 17,976,423.62 cannot hold. All ancillary complaints in respect of execution have been overtaken by events.
12. In the upshot, the Notice of Motion dated 17th November 2022 is hereby dismissed with costs to the Plaintiff.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

PETER M. MULWA



JUDGE

In the presence of:

Mr. Chacha for Plaintiff/Respondent

Mr. Otieno for Defendant/Applicant

Court Assistant: Carlos

