

CM ADVOCATES LLP

STANDSTILL AGREEMENTS:
A Comparative Analysis of Kenyan and English Law

1. INTRODUCTION

A standstill agreement is a contractual arrangement between parties in a dispute or financial distress that temporarily halts enforcement actions, litigation, or running of limitation periods. Its main purpose is to create breathing space for negotiations, restructuring, or settlement without prejudicing either party's legal rights.

In both Kenya and England, these agreements are increasingly used in commercial disputes, financial restructuring, and pre-action negotiations, but their contexts and implications differ.

2. STANDSTILL AGREEMENTS UNDER ENGLISH LAW

In English law, limitation periods are strictly defined (e.g., six years for contractual claims and twelve years for deeds under the Limitation Act 1980). A standstill agreement allows parties to pause or extend the limitation period, avoiding the need to issue protective proceedings simply to preserve rights.

Key Features

- **Suspension of Limitation Periods:** Prevents claims from becoming time-barred while negotiations continue.
- **Flexibility:** Parties can define the exact claims covered, the standstill duration, and conditions for extension.
- **Binding Contract:** Once executed, courts will enforce the terms like any other commercial agreement.

Judicial Approach

English courts emphasize precise drafting. In cases such as Exsus Travel Ltd v Baker Tilly [2016], the courts confirmed that only clear and unambiguous wording will suspend statutory limitation. Poor drafting may result in disputes over scope or enforceability.

3. STANDSTILL AGREEMENTS IN KENYA

In Kenya, standstill agreements are more commonly used in the context of lending relationships, restructuring negotiations, and enforcement actions. They allow parties to maintain the status quo while working towards settlement of outstanding debt obligations or refinancing.

Application:

- **Debt Restructuring:** Lenders and borrowers agree to suspend repayments or enforcement to allow restructuring.

- **Commercial Disputes:** Parties may agree to delay execution of securities, auction sales, or insolvency petitions pending negotiation.

- **Pre-Litigation:** Parties may agree to pause filing claims or enforcement to explore settlement.

Case Law

Kenyan courts have upheld the sanctity of standstill agreements, provided they are clear and voluntarily entered into:

- **Synergy Industrial Credit Ltd v Multiple Hauliers (EA) Ltd (2020):** A short-term standstill was entered to allow an independent business review and restructuring before a winding-up petition proceeded. The court adjourned the hearing of the petition on account of the said standstill agreement.

- **DL Koisagat Tea Estate Ltd v Stanbic Bank Kenya Ltd (2025):** The High Court emphasized that once parties sign a standstill agreement, they are bound by its terms, and courts cannot rewrite or vary them.

- **Edward Fondo Kalama & Another v County Government of Kilifi (2024, Court of Appeal):** The Court reaffirmed that under section 3(1) of the Public Authorities Limitation Act, claims against public authorities in tort must be brought within 12 months, and in contract within 3 years. The Court warned that indolence is fatal and equity does not aid the indolent, reinforcing the strictness of limitation statutes and affirming the importance of standstill agreements for purposes of preserving causes of actions while negotiations or audit with the public authorities is ongoing.

4. HOW STANDSTILL AGREEMENTS OPERATE IN DEBT INSTRUMENTS AND DEFAULT PROVISIONS

Standstill agreements are not limited to pausing litigation. They are increasingly deployed in financial contracts and debt instruments to suspend or modify default provisions.

- **Suspension of Default:** Where a borrower misses repayment deadlines, lenders may agree not to declare an event of default or call in the loan during the standstill period.

- **Restructuring Opportunity:** Creditors can use the standstill period to conduct an independent business review, negotiate revised repayment schedules, or explore refinancing options.

- **Preservation of Value:** A standstill can preserve the borrower's ability to trade, thereby protecting the lender's recovery prospects.

- **Binding Contractual Effect:** Once executed, parties cannot rely on default provisions inconsistent with the standstill until expiry or termination.

5. STANDSTILL AGREEMENTS AND THE LIMITATION OF ACTIONS ACT (CAP. 22)

The Limitation of Actions Act (Cap. 22) sets strict time limits for filing claims (six years for contracts, three years for tort, twelve years for land).

A standstill agreement can operate in two ways:

1. **Contractual Suspension:** Parties may agree not to plead limitation as a defence during the standstill period, effectively extending the time for litigation.
2. **Material Facts Exception:** The Act allows extension if "material facts of a decisive character" were not known within time. Courts have stressed this must be narrowly construed.

Contracting Out of Limitation

Parties in Kenya may contract out of the Limitation of Actions Act. By expressly providing in a standstill agreement that statutory limitation shall not apply between them for a defined period, they override Cap. 22 through freedom of contract. Courts will uphold such provisions where clearly drafted and not contrary to public

policy. Section 39 of the Limitation of Acts also provides that a period of limitation does not run if there is a contract not to plead limitation.

6. STANDSTILL AGREEMENTS AND THE PUBLIC AUTHORITIES LIMITATION ACT (CAP. 39)

The Public Authorities Limitation Act imposes even shorter timelines more so for contractual claims:

- 12 months for tort claims.
- 3 years for contract claims.

Application to Contractors and Suppliers

Contractors and suppliers engaged in government projects or supply contracts often face delayed payments. The short limitation periods under Cap. 39 put them at risk of losing claims if time expires.

A standstill agreement can:

- Suspend reliance on limitation as a defence by the government or county authority.
- Preserve contractor payment claims beyond the 3-year contractual limitation.
- Enable reconciliation of accounts or ADR without rushing to court.
- Provide certainty in ongoing negotiations for payment or performance.

The Court of Appeal in the **Edward Fondo Kalama case** confirmed that Cap. 39 must be read together with the Limitation of Actions Act, but extensions are strictly limited. This highlights the importance of standstill agreements as a contractual safety net.

7. KENYA VS. ENGLAND: A COMPARATIVE VIEW

Aspect	English Law	Kenyan Law
Primary Purpose	Suspend limitation periods	Pause repayments, enforcement, or auctions
Binding Nature	Enforced as a contract	Enforced as a contract
Judicial Attitude	Strict on precise drafting	Courts will not rewrite terms
Common Use	Pre-action settlement, litigation strategy	Debt restructuring, delayed government payments
Risks	Ambiguity may void suspension	Short statutory limits under Cap. 39 risk barring claims
Limitation Interaction	Limitation Act 1980	Limitation of Actions Act (Cap. 22) & Public Authorities Limitation Act (Cap. 39); parties may contract out

8. BEST PRACTICES IN DRAFTING

- Identify the Parties Clearly – especially where government or public bodies are involved.
- Define Scope – specify whether the agreement covers delayed payments, enforcement, or limitation defences.
- Set Duration & Long-stop Date – precise dates with extension clauses.
- Termination Triggers – clear conditions ending the standstill.
- Interaction with Statutes – expressly reference both Cap. 22 and Cap. 39, and contract out of them if intended.
- Execution – ensure government/public bodies are represented by duly authorized officers.

9. CONCLUSION

Standstill agreements are an essential risk management tool. In Kenya, they are especially critical in:

- Debt restructuring with lenders,
- Contractor and supplier claims against government bodies, and
- Situations where limitation deadlines under Cap. 22 or Cap. 39 loom large.

They allow parties to contract out of statutory limitation, suspend defaults, and preserve claims while creating space for negotiated solutions.

At **CM Advocates LLP**, we guide clients in crafting precisely drafted standstill agreements that secure commercial rights, anticipate statutory hurdles, and safeguard claims both in Kenya and across cross-border transactions under English law.

PRACTICAL INSIGHTS FOR CLIENTS

Standstill agreements are highly versatile, but their value depends on how and when they are deployed. Based on Kenyan and English practice, here are key takeaways for different stakeholders:

Contractors & Suppliers (especially in government projects):

- Use standstill agreements to suspend limitation under the Public Authorities Limitation Act (Cap. 39) and preserve delayed payment claims.
- Negotiate clauses preventing the government or county authority from relying on limitation as a defence.

Lenders & Borrowers:

- Deploy standstill agreements in debt restructuring to suspend repayment defaults and avoid triggering acceleration clauses.
- Use the breathing space to negotiate repayment schedules, seek refinancing, or conduct business reviews.

Investors & Developers:

- In joint ventures or cross-border projects, use standstill agreements to pause disputes while maintaining goodwill and exploring settlement.
- Where English law is chosen as governing law, carefully draft to suspend limitation periods under the Limitation Act 1980.

General Commercial Transactions:

- Consider expressly contracting out of the Limitation of Actions Act (Cap. 22) in Kenya, ensuring limitation periods do not extinguish claims mid-negotiation.
- Always align standstill agreements with statutory frameworks and court practice to ensure enforceability.

Contact Us:

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