



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL, COMMERCIAL AND ADMIRALTY DIVISION

Misc. Civil Appeal No. 209 Of 2017 (O.S)

P M S.....APPLICANT

VERSUS

ROYAL MEDIA SERVICES LTD.....RESPONDENT

EDITOR IN CHIEF, CITIZEN NEWS.....RESPONDENT

STANDARD MEDIA GROUP.....RESPONDENT

EDITOR IN CHIEF, KTN NEWS.....RESPONDENT

NATION MEDIA GROUP.....RESPONDENT

DAILY NATION NEWSPAPER.....RESPONDENT

SUNDAY NATION NEWSPAPER.....RESPONDENT

EDITOR IN CHIEF, NATION NEWSPAPER.....RESPONDENT

ROYAL MEDIA SERVICES LTD.....RESPONDENT

EDITOR IN CHIEF, NTV NEWS.....RESPONDENT

EDITOR IN CHIEF, NATION NEWSPAPER.....RESPONDENT

MEDIA MAX NETWORKS LTD.....RESPONDENT

EDITOR IN CHIEF, K24.....RESPONDENT

RULING

1. The application dated 18th August, 2017 is an *ex parte* Originating Summons brought under the provisions of Order 37 rule 6(1) of the Civil Procedure Rules, 2010, Sections 63(e) and 95 of the Civil Procedure Act, Cap 21, Sections 4(a), 27 and 28 of the Limitation of Actions Act, Cap 22, Laws of Kenya and all enabling provisions of the law. It seeks the following Orders:-

(i) Leave be granted to the applicant herein to file suits (sic) out of time against the respondents namely:-

- (a) Royal Media Services Ltd;
- (b) Editor-in-Chief, Citizen News;
- (c) Standard Media Group;

- (d) Editor-in-Chief, KTN News;
- (e) Nation Media Group;
- (f) Daily Nation Newspaper;
- (g) Sunday Nation Newspaper;
- (h) Editor-in-Chief, Nation Newspaper;
- (i) Editor-in-Chief , NTV News;
- (j) Editor-in-Chief, Nation Newspaper;
- (k) Media Max Networks Ltd; and
- (l) Editor-in-Chief, K24 News; and
- (ii) Costs of this application be in the cause.

2. The application is supported by the grounds on the face of it and the affidavit of P M S sworn on 18th August, 2017. Ms. Okundi, Learned Counsel for the applicant in arguing the application submitted that the *ex parte* applicant suffered psychological trauma after it was claimed that she had engaged in acts of bestiality and that she underwent psychological counseling after the defamatory remarks were made. Counsel indicated that the applicant went into hiding for some time before she could face the public after gaining enough confidence to do so. She stated that the defamatory remarks were published by the respondents on 14th May, 2013 to 30th May, 2013.

ANALYSIS AND DETERMINATION

The issue for determination is if this court has jurisdiction to extend time for the filing of a suit based on the tort of defamation.

3. Although the applicant has cited the provisions of Section 63(e) and 95 of the Civil Procedure Act, the same are not applicable to an application of this nature which seeks orders for filing of a suit out of the timelines provided by law.

4. The applicant also relies on the provisions of Sections 4(a) (sic), 27 and 28 of the Limitation of Actions Act. Section 4(1)(a) provides as follows:-

“(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued-

(a) Actions founded on contract.”

5. The above provision is not applicable in the intended suit as there was no contract between the applicant and the respondents. The affidavit of the applicant is clear that the intended cause of action is grounded on the tort of defamation.

6. Section 4(2) of the said Act is however relevant to this matter, it provides thus:-

“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. (emphasis added).

7. Going by the above provisions, it is apparent that the applicant was supposed to have filed suit by the 13th of May, 2014 when the duration of one year provided in law for filing a suit based on the tort of defamation elapsed.

8. The applicant cited the provisions of Section 27 of the Limitation of Actions Act which provides for extension of time in actions for negligence and others. It states as follows:-

“(1) Section 4(2) does not afford a defence to an action founded on tort where-

(a) The action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or of a written law; and

(b) The damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and

(c) The court has, whether before or after the commencement of the action, granted leave for the purpose of this section; and

(d) The requirements of subsections (2) are fulfilled in relation to the cause of action.

2. The requirements of this sub-section are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which-

(a) either was after the three year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and

(b) In either case, was a date not earlier than one year before the date on which the action was brought;

(3) This section does not exclude or otherwise affect-

(a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or

(b) the operation of any law which, apart from this section would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.”

9. The above provisions leave no room for doubt that they do not apply to the present application. It is clear that extension of time under Section 27 of the Limitation of Actions Act applies to claims in tort for personal injuries that arise from negligence, nuisance or breach of duty, whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law. It would in the said circumstances be of no use to consider the applicability of the provisions of Section 28 of the Limitation of Actions Act as they are not also applicable to this application.

10. In the case of **Wycliffe A. Swanya vs Toyota East Africa and Another** [2009] eKLR, the Court of Appeal held that according to the provisions of the Limitation of Actions Act no action for libel or slander may be filed after the end of 12 months from the date the cause of action accrued. The court held that this meant that the time started to run on the date when the slanderous remarks were made.

11. Further, in the case of **Bosire Ongero vs Royal Media Services** [2015] eKLR, the court held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.

12. The circumstances herein are no different. Since the alleged cause of action arose, the applicant waited for 5 years before filing any suit. This court has no jurisdiction to grant the orders sought. The application is hereby dismissed with no orders as to costs.

DELIVERED, DATED and SIGNED at MOMBASA on this 27th day of July, 2018.

NJOKI MWANGI

JUDGE

In the presence of:-

No appearance for the applicant

Caren Otene - Court Assistant