



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 358 of 2009**

STOMACH CLINIC LIMITED..... PLAINTIFF

VERSUS

FINA BANK LIMITED DEFENDANT

RULING

1. The chamber summons dated 28th January 2010 seeks for the plaint to be struck out with costs. this application is brought under the provisions of **Section 1A and 1B of the Civil Procedure act and order 6 rule 13(1) (a) of the Civil Procedure Rules**. The application is based on the grounds that the plaintiff time barred pursuant to the provisions of **Section 20 of the Defamation Act** which provides that an action for libel or slander may not be brought after the end of twelve (12) months from the date of the cause of action. In this case the cause of action accrued on 22nd May 2007 and became time barred on 22nd May 2008. This suit was filed on 20th November 2008 which was way outside the limitation period. The plaintiff is seeking for general damages for breach of contract which are not quantified. Thus the plaint does not disclose any cause of action.
2. This application was opposed by the plaintiff. Reliance was placed on the grounds of opposition filed on 6th April 2010. It was argued that the issue of limitation can be determined at trial not on an interlocutory application. Counsel for the respondent in their written submissions cited the case of **Crispin Ned Ngari and another v Churchill Odera Civil appeal number 233 of 1988 (Kwach, Tunoi and Shah JJA on 26 November 1998)**. where the court of appeal held that objection on limitation can only be taken at the trial.
A party can apply for the extension of time under **Sections 27(2) of the Law Reform Act**.
3. In response counsel for the applicant submitted that the point illustrated in the above case are irrelevant to this suit which was dealing with an accident claim and a suit which was filed out of time for a person who had died in a road accident in particular the issue of the *ex parte* grant of the extension of time. As regards this application counsel submitted that the statute clearly provides when a suit for libel or slander may be brought to court. He made reference to section 4(2) of the Limitation of the Actions Act which provides as follows:-

“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.”

4. The plaintiff's claim as stated in the plaint seeks for general damages for libel, breach of contract, injurious force hood and negligence. It is trite that an action founded on libel or slander should be filed within one year. The applicants had not sought leave before filing the suit. The issue raised by the plaintiff is that the suit cannot be strike out at an interlocutory stage because they can always apply for leave to file the suit out of time. I am not persuaded by the plaintiff's submission that an application cannot be made under the provisions of **Order 6 rule 13** to strike the suit on the grounds that it is time barred. Indeed **Order 6 rule 13(1)** provides:-

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that:

a) it discloses no reasonable cause of action or defence or

b) it is scandalous, frivolous or vexatious; or

c) it may prejudice, embarrass or delay the fair trial or the action; or

d) it is otherwise an abuse of the process of the court, an may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may.

5. This application falls within the above parameters. the pleadings speak for themselves. In the case of **MuKisa Biscuit Co. v West End Distributors EALR [1969] PAGE 700 Per Law, J.A.**

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implications out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples or an objection to the jurisdiction of the court or a plea of limitations or a submission that the parties are bound by the contract giving rise to the suit to refer to the dispute to arbitration”

Thus in my understanding the applicant could have raised even a preliminary objection on a point of law regarding the issue of limitation. The plaintiff's suit was filed outside the limitation period it is therefore a non starter which will otherwise an abuse of the court process. It is hereby struck out with costs to the defendants.

RULING READ AND SIGNED ON 25TH JUNE 2010 AT NAIROBI.

M.K. KOOME
JUDGE