



**Mwakweke v Hassan (Civil Case E256 of 2021)  
[2025] KEHC 5091 (KLR) (Civ) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E256 OF 2021**

**SN MUTUKU, J**

**APRIL 24, 2025**

**BETWEEN**

**CHIRAU ALI MWAKWEKE ..... PLAINTIFF**

**AND**

**AHMED ISSACK HASSAN ..... DEFENDANT**

**RULING**

1. The Defendant herein has raised a Notice of Preliminary Objection (PO) seeking to have the Plaintiff dated 27<sup>th</sup> November 2024 struck out with costs on the following grounds:
  - i. The cause of action brought on account of defamation is statute barred for offending Section 4(2) of the Limitations of Actions Act as read with Section 20 of the [Defamation Act](#) as the purported cause of action accrued in excess of 12 months prior to the date of filing.
  - ii. The suit offends the pronouncement of the Court of Appeal in Wycliffe A. Swanya v Toyota East Africa Ltd & another [2009] eKLR for being in excess of 12 months from the date of the impugned publication.
  - iii. The suit offends Order 3 Rule 2 of the Civil Procedure Rules that mandates a Plaintiff to file a Plaintiff together with a List of Witnesses, Witness Statements and Documents to be relied upon at trial.
2. This court directed that the PO be argued first through oral submissions.

**Submissions**

3. Mr. Mayinga, learned counsel for the Defendant, submitted that the Plaintiff filed herein ought to be struck out for offending Section 4(2) of the [Limitation of Actions Act](#) (Cap. 22 Laws of Kenya) and



Section 20 of the [Defamation Act](#) (Cap. 36 Laws of Kenya) which provide a cause of action founded on a claim of defamation must be filed within 12 months from the date of publication. He submitted that paragraph 4 of the *Plaint* states that the defamatory words were published in July 2023 and therefore the suit ought to have been filed in July 2024 but that this *Plaint* was filed on 10/12/2024 which was outside the 12 months provided under sections 4(2) of the *Limitations of Actions Act* and 20 of the [Defamation Act](#).

4. Counsel relied on *Wycliffe A. Swanya v Toyota East Africa Ltd & another* [2009] eKLR in his submissions that the Court of Appeal affirmed the position that a defamation suit ought to be filed within 12 months. Counsel also relied on *Royal Media Services v Valentine Mugure Maina* [2019] eKLR to support his submissions.
5. Mr. Swanya, learned counsel for the Plaintiff, submitted that the PO does not meet the threshold of the principles of PO; that the effect of a PO is to dispose of the suit because a PO cannot be raised if all facts pleaded are not correct or when any of the facts pleaded have to be ascertained or requires exercise of discretion by the court. Counsel cited several authorities including *Oraro v Banja* [2005] eKLR and *Marthat Akinyi v Susan Ongaro* [2022] eKLR. He submitted that this court ought to define when time started running in this suit and whether it is on the date of the publication. Counsel submitted that they communicated to the advocates for the Defendant who sought more time to seek instructions. He relied on *Duke of Brunswick and Lunebreg versus Harman* (1849) 14 QB 154 on the concept of multiple publication and urged that the PO be dismissed.
6. Mr. Naibei, learned counsel for the Plaintiff appearing alongside Mr. Swanya, submitted that the date when the cause of action arose is not definite. He submitted that in respect of defamation in a book, the date of defamation is the date of publication; that the book was published in 2023 and released to the public in July 2023 and that there is no clarity as to when the book was launched.
7. Counsel submitted that the date of publishing defamatory material in the four pages of the book should be determined separately from the publication of the book.
8. He further submitted that Order 3 Rule 2 CPR provides for filing of the *Plaint* with documents; that the PO is premature in that it was raised before the pre-trial conference; that failure to comply with Order 3 Rule 2 CPR is not fatal as the law permits the Plaintiff to file documents 15 days before pre-trial to comply. He relied on *Yaya Towers Ltd v Trade Bank Ltd* (Civil Appeal No. 35 of 2000) and *Cooperative Merchant Bank Ltd v George Frederick Wekesa* (Civil Appeal No. 54 of 1999) to support his submissions. He submitted that the PO is not based on pure point of law and ought to be dismissed.
9. In the rejoinder, Mr. Mayinga submitted that paragraph 4 of the *Plaint* makes it clear as to when the book was published. He submitted that in *Royal Media Services v Valentine Mugure Maina* case, the cause of action arises immediately defamatory words are published; that the multiple publication concept is not applicable in Kenya and that the applicable law is the *Limitations of Actions Act*.
10. He submitted that correspondence between parties does not stop the time from running and that the book should be taken as a whole and not piece meal by separating the 4 pages of the book.

#### Analysis and Determination

11. To my understanding, the singular issue for determination in this matter is whether the PO raised in this matter meets the threshold of a PO. It is argued that the Plaintiff's suit is time barred having been filed outside 12 months provided under Section 4(2) of the [Limitation of Actions Act](#) (Cap. 22 Laws of Kenya) and Section 20 of the [Defamation Act](#) (Cap. 36 Laws of Kenya). What do these provisions state?



12. Section 4(2) of the Limitations of Actions Act (Cap. 22 Laws of Kenya) provides that:

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.
13. Section 20 of the *Defamation Act* (Cap. 36, Laws of Kenya) provides that:

Subsection (2) of section 4 of the *Limitation of Actions Act* (Cap. 22) is hereby amended by the addition thereto of the following:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.
14. The Defendant, through his counsel, has argued that the Plaintiff is bound by the above provisions and ought to have complied and file his suit within 12 months from the date the cause of action accrued. The Defendant backed this position by citing Wycliffe A. Swanya and Royal Media Services v Valentine Mugure Maina cases. On the other hand, the Plaintiff maintains that he is within time.
15. The Plaintiff is specific under paragraphs 4, 6 and 7 that the alleged defamatory words were contained in the book titled: “Referee of a Dirty Ugly Game: In the Theatre of Kenya’s Elections-an Insider’s Account”. The book is said to have been published in July 2023. The defamatory content in that book are said to be found on pages 132, 133 and 134 of that book.
16. While the Plaintiff’s counsel agreed that the applicable date in defamatory words contained in a book is the date of publication, counsel argued that there is no clarity as to when the book was launched and that the date of publishing defamatory material in the four pages of the book should be determined separately from the publication of the book.
17. Counsel for the Plaintiff relied on the case of Duke of Brunswick and Lunenburg versus Harman (1849) 14 QB 154 on the concept of multiple publication. In this English case it was held that:

“In my judgment the defendants, whenever it transmits and whenever there is transmitted from the storage of their news server a defamatory posting, publish that posting to any subscriber to its ISP who accesses the news group containing that posting.”
18. The Court, in Royal Media Services Ltd v Valentine Mugure Maina & another [2019] KEHC 3644 (KLR) discussed the concept of multiple publication this way:

“The concept postulated here is what is commonly referred to as the ‘multiple-publication rule’ which, as its name suggests, allows for a new and separate cause of action each time a defamatory statement is published. In the off-line world this means that each copy of a book or a newspaper is a separate, actionable case of defamation with its own limitation period. It does not necessarily follow that the same litigant can take multiple actions arising from the same defamatory statement; it only means that in the case where the rule applies, any limitation period will run from the date of the last publication as opposed to the first.”
19. This is the reason counsel for the Plaintiff held the view that ‘the date when the cause of action arose is not definite’ and that ‘the book was published in 2023 and released to the public in July 2023 and that there is no clarity as to when the book was launched.’



20. My reading and understanding of the Plaintiff's pleadings is clear that the Plaintiff has brought this suit seeking declaratory orders and damages arising from material contained in the above cited book, which material the Plaintiff claims to have defamed him causing injury to his character and good standing in society. There is clarity on when the book was published as shown in paragraphs 4, 6 and 7 of the Plaintiff. There is no ambiguity that the book was published in July 2023. The four pages said to contain the defamatory words are part of the book and cannot be separate, to my understanding. They were published as part of the whole book and not separately.
21. There is no ambiguity in the law under Section 4(2) of the *Limitation of Actions Act* (Cap. 22 Laws of Kenya) and Section 20 of the *Defamation Act* (Cap. 36 Laws of Kenya) which state that a claim based on slander and libel ought to be brought within 12 months after the cause of action has accrued.
22. My reading of Order 50 (1) of the Civil Procedure Rules leaves no doubt in my mind that 'month' means calendar month. It provides that:
- Where by these Rules or by any judgment or order given or made, time for doing any act or taking any proceedings is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed.
23. Consequently, 12 months within which the Plaintiff ought to have filed his claim should run from July 2023 to June 2024. The Plaintiff is dated 27<sup>th</sup> November 2024. It was filed on the same date. My calculation gives me five (5) months outside 12 months allowed by the law to file such a suit.
24. The Plaintiff wants the court to invoke 'multiple publication rule'. He has, however, not placed any material before this court to demonstrate that the concept of multiple publication rule is applicable in Kenya. The Court in the Royal Media case stated as follows on that issue:
- “Now, the 1<sup>st</sup> respondent has not demonstrated that the multiple publication rule is applicable to this country. The English court decisions which the learned counsel for the 1<sup>st</sup> respondent cited are of persuasive authority and not binding on our courts; but more importantly, the English themselves have abandoned the multiple publication rule upon which those decisions were based. It will be foolhardy for us in this country to follow those decisions when their very basis has been found wanting to such an extent that a legislative intervention in the form of section 8 of the *Defamation Act* 2013 has been found necessary.
- In any event, however persuasive the English decisions on any particular subject are, they can never be an alternative to the statutory instruments from our own legislature. Express statutory provisions, even in England itself, are never supplanted by judicial precedents unless, of course, those precedents have unequivocally invalidated the provisions in question.”
25. The Plaintiff was also argued on the issues of failure by the Plaintiff to file the Plaintiff together with all the documents as envisaged under Order 3(2) of the Civil Procedure Rules. I have considered this issue and the rival arguments and I agree with the Plaintiff's counsel that it was not too late for the Plaintiff to provide the documents to support his claim given that the law allows him, with leave of the court, to furnish the court with whatever documents that may have not been filed together with the Plaintiff. This issue does not fit to be included in the Plaintiff.
26. I am persuaded, after due consideration of the rival arguments on the issue of filing the Plaintiff outside the time allowed, that the Plaintiff is merited. Before concluding on whether to strike out the Plaintiff for the



reasons advanced in the PO, I wish to consider the impact striking out pleadings has. I have considered the authorities cited by counsel for the Plaintiffs on this issue including *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* (Civil Appeal No. 35 of 2000). In this case, the court stated that:

“A plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant (plaintiff) can demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.”

27. The common thread running through most authorities on the issue of striking out of a suit is that this is a discretionary power that must be sparingly exercised and that ought to be exercised only in exceptional circumstances.
28. I have considered all the issues raised in this matter. The Plaintiff, through his counsel, failed to demonstrate that the rule of multiple publication is applicable in Kenya. He is clear in his plaint that the cause of action accrued upon the publication of the book in July 2023. The law under section 4(2) of the Limitations of Actions Act and section 20 of the *Defamation Act* is clear that a cause of action founded on the tort of libel and slander must be filed within 12 months after the cause of action has accrued.
29. I am guided by the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors* [1969] EA 696 that:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of 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 ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion” (emphasis added).
30. The PO in this matter is based on the claim that this suit was filed outside time. By that fact, this court has no jurisdiction to try the suit for the reason that what is filed outside the time is dead on arrival and therefore it would be an exercise in futility for this court to adjudicate on that which does not exist. This court does not need evidence to determine that issue because it is self-evident from the pleadings.
31. I think I have said enough to demonstrate that the PO raised here is merited. Consequently, I uphold the PO with the consequence that the Plaint dated November 27, 2024 is hereby dismissed for having been filed outside the 12 months allowed under section 4(2) of the Limitations of Actions Act and Section 20 of the *Defamation Act*. Costs are payable to the Defendant.
32. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 24TH DAY OF APRIL 2025.**

**S. N. MUTUKU**



## **JUDGE**

In the presence of:

Mr. Naibei, counsel for the Plaintiff

Ms Nyambura holding brief for Mr. Mayinga for the Defenant.

