



**Ngonjoh v Shakain Presbyterian School & 3 others (Civil Case  
E012 of 2022) [2024] KEHC 7237 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 7237 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E012 OF 2022  
DO CHEPKWONY, J  
APRIL 12, 2024**

**BETWEEN**

**SAMUEL NGUGI NGONJOH ..... PLAINTIFF**

**AND**

**SHAKAIN PRESBYTERIAN SCHOOL ..... 1<sup>ST</sup> DEFENDANT**

**MR GIDEON MWANGI WOKABI ..... 2<sup>ND</sup> DEFENDANT**

**MS JUDY NDUATA THUO ..... 3<sup>RD</sup> DEFENDANT**

**MS KARIUKI SN ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff moved the court by way of the Plaint dated 14<sup>th</sup> June, 2022 seeking various orders as follow:-
  - a. A declaration that the law enforcement agencies have a duty to conduct careful, thorough and independent investigations that are objective, fair and complete.
  - b. A declaration that the law enforcement agencies were hindered and/or failed in their duty to conduct careful, thorough and independent investigations, that are objective, fair and complete.
  - c. A declaration that the Plaintiff's human dignity and liberty was severely ruptured.
  - d. A declaration that the Defendants are jointly and severally liable for the pain and suffering occasioned to the Plaintiff.
  - e. A declaration that all the personal information and any related information that may be interpreted in whatever manner so as to positively identify the Plaintiff by his person, relation



or in any other manner whatsoever within this suit, any preceding and subsequent suit be anonymized.

- f. General, exemplary and aggravated damages for false imprisonment at Kshs. 800,000.00
  - g. General, exemplary and aggravated damages for malicious prosecution at Kshs. 4,500,000.00
  - h. General, exemplary and aggravated damages for defamation at Kshs. 6,000,000.00
  - i. General, exemplary and aggravated damages for negligence at Kshs. 3,000,000.00
  - j. Damages in lieu of apology at Kshs. 500,000.00
  - k. Any other orders that this Honourable Court may deem fit to grant in the circumstances.
2. In response, the Defendants filed a Notice of Preliminary Objection dated 5<sup>th</sup> July, 2022 wherein the following grounds were raised:-
- a. That the suit is misconceived, frivolous, vexatious and clear abuse of due process of the court.
  - b. That the suit does not disclose any cause of action against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants thus offending Order 2 Rule 7 of the Civil Procedure Rules, 2010.
  - c. That the application is untenable in the eyes of the law and equity.
  - d. That the instant suit is fatally defective.
3. The Plaintiff filed Replying Affidavit to the Preliminary Objection sworn on 24<sup>th</sup> July, 2022. He holds that Preliminary Objection is only proper if it is made on points of law but the one raised by the Defendants is based on facts. The Plaintiff holds that the Plaintiff captures the defamatory remarks made by the Defendants which complies with Order 2 Rule 7 of the *Civil Procedure Rules*. The Plaintiff holds that the Plaintiff is on four causes of action and it is not misconceived. He holds that the Preliminary objection is only meant to unnecessarily increase the costs of the suit and aimed at confusing the issues at hand.
4. The starting point is the definition of Preliminary Objection as was explained in the case of *Mukisa Biscuits Manufacturing Ltd -vs- West End Distributors* [1969]EA 696 discussed Preliminary Objections and stated as follows:-

“----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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.



5. The main point of contention is that the Plaintiff's suit does not have a reasonable cause of action which has been defined in *DT Dobie & Co (K) Ltd -vs- Muchina*, [1982] KLR, by the Court of Appeal as

“an action with some chance of success when allegations in the Plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer. ...” .

6. The court on looking at the prayers sought by the Plaintiff, it holds that it does not have any reasonable cause of action against the Defendants herein. This is because the prayers sought particularly that of malicious prosecution and false imprisonment were not effected by the Defendants and therefore they are not the necessary parties to the suit.

7. In other words the court cannot grant such orders as the ones sought by the Plaintiff against the Defendants as the proper Defendants ought to have been the police or the Director of Public prosecution or the Attorney General or all of them jointly depending on the orders sought.

8. The court in the case of *Douglas Odhiambo Apel & Another -vs- Telkom Kenya Limited & 2 Others* [2006] eKLR, held that:-

“The Second difficulty is that by the time the case came before me with a direction to write Judgment, the claim against the Commissioner of Police and the Attorney –General had already been withdrawn leaving Telkom Kenya as the sole Defendant in the suit. The Plaintiffs were arrested and charged by the Police. And the prosecution was undertaken by the Attorney-General as the public prosecutor. Telkom Kenya was merely a complainant. The decision to charge and prosecute the Plaintiffs was taken by the Police and the Attorney-General. Telkom Kenya as a complainant would not have been involved in that process. Once Telkom Kenya had made a complaint to the Police, it was left to the Police to investigate the complaint and decide whether or not to charge the Plaintiffs. That is why in a claim for damages for unlawful arrest, false imprisonment and malicious prosecution, the proper defendant is always the Attorney-General.”

9. In this case the court finds that there is no reasonable cause of action against the Defendants and for that reason it finds the Notice of Preliminary Objection to be meritorious. The upshot is that the Plaintiff's suit is hereby struck out with costs to the Defendant.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 12<sup>TH</sup> DAY OF APRIL , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

No appearance for either party

Court Assistant - Martin

