



**Ringera v Standard Limited (Civil Case 78 of 2019)
[2023] KEHC 3788 (KLR) (Civ) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3788 (KLR)

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

CIVIL

CIVIL CASE 78 OF 2019

JN MULWA, J

MAY 2, 2023

BETWEEN

RTD.JUSTICE AARON RINGERA PLAINTIFF

AND

THE STANDARD LIMITED DEFENDANT

RULING

Ruling on the preliminary objection raised at paragraph 9 of the Defence dated May 2, 2019

1. This suit was filed by a plaintiff dated April 12, 2019. It is a defamatory suit. By a previous case HCCC No 313 of 2009 between the two parties hereto, the Court, by its judgment dated November 23, 2018 found in favour of the Plaintiff and awarded him damages in the sum of Kshs 13,000,000/= being general damages, exemplary and aggravated damages; and an order of an injunction restraining the Defendant, its agents or servants from further printing, circulating, distributing, publishing or otherwise causing or authorizing to be published the same or any such libels of and concerning the Plaintiff.

For clarity, the Plaintiff in that previous suit is the same Plaintiff in this instant suit, and the Defendant also the same defendant therein.

2. A perusal of the plaint in this instant suit acknowledges the previous status and grievances, and the cause of action as was at the initiation of the previous suit in 2009, together with the Court's judgment dated November 23, 2018.

The only departure in the two suits is that at his plaint, paragraphs, 8, 9, 10 and 11, it is claim that despite the judgment, the Defendant continued, and continues to publish the defamatory statements maliciously and in contempt of the court's judgment and the law; and therefore seeks the same remedies sought in the previous 2009 case.



3. In the Defendant's statement of defence dated May 2, 2019, the Defendant acknowledges that at paragraph 8 that the judgment/decree made on the November 23, 2018 issued an injunction which the Defendant claims to have complied with rendering the claim in the plaintiff moot.

At paragraph 9, the Defendant denies jurisdiction of the court on account of express provisions of Section 5 and 7 of the Civil Procedure Act and Section 4 of the Limitation of Actions Act; and thereby has urged for the dismissal of the suit with costs.

4. All parties to the suit duly complied with provisions of Order 11 of the Civil Procedure Rules, and the suit was severally listed down for hearing, but for one reason or another could not proceed.
5. On July 18, 2022, the Defendant by its Advocate Mr Bwire brought to the court's attention of a Preliminary Objection captured at paragraph 9 of the plaintiff, on the jurisdiction of the court, which Mr Oyatsi Advocate for the Plaintiff was not pleased with as it was not raised earlier during pre-trial conference and directions.

Be that as it may, being an objection on court's jurisdiction, the parties were directed to file submissions on their rival positions.

The Defendant's submissions are dated July 19, 2022, and the Plaintiff's dated August 26, 2022.

6. The court has carefully considered the parties pleadings, and the submissions, and flagged for determination the following issues: -
 - a. What is the plaintiff's cause of action in this instant suit
 - b. Whether the instant suit is Res judicata
 - c. What are the appropriate orders arising from the above two issues, and the preliminary objection.
7. The plaintiff by his Advocate has extensively submitted on what he deems to be the cause of action; that it is not the publication made 10 years ago, but is based on a continuous publication by the Defendant; that in particular it is based on a publication of March 21, 2019; that under the law of libel, libellious words are published each time they are disseminated to 3rd parties and that each publication constitutes a separate cause of action, and finally that republication of a libel is a continuous wrong, and a fresh cause of action.
8. Reliance has been placed upon *Halsbury's Laws of England* Volume 12(1) at paragraph 834; and a Court of Appeal of England, in the case *Vizetelly Vs Mudie's Select Library Limited* (1900) 2Q B170; among others.

I shall come back to the above later in this ruling.

From our jurisdiction, the case of *John Matere Keriri vs Nation Media Group Limited*, HCCC No 185 of 2019 where Serگون Judge on June 11, 2021 rendered himself. I shall render myself on the court's holding later as well.

9. The Defendant on its part submitted on the matter of *Res Judicata* and whether contempt of court by a party can be redressed by a fresh suit.

The crux of the plaintiff's claim is captured at paragraph 8 of the plaintiff that: -

The plaintiff states that despite the said judgment, the Defendant continues to publish the same article on its website and to defame the plaintiff worldwide.



It is thus the plaintiff's submission that the plaintiff's claim is thus expressed without equivocation, that it is the same article that was the subject of the judgment of the court on November 23, 2018.

The above has not been controverted as it is very well and plainly pleaded in the plaint.

10. In *Mukisa Biscuit Manufacturing Co Ltd v Westend Distributors Ltd* (1969) EA 696, the court expressed itself 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 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.”

Section 5 of the *Civil Procedure Act* is explicit that;

Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.

11. Section 7 of the Act further stipulates that: -

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by the court.

12. Basically the articles that caused filing of the first suit Hcc No 313 of 2009 are the same articles subject of this suit. They are defamatory of the plaintiff as the court found in its judgment. The subject matter cannot be said to be different; the parties are the same, and, the factual basis in the two plaints are the same; the reliefs sought are also the same.

13. The Supreme Court in the Independent Electoral & Boundaries Commission Vs Maina Kiai & 5 others (2017) eKLR; while considering the matter of *Res judicata* under Section 7 of the *Civil Procedure Act* pronounced itself of the test of application of the doctrine of *res-judicata* that: -

- a. The suit or issue was directly and substantially in issue in the former suit
- b. That the former suit was between the same parties or parties under whom they or any of them claim.
- c. Those parties were litigating under the same title.
- d. The issue was heard and finally determined in the former suit.
- e. The court that formally heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

14. By all standards, the test set out in the above suit has been fully satisfied in this later suit.

The rationale behind the *res-judicata* doctrine was captured in the case *John Florence Maritims Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 others* (2015) eKLR that: -

---it ensures the economic use of court's limited resources and timely termination of cases... it promotes stability of judgments by reducing the possibility of inconsistency in



judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without Res-Judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably...

As pleaded by the Plaintiff, despite the judgment, the Defendant continues to publish the same article. In effect, what the Plaintiff is saying is that the Defendant has failed to comply with the court's judgment.

15. That being the case then, I am persuaded that there are mechanisms provided under the law for enforcement of courts judgments under the Civil Procedure Rules and other statutes; one of them being a party taking out contempt of court proceedings against the party who is in disobedience of court orders.
16. The court has not been told by the Plaintiff that it has been unable to take out contempt proceedings against the Defendant, and if it has, the result thereof that would necessitate taking out a fresh suit against the said Defendant, seeking very similar reliefs, from the same cause of action.
17. That brings the court to what the Plaintiff terms as Accrual of cause of action in libel, and continuing wrong citing *Halsbury's laws of England* Vol 12(1)
It is the Plaintiff's argument that libelous words are published each time they are disseminated to a third party, and each publication constitutes a separate cause of action in law.
18. From the extract from Halsbury's Laws cited above, it is stated that a cause of action which arises from the repetition or continuance of acts or omissions of the same kind as that for which an action has already been brought constitutes a continuing wrong.
19. It further continues to state that the distinction is important in determining whether the matter is res-judicata and whether a limited period has expired; and continues to hold that where the damage consequent on an act or omission rather than the act or omission itself which provides the cause of action, than as the action is maintainable until the damage is sustained, a fresh action will lie every time damage accrues from the act. Further, the article states that prospective damages are not recoverable for the cause of action is not the act but the damages arising from it; further that if equitable damages are awarded for such prospective claims, then no further action can be brought since the plaintiff will have been already compensated---- that the jurisdiction to award damages, rather than to give the injunction sought out to be exercised only under very exceptional circumstances.....
20. In this court's understanding of the statement cited above, I beg to disagree with the plaintiff's arguments that the present cause of action as stated in the present case did not accrue on the same date as the cause of action in the previous suit No 13 of 2009. I state so because nothing new has changed from the date of the earlier case upto the filing of this suit. Without a doubt, and pursuant to [Limitation of Actions Act](#) Section 4(2), the limitation for filing defamation suits, being twelve months from the date of publication of the defamatory article, which is the same as that published in 2009, has already been caught up by the limitation and therefore time barred.

The Plaintiff had a duty to, but failed to pursue compliance of the court orders and particularly the injunctive remedy granted against the Defendant in the 2018 Judgment. There is no demonstration that it even attempted to seek compliance by the defendant, but simply waited to file a similar suit in all aspects seeking similar reliefs without any variation at all.



21. In the case *Royal Media Services Ltd vs Valentine Mugure Maina & Another* (2019) eKLR the court pronounced itself that: -
- In particular, Section 4(2) thereof, has never been amended as to vary the point in time when a cause of action from libel or slander occurs. As far as libel is concerned, the cause of action accrues, when the defamatory material is published and in the present case, the alleged defamatory was published more than a year before she filed her suit. In short, her suit was filed out of time and the learned magistrate ought to have held so and struck it out.
22. In respect of the instant case, to hold otherwise would be an extremely dangerous precedent where a party would be rushing to court for damages for libel whenever a post judgment or post ruling is given in its favour; and out of choice fails to pursue the defendant for compliance with court orders.
23. Consequently, the court finds and holds that:
- a. The plaintiff's cause of action is that which arose on June 7, 2009, and which was determined by a competent court in the judgment dated November 23, 2018 in Hccc No 313 of 2009 and appropriate remedies in terms of damages and injunctive orders granted against the Defendant
 - b. That any subsequent suit between the same parties over the same subject or cause of action; including this suit is caught up by the doctrine of *res-judicata* and cannot be relitigated in the circumstances.
 - c. That having made the above observations, it is plainly clear that the present suit as filed is also time barred under Section 4(2) of the *Limitation of Actions Act*.
 - d. That the defendant's preliminary objection pleaded at paragraph 9 of the Defendant's statement of defence dated May 2, 2019 is hereby upheld; and the suit struck out with costs to the defendant.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF MAY, 2023

J N MULWA

JUDGE

