



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO. 185 OF 2019

HON. JOHN MARETE KERIRI.....PLAINTIFF/RESPONDENT

VERSUS

NATION MEDIA GROUP LIMITED..... DEFENDANT/APPLICANT

RULING

1. The defendant herein took out the motion dated 9th April 2021, whereof it sought for this suit to be struck out for being frivolous, vexatious and an abuse of the court process. It is also stated that the suit is time-barred.
2. The applicant filed the affidavit sworn by Seko Owino in support of the motion. The plaintiff filed the replying affidavit sworn by Desterio Oyatsi and grounds of opposition to oppose the motion.
3. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.
4. I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits. I have also taken into account the rival written submissions plus the authorities.
5. It is the submission of the defendant that the publication complained of was published on 4th March 2016 while this suit was filed on 29th August 2019, three years after the date of the aforesaid publication. It is the argument of the defendant that the plaintiff's suit is statute barred under Section 4(2) of the Limitations Actions Act, Cap 22 Laws of Kenya.
6. The plaintiff urged this court to find that the plaintiff's cause of action arose from repetition or continuance of unlawful acts or breaches committed by the defendant against the plaintiff therefore the same cannot be said to be statute-barred.
7. The plaintiff further pointed out that the defendant retains on its website the defamatory article which it publishes and defames his reputation continuously and on daily basis to the defendant's customers or readers.
8. It is stated that a fresh cause of action arises every day that the defendant continues to retain and or publish the said defamatory article.
9. Having considered the material placed before this court plus the rival submissions together with the authorities, it is clear that the main issue which has been left for the determination of this court is whether or not his suit is time-barred.
10. I have already set out the rival arguments over the issue. In paragraph 5 of the plaint dated 29th August 2019, the plaintiff stated as follows:

“In the issue of the said “The Business Daily” newspaper dated 4th March 2016, the defendant published printed and circulated and/or caused to be printed, published and circulated words as follows of and concerning the plaintiff

“Moi era men face multi-billion shilling asset seizure.

MP asks the National Assembly to make key report public and recover property from those alleged to have looted taxpayers money”....

..... “Some of the Kibaki government officials named in the Kroll Report include Stanley Murage, Kibaki’s private secretary and former state house comptroller Matere Keriri – said to be the faces behind a project dubbed Team Simoco to supply a multi-billion shilling police communications.”

11. In paragraph 7 of the plaint, the plaintiff further avers as follows:

“The defendant has published on daily basis and continues to publish the said words of and concerning the plaintiff since 4th March 2016 todate.

12. It is apparent from the above excerpts that the plaintiff has stated that the publications complained of were published by the defendant on 4th March 2016 and that the defendant continued to publish the same on daily basis upto date. The defendant has denied the averments made in paragraphs 5 and 7 of the plaint and stated that the suit having been filed over a year from the date of the publication, the suit is time barred.

13. The plaintiff has stated that the defamation visited upon him by the defendant is continuous. The plaintiff also stated that the defendant has since 4th March 2016 published the article daily on its website. The plaintiff managed to supply a print out to prove that that article was still in the plaintiff’s website as of 26th August 2019 and continues to be published todate.

14. It is not in dispute that under Section 4(2) of the Limitations of Actions Act, an action for libel or slander should not be brought after the end of twelve (12) months from the date of the publication. In the circumstances on this suit therefore be said to be time-barred? In my view, the answer is no. The plaintiff has demonstrated that the article complained of was published on 4th March 2016 and the same continued to be published by the defendant on a daily basis on its website.

15. In the end, I find the defendant’s motion dated 9th April 2021 to be without merit. The same is dismissed with costs abiding the outcome of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 11TH DAY OF JUNE, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant