

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 144 OF 2018

MARY KATHURE.....1ST PLAINTIFF

PER HJELMAGER.....2ND PLAINTIFF

VERSUS

ULIKS HASANAJ.....DEFENDANT

R U L I N G

The plaintiffs filed this suit against the defendant for damages for defamation attributed to the defendant.

The defendant filed a Memorandum of Appearance following service upon him of the summons and the plaint. On the same date that the memorandum of appearance was filed, the defendant lodged a Notice of Preliminary Objection to the effect that the suit was filed contrary to Section 4(2) of the Limitation of Actions Act, Cap 22 Laws of Kenya, it was contrary to Order 1 Rule 13 of the Civil Procedure Rules 2010, incurably defective and bad in law.

Both parties have filed submissions to address the preliminary objection which I have read.

An action for libel or slander must not be brought after the end of 12 months from the date of the act complained of. This is as provided under Section 4(2) of the Act aforesaid.

I have considered the rival submissions and the authorities cited. I have asked myself whether or not the preliminary objection may result in the final determination of this suit at this stage, going by the observations in the case of **Mukisa Biscuits Manufacturing Company Ltd vs West-end Distributor Ltd (1969) EA 696**, which provided inter alia as follows: -

“So far as I am aware, 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 urged 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.” Per LAW JA.

In the submissions filed by the parties and more so the plaintiff’s counsel, and which I agree with, the question of when the plaintiffs became aware of the offending publication is an issue for determination, not by way of the preliminary objection but evidence. The preliminary objection shall therefore not determine the case entirely at this stage. To delve any deeper into the issues raised by the parties in their respective submissions may compromise the main trial, which I believe should take place.

In any case, the striking out of a pleading is a drastic step which should be applied only in the clearest of cases. That is so because, a party is likely to be driven out of the seat of justice before a hearing, thereby breaching the very essence of the policy of access to justice.

I am not persuaded to accept or allow the Notice of Preliminary Objection which is hereby dismissed with costs to the plaintiffs.

Dated, signed and delivered at Nairobi this 4th day of June, 2019

A.MBOGHOLI MSAGHA

JUDGE