



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 158 OF 2016**

**PETER LAI MUTHOKA.....PLAINTIFF**

**VERSUS**

**STANDARD GROUP LIMITED.....DEFENDANT**

**RULING**

1. The Defendant filed the Preliminary Objection dated 16<sup>th</sup> March, 2018 which states as follows:

**“TAKE NOTICE that counsel for the Defendant shall at the hearing of the matter or on the first opportunity raise a Preliminary Objection on grounds that the Court’s jurisdiction under article 165 (3) (b) of the Constitution of Kenya 2010 has not been invoked as provided for under Article 22 (3) of the Constitution of Kenya 2010 and the Constitution of Kenya (Protection of Rights and fundamental Freedoms) Practice and Procedure Rules, 2013 thus the court lacks jurisdiction to hear the suit as filed.”**

2. I have considered the Preliminary Objection and the submissions made together with the authorities cited by the parties.

3. Counsel for the Defendant argued that in the light of the history that preceded Article 34 of the Constitution, this court has no jurisdiction to entertain the defamation suit herein. The court was also referred to Article 33, 22, and 165 of the Constitution.

4. In response, the Plaintiff’s counsel submitted that the submissions made by counsel for the Defendant are a replica of the submissions filed in respect of a Preliminary Objection herein dated 16<sup>th</sup> August, 2016 which was dismissed on 3<sup>rd</sup> March, 2017. It was argued that the court has jurisdiction to entertain this suit and that the Preliminary Objection is meant to delay this suit wherein pre-trial procedures have already been conducted.

5. The Preliminary Objection dated 16<sup>th</sup> August, 2016 was based on the grounds that:

**“1. The court lacks jurisdiction to hear this suit by virtue of Article 34(2) of the Constitution of Kenya 2010 for purposes of granting prayers a, b, c, d and f sought in the plaint.**

**2. The suit herein is not instituted as provided for under Article 22 of the Constitution.”**

6. Both Preliminary Objections are on the subject of the court’s jurisdiction to entertain the suit herein. The only difference is that the Preliminary Objection dated 16<sup>th</sup> August, 2016 refers to Article 34(2) of the Constitution while the Preliminary Objection dated 16<sup>th</sup> March, 2018 refers to Article 165(3) of the Constitution. Article 22, is common in both Preliminary Objections.

7. The question whether this court has the requisite jurisdiction to hear this matter was settled by the ruling herein dated 3<sup>rd</sup> March, 2017. The issue is therefore *Res judicata*. As provided by Section 7 Civil Procedure Act;

**“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 such court.”**

8. Both the Plaintiff’s and the Defendant’s counsel referred this court to the Court of Appeal decision in **Standard Ltd & 2 others**

Christopher Ndarathi Murungaru [2016] eKLR which addressed the issue of this court's jurisdiction as follows:

**“The assertion that Article 34 has ousted or otherwise limited the jurisdiction of the High Court under article 165 of the Constitution has, in our view, absolutely no substance.....In our view, such express jurisdiction cannot be ousted or limited by implication, as the appellants assume. In our reading of Article 34(5) of the Constitution, which provides for the establishment of a media regulatory body, there's absolutely nothing that constrains, limits or otherwise affects the jurisdiction conferred on the High Court by Articles, 22,23 and 165(3)(b), to enforce rights and fundamental freedoms. The Media Complaints Commission, whose membership is largely drawn from media and related practitioners, is first and foremost in the nature of a self-regulatory body that provides remedies in cases of breach of the code of conduct by journalists. The Commission has no powers under section 38 of the Media Council Act to award the kind of remedies that the Constitution contemplates for violated or infringed rights and fundamental freedoms including a person's right to reputation and dignity. It cannot therefore be seriously argued that such a body is a substitute for the High Court in matters of enforcement of rights and fundamental freedoms, as argued by the appellants.”**

9. With the foregoing, there is no doubt that the Preliminary Objection is misplaced. This court has the requisite jurisdiction to entertain this suit. The Preliminary Objection is dismissed with costs.

Date, signed and delivered at Nairobi this 4<sup>th</sup> day of June, 2019

**B. THURANIRA JADEN**

**JUDGE**