



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO.117 OF 2013**

**HON. ENG. EPHRAIM MAINA.....PLAINTIFF**

**VERSUS**

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

**RULING**

What is before the court for determination is the preliminary objection dated the 14<sup>th</sup> February 2018, by the defendant. The objection is based on the ground that, the jurisdiction of the court 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.

In support of the objection, counsel for the defendant argued that the High Court has jurisdiction to protect a person's right to dignity under Articles 165(3) (b) and 22(3) of the Constitution. The suit having been filed under the Civil Procedure Act and Rules is improperly before the court.

Counsel submitted that the form of filing, is that provided for under Article 22(3) of the Constitution and the rules made there under by the Chief Justice which constitutes the substantive procedure and for that reason, choosing to file the suit under the regime of Civil procedure Act is fatal to the suit. He argued that the court lacks jurisdiction to protect the plaintiff's rights under Articles 22 and 23 of the constitution in the form the suit is commenced.

Counsel contended that the plaintiff moved the court under Article 33(3) of the Constitution which requires persons exercising their freedom of expression to respect the rights of other persons, but, according to him, in light of the provisions of Article 34(1) of the Constitution, the defendant being a media house is exempt from the provisions of Article 33(2) which amounts to crime of defamation and not a tort of defamation.

In her response, counsel for the plaintiff argued that the preliminary objection fails to appreciate the jurisdiction of the High Court under Article 165 with respect to civil and criminal cases. This being a defamation matter, the court ought to give purposeful interpretation of the Constitution. In her view, the court's role being that of an independent arbiter is empowered to grant declaratory rights and conservatory orders.

The court has carefully considered the preliminary objection and the submissions by the learned counsel. The objection raised by Counsel for the defendant is based on the provisions of Articles 22(3), 165(3) (b), 23(3) and 34 of the Constitution. He has taken issue with the procedure the plaintiff has used to move the court for her reliefs. In his view, the plaintiff ought to have moved the court by way of a petition and not a plaint.

Article 22 provides;

**“for enforcement of Bill of rights under 22(3), the chief justice shall make rules providing for court proceedings referred to in this Article, which shall satisfy the criteria that;**

**(a).....**

**(b) Formalities relating to the proceedings including commencement of the proceedings are kept to the minimum and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation.**

**22(1) “Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of rights has been denied, violated or infringed, or is threatened.**

**(d) the court, while observing the rule of natural justice, shall not be unreasonably restricted by procedural technicalities”.**

Article 23(3) provides for the reliefs available and which the courts can grant in any proceedings brought under Article 22 of the Constitution. Right to human dignity and privacy are provided for in Articles 31 and 28 respectively of the Constitution and are among the fundamental rights and freedoms, set out in the Bill of Rights.

The High court is established under Article 165 of the Constitution and its jurisdiction is set out under Article 165, 3((a) – 3(e). 165 (3) (a) donates unlimited original jurisdiction to the High Court to hear criminal and civil cases.

While 165 (3) (b) donates to it, jurisdiction to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened. This is also captured in Article 23(1).

Whereas Article 22(3) has empowered the Chief Justice to make rules providing for the court proceedings referred to in that Article, the formalities relating to commencement of such proceedings should be kept to the minimum and in particular that the court shall, if necessary entertain proceedings on the basis of informal documentation, See Article 22(b).

Further, Under Article 159(1), judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under the constitution. Under Article 159(2) (d) justice shall be administered without undue regard to procedural technicalities. Article 22 (3) is clear beyond peradventure that, formalities relating to proceedings under that Article should be kept to the minimum.

In my considered opinion, the fact that the plaintiff has moved the court by way of a plaint and not a petition, is not fatal.

In view of the foregoing, I find that the preliminary objection has no merits and it is hereby dismissed with costs.

**Dated, Signed and Delivered at Nairobi this 11th day of October, 2018**

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**L. NJUGUNA**

**JUDGE**

In the presence of:-

..... **For the Plaintiff**

..... **For the Defendant**