



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 474 OF 2013

MONICA HARDWARE LIMITED.....PLAINTIFF

VERSUS

DIAMOND TRUST BANK LIMITED.....DEFENDANT

RULING

1. The defendant filed a preliminary objection dated 12th May, 2014 on the following grounds:

i. That the alleged cause of action of defamation as pleaded in paragraphs 7,8,9,10,11 and 17 of the plaint dated 1st November, 2013 and filed on 12th November, 2013 accrue on 1st September, 2011 and the plaint has consequently been filed out of the time limits prescribed under the provisions of section 4 (2) of the Limitation of Actions Act Cap 22 Laws of Kenya.

ii. That consequent to the foregoing, the cause of action of defamation as pleaded in the aforesaid paragraphs of the plaint is time barred and said paragraphs of the plaint should accordingly be struck out with costs.

2. This preliminary objection was canvassed by way of written submissions. It was the defendant's contention that from the paragraphs advancing the plaintiff's claim for defamation, particularly paragraph 7 of the plaint, it can be inferred that the alleged cause of action for libel arose on 1st September, 2011. That the plaint was however filed on 1st November, 2013, fourteen (14) months beyond the limitation period. It was submitted that the cause of action for defamation was thereby not maintainable having been brought after the limitation period. To support this argument, the defendant cited, Halsbury's Laws of England (Vol. 28) at paragraph 601, particularly the reasons behind the policy of limitation thus:

“ the courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty that justice in them (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

3. The defendant further relied on section 20 of the Defamation Act which principally amended section 4 (2) of the Limitation of Actions Act and the cases of **Bosire Ogero v. Royal Media Services (2015) eKLR** and **Nzoia Sugar Company Limited v. Fungututi [1988] KLR 399** in which the courts observed that a court lacks jurisdiction to deal with a claim when it is statute barred and **Dr. Lucas Ndungu Munyua v. Royal Media Services Limited & Another [2014] eKLR** where the judge held that section 27 of the Limitation of Actions Act does not provide for extension of time in a defamation claim.

4. On the other hand while the plaintiff acknowledges the failure in filing the suit out of time, it was

contended that the delay was occasioned by the advocate and that such a mistake should not be visited on a litigant. The plaintiff cited **Lucy Bosire v. Kehancha Div. Land Dispute Tribunal & 2 others(2013) e KLR** and **Philip Keipto Chemwolo &another v. Augustine Kubanda [1986] KLR 492**among others to support that argument.

5. The effect of the statute of limitation is that certain causes of action may not be brought after the expiry of a particular period of time. It follows therefore that the Act bars the bringing of particular actions after the specified periods of limitation but does not necessarily extinguish such causes of action. See **Rawal v. Rawal [1990] KLR 275**where it was stated:

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a defendant after he has lost evidence for his defence from being disturbed after along lapse of time. It is not to extinguish claims”. See also **Dhanesvar V. Mehta vs. Manilal M Shah [1965] EA 321.**”

In the premises aforesaid, the court finds that the preliminary objection dated the 12th May, 2014 has merits and it is allowed. The course of action in defamation as pleaded in paragraphs 7,8,9,10,11 and 17 is statutory time barred and the said paragraphs are hereby struck out.

Dated, Signed and Delivered at Nairobi this 9th Day of February, 2017.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... for the Appellant

..... for the 1st Respondent

..... for the 2nd Respondent