



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 26 OF 2015

PATRICK ODUMAPLAINTIFF

VERSUS

REGINA SABINA MUTUKU

T/A FIGURE EIGHT HEALTH CLUB.....1ST DEFENDANT

MUSA WALUVENGO MUREMBE.....2ND DEFENDANT

RULING

1. The 1st and 2nd Defendants have raised a preliminary objection seeking orders that the entire suit be struck out on the grounds that:-

“1. That the suit herein is barred by limitation of time having been filed over 12 months after the impugned publication of the alleged defamatory letter complained by the Plaintiff.

2. That this suit is stale and an abuse of the due process of Court having been brought to this court on clear disregard of the provisions of time limitation for defamation suits.

3. That given that this matter is statutory time barred, the honourable court has no jurisdiction to entertain the same.

2. The preliminary objection was canvassed by way of written submissions which I have duly considered.

3. As stated in the celebrated case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors (1969) EA 696:**

“...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 argued 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.”

Sir Charles Newbold P. added as follows at page 701:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point

of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

4. The main question for determination in this case is whether the suit is statute barred. This being a Defamation matter it is governed by Section 4(2) of the Limitation of Actions Act which provides that:-

“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued. Provided that an action for libel or slander may not be brought after the end of twelve months for such date.”

5. It is clear that a cause of action in a defamatory suit ought to be brought within twelve months from the date of the alleged defamation. In this case, the suit was filed on 23rd January 2015. The letter that the Plaintiff bases his claim on was not dated. The Plaintiff however has included a copy of the said letter in his list of documents which shows that the letter was received by the Auctioneers Licensing Board on 19th November, 2013. The Plaintiff also wrote to the Director of Public Prosecutions on the 10th January, 2014 as per the copy of the letter which forms part of the Plaintiff’s list of documents. Although the Defendants cannot be allowed to gain advantage from the omission to date the letter in question, likewise the Plaintiff cannot be allowed to gain advantage over his omission to state in the plaint when the cause of action arose. Taking into account all the other dates stated in the plaint and in the accompanying documents, it is clear that the Plaintiff’s case is statute barred. It was filed after the lapse of twelve months from the date the cause of action arose.

6. With the foregoing, I uphold the preliminary objection and strike out the suit with costs.

Dated, signed and delivered at Nairobi this 15th day of March, 2017

B.THURANIRA JADEN

JUDGE