



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 564 OF 2013

*[AN APPEAL FROM THE ORIGINAL DECREE IN MILIMANI CHIEF MAGISTRATE'S COURT IN
CMCC NO. 2820 OF 2014- OBULUTSA AG. CM-DATED 30TH SEPTEMBER 2013]*

1. **THE STANDARD GROUP LIMITED**
2. **THE EDITOR, WOMAN INSTINCT MAGAZINE.....APPELLANTS**

VERSUS

1. **CATHERINE WANJIKU**
2. **EVERLYNE WANJIRU**
3. **MARY MUTHONI.....RESPONDENTS**

JUDGMENT

This appeal emanates from a ruling of the lower court on a preliminary objection raised by the Appellants who were the Defendants. The Respondents had filed suit based on Defamation alleging that the Appellants had published defamatory statements which were injurious to them. In their defence, the Appellants raised the issue of the suit being time barred in accordance with Section 4(2) of the Limitation of Actions Act (Chapter 22)

Section 4(2) of Cap 22 provides as follows –

“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 from such date.”

The cause of action as pleaded in the lower court suit (paragraph 6 of the plaint dated 16th May 2013) accrued on 10th July 2010. The suit was filed on 17th May 2013, way out of the period of limitation referred to above. The proceedings before the *Media Council* (and subsequent apology by the Defendants) pleaded in paragraph 9 of the plaint do not afford an answer in law against a defence of limitation.

The facts on which the preliminary objection was based in the lower court were derived from the plaint filed by the Appellant. It raised a pure point of law. The defence of limitation was raised in the Defence as required in the Rules.

It would be absurd for libelous statement to be made about a person and then he/she waits until the Defendant publishes an apology so as to file an action in court. If this be the case then there would be no need for any limitation period to be specified. In the present appeal, the libelous words were published on 10th July, 2010 and the latest the suit should have been filed in the lower court would have been 10th or 11th July, 2011.

In the circumstances the appeal ought to be allowed and the preliminary objection raised by the Appellants by notice dated 8th July 2013 upheld. The suit herein having been filed out of the statutory period of limitation, and there being no provision under statute for extension of that period, is hereby struck out with costs to the Appellants. It is so ordered.

DATED, SIGNED, and DELIVERED AT NAIROBI THIS 4th DAY OF MARCH 2015.

A. MBOGHOLI MSAGHA

JUDGE