



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

Cause No 1902 Of 2015

DANIEL MUNGAI KARANJA.....CLAIMANT

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

STANDARD CHARTERED BANK LTD..... 2ND RESPONDENT

Mr. Chege For 1st Respondent

Mr Burugu for 2nd Respondent

Mr. Masese for Claimant

RULING

1. A Preliminary Objection has been raised specifically with respect to the claim for defamation.
2. The amended plaint dated 5th June, 2006 seeks relief for
 - a) Malicious prosecution
 - b) Illegal detention
 - c) Defamation
 - d) Wrongful dismissal.
3. The alleged defamation took place on 17th and 27th August 2002 respectively. **Section 20 of the Defamation Act amended Section 4(2) of the Limitation of Actions Act, Cap 22 of the Laws of Kenya** as follows:-

“20. Amendment of **Section 4 Cap 22 -Sub Section (2) of the Limitation of Actions Act (Cap 22)** is hereby amended by the addition thereto of the following;

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.

4. The said amendment is reflected in the **limitation of Actions Act** as follows;

“4(2) An action founded on tort may not be brought after the end of three years from the date of which the cause of action occurred, provided that an action for libel or slander may not be brought after the end of twelve months from such date”.

5. It is submitted by the respondents that the action on defamation is time barred and the same be struck off from the suit.

6. The Claimant opposes the preliminary objection on grounds that he had to await the conclusion of the criminal case in which he was charged with two counts of fraudulent, false accounting and two more counts of stealing before he could institute a defamation suit against the Respondents. That the case was concluded on 11th January 2005 in a ruling of the Chief Magistrate in which he was acquitted of all the charges.

7. The Claimant thereafter filed the civil suit No.856 of 2005 at the High court on 11th July 2005 which was subsequently transferred to this court as Cause No.1902 of 2015.

8. The Claimant argues that the claim could only claim defamation after he had been acquitted in the criminal trial. That the Claimant was disabled from alleging defamation during the pendency of the criminal case against him. The Claimant relies on **Section 22 of Limitation of Actions Act** which provides:-

“If, on the date when a right of action accrues for which a period of limitation is prescribed by this Act the person to whom it accrues is under a disability, the action may be brought at any time before the end of six years from the date when the person was to be under a disability or prescribed period of limitation has expired.....”

DETERMINATION

9. It is the Court's considered view that the mere fact that a person has been charged with a criminal offence regarding a subject matter which the accused considers defamatory against his person by the complainant, is no reason to await the conclusion of the criminal case in which he is the accused to be concluded to file a suit for defamation against the person he alleges to have defamed him.

10. To this extent the court does not consider the pendency of the criminal case against the claimant to be a disability within the meaning of **Section 22 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya**.

11. The suit for defamation was filed after the expiry of 12 months from the date the cause of action arose and the same is struck off. The suit will proceed on other causes of action set out in the plaint.

12. The court is justified in its view having regard to the finding of the Court in **Dr. Lucas Ndungu Munyua vs Royal Media Services Ltd. Hccc at Nairobi No.52 of 2008** in which case the Judge cited with approval the decision by **Mbito, J** in **Lucia Wambui Ngugi vs Kenya Railways & another Nairobi HCCA No. 213 of 1989** as follows:

“From the foregoing, extension of time only applies to claims made in tort and even in tort the claims must be in respect of claims for personal injuries arising from negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law). Therefore Section 27 aforesaid does not provide for extension of time in defamatory matters”.

13. This position was confirmed in **Mary Asundwa vs Nzoia Sugar Company Limited Civil Appeal No.244 of 2000** where the court of Appeal held:

“Section 27(1) of the Limitation of Actions Act clearly lays down that in order to extend time for filing a suit the action must be founded on tort and must relate to the tort of negligence,

nuisance or breach of duty and the damages claimed must be in respect of personal injuries to the plaintiff as a result of the tort”.

14. Accordingly the Preliminary Objection is upheld with the result that the cause of action based on defamation is struck off the plaint and the rest of the suit to take its normal course.

Dated and delivered in Nairobi this 1st day of April, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE