



REPUBLIC OF KENYA



KENYA LAW
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**Makokha v Nafuna & 3 others (Civil Case E219 of 2023)
[2025] KEHC 840 (KLR) (Civ) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E219 OF 2023

JN MULWA, J

JANUARY 30, 2025

BETWEEN

BEATRICE ACHIENG MAKOKHA PLAINTIFF

AND

JANEFIVER NAFUNA 1ST DEFENDANT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND DEFENDANT

INSPECTOR GENERAL OF POLICE 3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. By a Plaint dated 4/12/2023, the Plaintiff instituted a suit for malicious prosecution against the defendants seeking :
 - i. General and aggravated damages with interest at court rates.
 - ii. Exemplary damages
 - iii. Costs of the suit and interest
2. On 8/4/2024 the 2nd 3rd and 4th Defendants filed a statement of defence dated 8/4/2024 denying all allegations leveled against them by the plaintiff. The 1st Defendant also filed her defence dated 12/4/2024 likewise denying the plaintiff's claim.
3. By a Notice of Preliminary Objection (PO) dated 16/4/2024, the 2nd, 3rd and 4th defendants herein objected to the hearing of the suit on grounds that it was time barred by dint of section 3(1) of the



Public Authorities Limitation Act as read together with section 27 of the Limitation of Actions Act and urged for dismissal of the suit with costs for lacks of jurisdiction to hear and determine the same.

4. The Plaintiff has not filed any response or submissions to the PO. The 4th defendant has filed its submissions dated 18/7/2024.

4th Defendants Submissions.

5. It was the 4th Defendants submissions that the cause of action giving rise to the instant suit arose on 17th May, 2022 when it is alleged that the Plaintiff was acquitted of her criminal charges in Kibera CM Criminal Case no. 1255 of 2016, essentially terminating the case against the Plaintiff. It was not until 4th December, 2023 that this suit was filed. Clearly, more than 12 months from the date of accrual of the cause of action.
6. The Defendant submitted that the Suit was filed pursuant to the Government Proceedings Act, Cap 40 under which statute, limitation of time for actions is governed by the Public Authorities Limitation Act, Cap 39 Laws of Kenya. Section 3(1) of Cap 39, provides;

“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”
7. The Defendant reiterated that the Plaintiff’s action is tortious in nature as she seeks general, aggravated and exemplary damages arising from the Plaintiff’s alleged unlawful arrest, detention and malicious prosecution as pleaded in the Plaint, and having been filed after the twelve months statutory limitation, it is time barred.
8. The 4th defendant in support of its submissions cited the case of Jacob Juma & another v Commissioner of Police & another [2013] eKLR whereof the court stated that for claims based on the tort of malicious prosecution, the right to bring the action only accrues when a Claimant secures his acquittal of a charge or on appeal. Further cited is the case of Mbowa v East Menngo District Administration [1972] EA 352 wherein the East African Court of Appeal stated that time for the purposes of limitation begins to run as from the date when a plaintiff could first successfully maintain an action. In the instant case, the Applicant’s cause of action accrued on 27th June 2019 when he was acquitted of the murder charge.

Analysis and Determination.

9. In the landmark case of Mukisa Biscuits Manufacturing Ltd vs West End Distributors Ltd Civil Appeal No. 9 of (1969 E.A 696) the Court held that :-

‘ a preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.....

It raised a pure point of law, which, if argued on the assumption that all facts pleaded are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion.’
10. The cause of action giving rise to the instant suit arose on the 17th May, 2022 when it is alleged that the Plaintiff was acquitted of her criminal charges in Kibera CM Criminal case no. 1255 of 2016.

The suit was filed on 4th December 2023, clearly more than 12 months from the date of accrual of the cause of action.



Section 3(1) of *Public Authorities Limitation Act* Cap 39, provides;

“No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.”

Being tortious in nature as stated above, the Plaintiff’s action ought therefore to have been brought within one year.

11. In *Jacob Juma & another v Commissioner of Police & Another* [2013] eKLR, the court stated that for claims based on the tort of malicious prosecution, the right to bring the action only accrues when a Claimant secures his acquittal of a charge or on appeal.
12. Section 6 of the Public Authorities Limitations Act permits partial application of the Limitations of Actions Act Cap 22, particularly Section 27 thereof in relation to government liability claims founded on tort in so far as the extension of statutory timelines is concerned.
13. The Court’s discretion is only limited to the tort of negligence, breach of duty and nuisance. This instant suit is not grounded on any of the listed torts.
14. The Court of Appeal in *Mary Ofundwa vs Nzoia Sugar Company Ltd* (Kisumu *CA No. 244 of 2000*) held that a malicious prosecution action is not among suits in respect of which time for filing may be extended under section 27 of the Limitations of Actions Act.
15. For the foregoing, the court finds and holds that the 4th Defendant’s Preliminary Objection dated 16/4/2024 is merited and allowed. The Plaintiff’s case is therefore dismissed against all the defendants as prayed, save that there shall be no orders on costs.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 30TH DAY OF JANUARY 2025.

JANET MULWA

JUDGE

