



**Wamurichu v Wanjala (Civil Case 580 of 2010)  
[2025] KEHC 5251 (KLR) (Civ) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5251 (KLR)

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

**CIVIL**

**CIVIL CASE 580 OF 2010**

**AM MUTETI, J**

**APRIL 28, 2025**

**BETWEEN**

**DR. KAMAMIA WAMURICHU ..... PLAINTIFF**

**AND**

**DR. PIUS MASIKA WANJALA ..... DEFENDANT**

**RULING**

1. The defendant filed the preliminary objection dated 26/7/2024 contesting paragraphs of the 7 to 13 of the amended plaint dated 22/3/2021. The defendant contends that the said paragraphs introduce a new cause of action after more than 10 years of alleged publication.
2. That the intended cause of action is barred by statute of limitation and the court also lacks jurisdiction to determine the issues raised by way of the amendments.
3. The plaintiff filed his replying affidavit dated 8/7/2022. The plaintiff depones that the objection is based on factual issues which need proof and that the objection is bad in law and is also misconceived.
4. At paragraphs 14 to 16 of the replying affidavit , plaintiff depones that he amendment of the plaint was purely meant to include facts which were inherently linked to the defamation claim set out in paragraph 3 to 6 of the plaint.
5. Further, that the facts were introduced to enable the court appreciate the defendant’s actions after the publications made in June 2010.They also demonstrate the defendant’s improper motive and malice aggravating the publication of June 2010 by failing to retract or apologize and making subsequent defamatory allegations in a separate forum.
6. That paragraph 13 of the amended plaint confirms that the cause of action in the defamation suit is based on the publication made in June 2010. The defendant filed a defence to the amended plaint and



- did not contest the amendment. Further, that the defendant did not raise the objection during pretrial directions.
7. The plaintiff also depones that the defendant and his advocate have been unwilling to proceed with the matter and intend to delay it.
  8. It is further contended by the plaintiff that the defendant has been employing delay tactics in the case and even filed an application to expunge the letter dated 25/6/2010 and paragraphs 3 to 6 of the plaint but failed to prosecute the application.
  9. That the preliminary objection is another tactic that is being used to delay the hearing of the suit.
  10. The plaintiff contends that there is inordinate delay in bringing the preliminary objection. The plaintiff refers court to Section 1A, 1B and 3A of the *Civil Procedure Act* and calls on the court to prevent miscarriage of justice. He states that he will be prejudiced if the objection is allowed. The overriding objective in hearing the preliminary objection should be to administer justice to the parties.
  11. Parties filed written submissions on the objection.
  12. The defendant refers court to the provisions of Section 20 of the *Defamation Act* and Section 4 of the *Limitation of Actions Act* and urged that actions for libel and slander should be brought after 12 months.
  13. According to the defendant the impugned paragraphs concern emails dated 8<sup>th</sup>, 9<sup>th</sup> October 2010 and 29/11/2010 sent to the plaintiff and 351 parties but the plaintiff failed to introduce it in the plaint filed on 25/11/2010. The plaintiff did not seek leave and extension of time to bring the claim.
  14. The emails alluded to constitute libel and would in the opinion of the defendant constitute a separate cause of action as per the decision of *Ruth Njiru James Vs Njoroge Ndirangu & 3 Others (2015) eklr* and *Royal Media Services vs Valentine Mugure Maina (2019) eklr*. That the cause of action arises when the publication occurs and that libel and slander must be strictly pleaded and proved.
  15. That the additional paragraphs were not aggravated or repetitive publications. The original plaint dated 25/11/2010 was based on the defendant's letter dated 25/6/2010.
  16. The plaintiff knew of the publications made on 8<sup>th</sup> and 9<sup>th</sup> November 2010 immediately they were issued since he was among the recipients. The defendant maintains that the statutory period for bringing the claims lapsed on 7<sup>th</sup> and 8<sup>th</sup> October 2011 and 29<sup>th</sup> November 2011.
  17. Further, that extension of time cannot be granted in defamation suits. In support of that submission the defendant relied on the case of *Evelyn Onyamo Agindu –Vs- Evelyn Onyamo Agindu (2022) eklr*
  18. The plaintiff/ respondent filed submissions dated 3/10/2024. His case is that the defendant published several defamatory and malicious statements against him on or about June 2010 and that he filed the plaint on 25/11/2010 seeking injunction restraining the defendant from filing defamatory statements.
  19. That paragraph 13 of the amended plaint demonstrates the libelous action of the defendant and how the plaintiff has suffered hatred and ridicule. According to the plaintiff the paragraphs were only introduced to augment the defamation complained of in the original plaint at paragraph 3. The amendment assists the court determine whether the plaintiff is entitled to aggravated damages and quantum sought.
  20. That the objection is founded on the claim that the amended plaint introduced a new cause of action after 10 years. This is a factual issue which requires evidence from both parties and can be dealt with at the hearing.



21. The plaintiff argued that a preliminary objection is meant to serve a public interest cause of preventing parties from wasting judicial time. It is the view of this court that the objection was brought in bad faith and was calculated at ensuring that litigation does not come to an end.
22. Further, that no leave was required since the plaint was amended before the close of pleadings. The plaint was amended on 22/3/2021 while pleadings closed in May 2021.
23. Amendment of pleadings are allowed as long as the other party does not suffer prejudice, see the case of Eastern Bakery -Vs- Castelino 1958 EA.
24. That no prejudice will be suffered by the defence since the amendments are inherently interlinked and seek to elaborate the particulars of defamation in paragraph 3 of the plaint. The Court of Appeal in Nicholas Salat -Vs- IEBC & Others 2013 eKLR held that a where procedural infraction does not cause an injustice, they should not have an invalidating effect. That justice should not be sacrificed at the altar of strict compliance to procedure which sometimes cause hardship.
25. The amendments introduced in the plaint do not in any way introduce any hardship in the suit that the defendant can not be able to surmount in the course of the trial.

### **Analysis & Determination**

26. The preliminary objection dated 26/7/2024 seeks to expunge paragraphs 6,7, 8 and 13 of the Amended plaint .The objection is contested on ground that it does not meet the threshold of preliminary objections .
27. The objection and the plaintiff's replying affidavit together with the submissions have been carefully considered by the court.
28. The issues for determination are whether the objection raises pure points of law capable of disposing of the suit and whether the amendments to the plaint introduce a new cause of action.
29. In the case of Mukhisa Biscuits Manufacturing Co Ltd -Vs- Westend Distributors Co Ltd, (1969) EA the locus classicus on the law on preliminary objections the court stated as follows;-
 

“... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, on which if argued as a preliminary point may dispose of the suit. Examples are on 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 stated at page 701 that:

“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.” [Emphasis mine]
30. The issue that arises in the instant application is therefore one that should be tested against the well established standard of what amounts to a preliminary objection. The plaintiff has contended that the amendments are not aimed at introducing a new cause of action but are a mere elaboration and further demonstration to the court of the libelous conduct of the defendant.



31. The court therefore considers that by dint of that submission by the plaintiff the issue is contentious and does not fall within the parameters set out in the Mukhisa Biscuits Case. The court would require to hear the parties and sieve through the facts in order to determine whether a new cause of action is sought to be introduced through the amendments. The court can do so within the Preliminary Objection since those are matters of fact that are contested.
32. In the case of Oraro Vs Mbaja Oraro vs. Mbaja [2005] 1 KLR 141 Justice Ojwang JB( as he then was) as held that the objection must not be founded on factual information which must be investigated .The facts must not be disputed .

“...The principle is abundantly clear. A "preliminary objection" correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed...Where a court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”
33. The objection refers to the provisions of Section 20 of the *Defamation Act* and Section 4 of the Limitations Act. The defendant also contends that the plaintiffs’ claims are statute barred. The plaintiff has made it clear that he does not seek to introduce a new cause of action thus the question of the amendments being statutorily barred does not arise.
34. The set of facts are disputed by parties thus they would require investigation further by the court consequently the preliminary objection is not merited and is therefore dismissed with costs.
35. The parties are hereby directed to appear before the presiding judge of the Civil Division of this court for allocation of dates before another judge in the Division for hearing.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

Timothy for defendant

Nekeo h/b for Simiyu for plaintiff

