



REPUBLIC OF KENYA



**Waka v KCB Bank Kenya Limited & 3 others (Civil Case E030 of 2025)
[2025] KEHC 12360 (KLR) (Civ) (5 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12360 (KLR)

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

CIVIL

CIVIL CASE E030 OF 2025

SN MUTUKU, J

AUGUST 5, 2025

BETWEEN

SAMSON ODHIAMBO WAKA PLAINTIFF

AND

KCB BANK KENYA LIMITED 1ST DEFENDANT

THE INSPECTOR GENERAL OF POLICE 2ND DEFENDANT

THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

Background

1. Samson Odhiambo Waka, the Plaintiff, filed a Complaint dated 11th February 2025 seeking, inter alia, general damages for malicious prosecution, wrongful arrest and detention, as well as libel; aggravated/exemplary damages; a permanent injunction restraining the 1st, 2nd, 3rd and 4th Defendants from further publishing or causing to be published the alleged defamatory words set out in the complaint.
2. The Complaint was accompanied by a Notice of Motion of the same date, seeking a temporary injunction against the defendants pending hearing and determination of the suit, and an order to expedite the hearing of the present suit.
3. The current dispute arises from alleged termination of the employment of the Plaintiff from his position as the Senior Manager in the Trade Finance Department of the 1st Defendant, alleged defamation and alleged prosecution in Criminal Case No. 1150 of 2009, Republic v Yagnesh Divani & 9 others.



The Preliminary Objection

4. The 1st Defendant entered appearance and filed a Notice of Preliminary Objection (PO) dated 13th May 2025 challenging the competency of the suit in which the following grounds were raised:
 - i. That the dispute arises from an employer-employee relationship and this Honourable Court has no jurisdiction to hear and determine the instant suit as the same offends Article 162(2) (a) as read with Article 165(5)(b) of *the Constitution* of Kenya, and Section 12(1) of the *Employment and Labour Relations Court Act*.
 - ii. That the Honourable Court has no jurisdiction to entertain the claim for defamation as the same is time barred and contrary to the provisions of Section 4(2) of the *Limitation of Actions Act*.
 - iii. That the instant suit is otherwise an abuse of the court process and should be dismissed with costs.
5. On 14th May 2025 the Plaintiff, through his counsel, applied orally to withdraw the Notice of Motion with no order as to costs, which application was allowed. Directions were also issued to canvass the PO through written submissions.
6. The 1st Defendant filed submissions dated 5th June 2025 in which two issues have been identified for determination:
 - i. Whether this court has jurisdiction to hear and determine this matter.
 - ii. Whether the claim for defamation is time-barred.
7. In respect of the 1st issued, the 1st Defendant relied on Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), A.W.G v D.N.K. & another [2022] KEHC 26899 (KLR) and Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) on the issue of jurisdiction. The 1st Defendant submitted that the present claim falls within the jurisdiction of the Employment and Labour Relations Court (ELRC) by dint of Articles 162(2) and 165(5) of *the Constitution*, since it stems from an employment relationship between the Plaintiff and the 1st Defendant; that the claim founded on the tort of defamation, is time barred by dint of Section 4(2) of the *Limitation of Actions Act*, which stipulates that claims founded on defamation shall not be brought after the lapse of 12 months.
8. To support its submissions, the 1st Defendant has drawn this court’s attention to various decisions, including the case of Wycliffe A. Swanya v Toyota East Africa Ltd & another [2009] KECA 379 (KLR) where the Court of Appeal reaffirmed the above-cited provision. The 1st Defendant urged the court to dismiss the suit with costs, for want of jurisdiction and for being time barred.
9. In opposition to the PO, the Plaintiff submitted that this court has jurisdiction to entertain the present suit pursuant to Article 165(5) of *the Constitution*, since the same is premised on malicious prosecution but raises various causes of action touching on unlawful arrest and detention, and defamation, among others. The Plaintiff argued that contrary to the arguments by the 1st Defendant, the present claim does not concern itself with an employment dispute and does not therefore fall within the ambit of the ELRC. The Plaintiff has urged this court to consider inter alia, the case of George Masinde Murunga v Attorney-General [1979] KEHC 34 (KLR) where the High Court determined a claim for malicious prosecution.



10. The Plaintiff has further urged this court to consider the case of *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] KECA 700 (KLR) where the court reasoned that preliminary objections ought not to be used in defeating valid claims.
11. From the court record, the 2nd, 3rd and 4th Defendants are yet to enter appearance in the matter and did not therefore participate at the hearing of the preliminary objection.

Analysis and Determination

12. I have considered the PO and the rival submissions as well as the authorities cited by the parties. I have identified the following as the issues for determination:
 - i. Whether the PO meets the threshold.
 - ii. Whether this court has jurisdiction to try this matter.
 - iii. Whether the claim for defamation is time-barred.
13. A PO as defined in *Mukisa Biscuit Company v West End Distributors Limited* (1969) EA 696 must raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct and that a PO cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
14. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others* [2015] eKLR when it rendered itself thus in respect of what constitutes a PO:

“It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.”
15. To my mind, the PO raised in this matter rides on two (2) key elements. The first element concerns itself with whether this court has jurisdiction to entertain the present suit by dint of Articles 162(2) as read with 165(5) of *the Constitution*. On this issue, the 1st Defendant’s key argument is that given the fact that the dispute herein arises out of an employment relationship, it is the ELRC and not this court, that possesses the requisite jurisdiction to entertain the Motion. In contrast, the Plaintiff has maintained that the present claim is based on malicious prosecution and defamation and is therefore competently before the High Court.
16. *The Constitution*, 2010 under Article 162(2) of *the Constitution*, the Employment and Labour Relations Court is established with jurisdiction to hear and determine disputes relating to employment and labour relations. The jurisdiction of this court as provided under Article 165(3) is as follows:
 - (3) Subject to clause (5), the High Court shall have-
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;



- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of-
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
- (e) any other jurisdiction, original or appellate, conferred on it by legislation.

...

17. Sub-article (5) of Article 165 of *the Constitution* prohibits the High Court from handling matters reserved for the exclusive jurisdiction of the Supreme Court and courts of equal status to it, the ELRC being one of these courts by dint of Article 162(2) of *the Constitution*.
18. My reading of the pleadings reveal that the Plaintiff's claim is primarily founded on malicious prosecution and defamation, both of which constitute torts which fall under the jurisdiction of this court. However, among the reliefs sought in the plaint include damages pertaining to withheld salaries and foregone pension contributions. In my view, the said reliefs are outside the jurisdiction of this court to determine for the reason that they relate to employment matters. Consequently, the 1st Defendant partially succeeds on the 1st ground of the PO in respect of the claim founded on employment related issues.
19. On the issue whether the claim on defamation is time-barred, the pleadings show that the present claim is also premised on the tort of defamation. Section 4(2) of the *Limitation of Actions Act* 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 from such date.”
20. The above provision is clear that claims arising out of defamation ought to be filed within a period of one (1) year from the date of occurrence of the alleged defamatory publication. The circumstances giving rise to the current suit occurred on 17th June 2009, 31st May 2011 and 9th April 2013.
21. The Court of Appeal in *Wycliffe A. Swanya v Toyota East Africa and Another* [2009] eKLR lay emphasis on the requirement for a party to comply with the statutory timelines when it held thus:

“...the *Limitation of Actions Act* (Chapter 22 Laws of Kenya) does not say so. It says in case of libel or slander no action may be filed

“after the end of 12 months from the date the cause of action accrued” and we understand this to mean from the date the slanderous remarks are made. (see proviso to section 4 (2) – of the *Limitation of Actions Act* and section 20 of the



Defamation Act). It would be absurd for slanderous remarks to be made about a person and then he/she waits until he/she feels the effects thereof 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 appeal before us the slanderous remarks were made on 12th November, 2005 and the latest the suit should have been filed would have been 11th or 12th November, 2006.”

22. Similarly, in *Bosire Ogero v Royal Media Services* [2015] eKLR and *Dr. Lucas Ndung’u Munyua v Royal Media Services Ltd & Another* [2014] eKLR, the respective courts held that Section 27 (1) of the Limitation of Actions Act which sets out the instances in which time may be extended for a party to file a suit out of time, applies to claims in tort for personal injuries that arise from negligence, nuisance or breach of duty. There is nothing to indicate that the above proviso extends to defamatory claims.
23. In view of all the foregoing circumstances, I am persuaded that the claim for defamation is statute barred and therefore incompetent. Consequently, the ground 2 of the preliminary objection is well founded.
24. In the end therefore, the preliminary objection dated 13th May 2025 partially succeeds, leading this court to issue the following orders:
 - a. This court lacks jurisdiction to entertain the claim of defamation as the same was filed outside the time allowed by the law. The claim for defamation is struck out of the pleadings.
 - b. The Plaintiff shall amend his Plaintiff to align his claim with the jurisdiction of this court. An amended Plaintiff shall be filed and served on the Defendants within 20 days from the date of this ruling.
 - c. Leave is hereby granted to the defendants to amend their respective defences accordingly. This shall be done within 30 days after service of the amended Plaintiff.
 - d. The costs shall abide the outcome of this case.
25. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH AUGUST 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Kagimbi for the Plaintiff

Mr. Mugambi for Ms. Mungo for the 1st Defendant

N/A for the 2nd Defendant

N/A for the 3rd Defendant

N/A for the 4th Defendant

