



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 62 OF 2018**

**BEN KANGANGI.....PLAINTIFF**

**VERSUS**

**ANERLISA MUIGAI .....DEFENDANT**

**JUDGMENT**

The plaintiff Ben Kangangi filed this suit against the defendant in a plaint dated 22<sup>nd</sup> March 2018 seeking general damages, damages for loss of reputation, exemplary damages, a written apology and a permanent injunction. It was pleaded that, the defendant maliciously posted on her facebook and Instagram official handle the following;

**“It’s amazing what malice can do to your name in a day. Straight to the point. BEN KANGANGI had been my friend for over 5 years and NOT my boyfriend as stated. We met in a circle of young entrepreneurs who interacted frequently, giving each other leads and support. Ben being brought up from Mathare by a single mum and managed to hassled his way up from Mathare, i respected that. Ben sold cars. I even referred several friends to his car yard and within 2 years of interaction, I and other friends had even loaned him to expand his car business and he always paid back within a week or two.**

**One morning Ben called me and told me that he needed 20M for a tender he had secured with the government to supply electrical cables. That evening he also submitted original documents which until now i have not understood how he managed to forge the documents, So I told him i could only give him 7M but for the other 13M, he had to borrow from elsewhere.**

**2 days later Ben told me that his friend knew a financier but the financier did not know Ben personally. The financier was also known for asking for heavy collateral which Ben did not have and since i had a stronger standing socially and businesswise, i could borrow money on his behalf. So i agreed to met the friend that Ben was talking about and i was introduced to DENNIS MOMBO MWANGEKA and in less than a week ” MWANANCHI CREDIT ” ( which is Dennis’s company ) had given me the whole amount on September 2015 without any security. I also mentioned that i was borrowing money on behalf of Ben Kangangi who i thought everyone knew but Dennis said he did not know him. After three days Dennis called me and said he needed security of two cars, i brought two cars that Ben Kangangi surrendered but Dennis said he would only be content if i gave him atleast one car under my name or my company name and that’s when i gave in my vehicle.**

**So in the second week of being given the money is when Dennis started demanding for his money as I had stated to return the money within a week. Ben had promised the same. Right away i started calling Ben but his phone went unanswered, all i was been told is that he was taking numerous trips to dubai as his house which is right opposite village market was being completed and also he purchased a porsche panamera.**

**In the same week of calling Ben, i was informed that Ben and Dennis had been seen drinking together yet Dennis had told me that he did not know who Ben was. I even tried to call Dennis immediately after been told that and he lied that he was in Eldoret. A friend also send me a clip on Youtube of dennis house being raided years back by police over stolen cars. Straight away i saw something was not right and felt that i got into a trap and decided to take this matter to court to try and save my own money too.**

**Ben Kangangi was held in pangani police station till he agreed to sign off the money that I had taken under my name to be under his name and also return my money which he did agree to sign eventually. He was released and also returned my 5M the following day but still remained to pay me 2M. He also surrendered more cars and mine was returned.**

**After a few months Dennis called me and told me to withdraw the case from court as he was going to sort it out.. Bens cars were also returned which made me think Dennis was paid off the money by Ben and truth be told Dennis never called me again since 2015 until the day after my 30th birthday which was January 2018, he started haunting me again. Although Dennis claims to have sent me a demand letter end of 2016 I never received it but i informed my lawyer.**

**One of the bloggers called me last week and told me ” madam hapa kuna story yako na tumelipwa 10k, utatoa ngapi tusiandike hii story” i blocked every blogger including radio presenters who called me and just stuck to my truth.**

**I was not shocked to see the story out because these bloggers had been paid to even add lies and the fact that i had given them a cold shoulder made it worse.**

**Bottom line is that you CAN NEVER TRUST ANYONE. i learnt to stop been Naive. Nobody is your friend when it comes to money. My business is straight but unfortunately not everyone can say that about theirs thats why they choose to destroy others. You also need to know that people can team up behind your back and not everybody wishes the best for you.**

**When toxic people cannot control you, they will try and control how others see you. I choose to rise above petty rumours and focus on my vision of delivering the best quality, cleanest and safest drinking water in the market. I also choose to encourage and motivate people who are on their weight loss journey through sharing my diet and workout plan which will be coming to you very soon”**

It is the plaintiff’s case that the contents of the online posts resulted in numerous repeat publication of libelous articles against him by several publishers and at all material times the defendant was aware that she has a huge following and is a member of a prominent family therefore, deriving great public interest.

The plaintiff argued that the said words in their natural and ordinary meaning were understood to mean that the plaintiff is a congenital and compulsive liar, a crook, a cheat, fraudulent businessman, self-conceited person, insensitive and engages in insensitive, illegal and criminal activities.

The plaintiff claims that the posts were malicious and calculated to injure, disparage and lower the esteem with which right thinking members of the society in general regarded and hold him. The plaintiff’s character and reputation has been greatly injured by the said posts and as a consequence he has been brought into grave public ridicule, scandal, odium and contempt in the eyes of right thinking members of the society.

**PW1 Benson Kangangi** testified that he is a businessman dealing in imports and sale of high end automobiles, equipment, fashion apparel and interior designs materials through his trading company known as Benka Automobiles. Through his businesses he makes an annual turnover between USD 1,000,000 to USD 2,000,000.

PW1 is known to the defendant as they have been friends from 2012 and used to spend considerable time together. On 16<sup>th</sup> March 2018 however he came across an article published by the Standard Group on its online group, with the title “Keroche heiress Anerlisa Muigai haunted by Shs. 19 Million loan for ex-lover”. The publication ran a story where the defendant had been sued for failing to meet her debt obligation against Mwananchi Credit which she had allegedly taken on behalf of the plaintiff.

PW1 sought out the defendant but his calls remained unanswered. He thereafter sought legal advice from his counsel on the impact of the said article that was defamatory to him.

PW1 indicated that the defendant is not his ex-lover as the article claims as they have never had any intimate relationship. It is also not true that he had been involved in a money transaction with the defendant. PW1 testified that he knew of the defendant’s debt with Mwananchi Credit after she approached him looking for assistance to offset the arrears but he was unable to assist her financially. He however accompanied the defendant to her mother Mrs. Tabitha Karanja to try and convince her to come to her aid but unfortunately she declined.

According to the plaintiff, since the publication of the online posts, he has been greatly injured in character and reputation as a consequence he had been brought into public ridicule and contempt in the eyes of right thinking members of society. He stands to lose considerable business opportunities as a result of his damaged reputation.

Counsel for the plaintiff submitted that the plaintiff has made a case for defamation against the defendant. The defendant’s post depicted the plaintiff as someone of shameful character since he is a liar. Counsel referred to the case of **Samuel Ndungu Mukunya –v- Nation Media Group Limited and Another (2015) eKLR** where the court stated that a claim for defamation is proved if the following is established:-

- a) The libel must be published by the defendant.**
- b) The published words must refer to the plaintiff.**
- c) The statement as published must be false and defamatory of the plaintiff.**
- d) The publication was malicious.**

Counsel for the plaintiff maintain that the defendant published the alleged defamatory words. The published words referred to the plaintiff and the publication is false, malicious and defamatory.

#### **Analysis and determination.**

The issues for determination before this court are whether the alleged publication was defamatory and whether or not the plaintiff’s character, integrity and reputation was injured as a result of the defendant’s post?

According to the Black's Law Dictionary, 9th Edition at page 479 it defines defamation as

**“the act of harming the reputation of another by making a false statement to a third person.”**

The words complained of must be shown to have injured the reputation, character or dignity of the plaintiff. The burden of proving this is on the plaintiff to demonstrate that a reasonable person would not have understood the words otherwise than being defamatory. Evidence that shows that the defendant knew that the said words were false or did not care to verify their authenticity; this is evidence of malice. The ingredients relied upon by the court in order to determine whether libel or slander has been committed were stipulated in the case of **John Ward v Standard Limited [2006] eKLR** where J. L. A Osiemo J stated that:

**“A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule, or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling.**

**The ingredients of defamation are:**

- (i) the statement must be defamatory**
- (ii) the statement must refer to the plaintiff**
- (iii) the statement must be published by the defendant**
- (iv) the statement must be false.”**

The defendant was served, entered appearance on 28<sup>th</sup> February 2020 but did not file any defence. The matter proceeded *ex-parte*.

Turning back to the matter and bearing the ingredients of defamation as above in mind, the publication the plaintiff claims to be defamatory appeared as a long post on the defendant's facebook and instagram accounts. In it the defendant indicated that the plaintiff approached her seeking a loan for Kshs.20 Million. The defendant was unable to raise the whole amount but proceeded to lend the plaintiff Kshs.7 Million and later agreed to borrow Kshs. 13 Million on behalf of the plaintiff from Mwananchi Credit Limited. Later when she was requested to pay the loan she tried to get in touch with the plaintiff and her calls went unanswered. It was only when the plaintiff was held at pangani police station that he agreed to sign off the loan to his name and paid 5 Million to the defendant and remained with a Kshs.2 million balance.

On plain reading of the post, it is this courts view that it was indeed defamatory. The post directly referred to the plaintiff and indicated that he was an unscrupulous businessman who conducted fraudulent businesses and could not be trusted. The plaintiff indicated that the claims by the defendant were false and the defendant did not provide anything to controvert the same. The post was picked up by several media outlets such as Standard media who went on to publish an article on the online page titled “Keroche heiress Anerlisa Muigai haunted by 19 Million loan of ex-lover”

I am satisfied that in the absence of any contrary evidence, the plaintiff was defamed as the evidence on record does prove that the plaintiff's character was negatively affected.

An award of damages in defamation case is discretionary. The court of Appeal in **C A M v Royal Media Services Limited Civil Appeal No. 283 of 2005[2013] eKLR** stated that:

**“No case is like the other. In the exercise of discretion to award damages for defamation, the court has wide latitude. The factors for consideration in the exercise of that discretion as enumerated in many decisions including the guidelines in Jones V Pollard (1997) EMLR 233-243 include objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published and any repetition; subjective effect on the Plaintiff's feelings not only from the prominence itself but from the Defendant's conduct thereafter both up to and including the trial itself; matters tending to mitigate damages for example, publication of an apology; matters tending to reduce damages; vindication of the Plaintiff's reputation past and future.”**

In the case of **Benaiah Sisungu v Tom Alwaka T/A Weekly Citizen & Another [2007] eKLR** the court awarded Ksh.600,000/= as general/compensatory damages and Kshs.400,000 as exemplary damages for libel and defamation. I do note that the defamatory words were made on face book and twitters as well as other media houses. The plaintiff annexed several captions depicting the story and the general publication was that the plaintiff took some money from the defendant and failed to pay.

On the subject of a permanent injunction against the defendant, the plaintiff did not advance any arguments in that regard, hence I am not inclined to make any orders to that effect.

On the issue of damages, counsel for the plaintiff urged the court to award Kshs.6million. Counsel referred to the case of **FRANCIS OYATSI –V- WACHIRA WARURU & ANOTHER (2010) eKLR** where an award of Kshs. 3,500,000 was made and the case of **JOHNSON EVAN GICHERU –V- ANDREW MORTION & ANOTHER (2005) eKLR** where Kshs.6,000,000 was awarded.

Given the evidence on record, I do find that a global award of Kshs.2,000,000 shall be adequate compensation for the plaintiff. The plaintiff is hereby awarded Kshs. 2 million as general damages plus costs and interest.

**DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH, 2022.**

**S.J. CHITEMBWE**

**JUDGE**