



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 45 OF 2020

KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED.....PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED.....1ST DEFENDANT

JOHN KAMAU.....2ND DEFENDANT/APPLICANT

JULIUS SIGEL.....3RD DEFENDANT/APPLICANT

VITALIS KIMUTAI.....4TH DEFENDANT/APPLICANT

MUCHEMI WACHIRA.....5TH DEFENDANT/APPLICANT

PHILIP MBUTHIA.....6TH DEFENDANT

RULING

1. The Defendants took out the motion dated 4th January 2021 supported by the grounds presented on its face and the facts stated in the affidavit of Legal Manager and head of training Mr. Sekou Owino. The Defendants sought for the orders that the suit against them dated 2.03.2020 to be struck out as it is scandalous, frivolous and vexatious and abuse of the court process with costs of this application be awarded to the Defendants.
2. The Plaintiff/Respondent filed the replying affidavit sworn by Mr. John Kennedy Omanga the Chief Legal Adviser for the Plaintiff to oppose the motion.
3. I have considered the grounds stated on the face of the motion dated 4th January 2021 and the facts deponed in the rival affidavits. It is the submission of the Defendants that the Plaintiff by law being a Public body cannot maintain an action in defamation.
4. It stated that the by Legal Notice 44 of 1999 the Kenya Tea Development Authority was converted into a Limited Liability Company and renamed Kenya Tea Development Agency Holdings Limited and that it fulfills the functions of the defunct Kenya Tea Development Authority save for the Plaintiff's change in legal status to a limited liability company.
5. The defendant submits that the Plaintiff being a Public body exercising a Public function in the tea sector in Kenya cannot maintain an action for defamation being a Governmental body it should be open to Public criticism. The Defendants placed reliance in the case of **Nairobi City County Government v John Kamau & Another (2017)eKLR**

“in regard to the locus to sue and to be sued by body corporate, the court also notes the special circumstances of this case. The Plaintiff herein is a County Government which can be defined as government for the people and by the people and not just any other body of persons. It is run using public resources and it is a mini government so to speak. It is different from the former local authorities. I am persuaded by the arguments by Counsel for the defendants that a county government should be open to public criticisms as this is the only way that it can be held to account. The circumstances of this case were even more peculiar as the alleged defamatory statement arose from the contents of the Auditor General's report which is an official report and which contents are substantially true. I have no quarrel with the provisions of the County Government Act to the effect that a county government can sue and be sued but in cases of defamation such as the one at hand, I hold a contrary view which is that, it cannot sue.”

6. The Plaintiff opposed the application arguing that the Government’s position on the legal standing of the Plaintiff was rendered way back by the Attorney General in 2007 when it was incorporated as a private company under Section 16(2) of the Companies Act which can be wound up in accordance with the procedure stipulated in the Act and its own Articles of Association.

7. It is the Plaintiff’s submission that the Plaintiff has 54 small scale tea factory companies as its shareholders who are over 600,000 small scale tea growers and duly indicted under Clause 4 of its Articles of Association.

8. The Plaintiff therefore contends that they have been operating as a private company Limited by shares since 2000 and that the averments therein are therefore false, misleading and farfetched and that the court should not indulge them.

9. The substantive law governing striking out of pleadings is founded on the provisions of **Order 2 Rule 15 of the Civil Procedure Rules** which provides;

“(1) at any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- a) It discloses no reasonable cause of action or defence in law; or*
- b) It is scandalous, frivolous or vexatious; or*
- c) It may prejudice, embarrass or delay the fair trial of the action; or*
- d) It is otherwise an abuse of the process of the court;*

And may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

10. Having traversed the arguments of the respective parties, I find that the issue to be determined by this court is whether the Plaintiff has the legal capacity to maintain a suit for defamation. I have considered the Defendants/Applicants’ argument that the Plaintiff being a Public body does not have the legal capacity to sue for defamation as the same should be open to public criticisms.

11. The Plaintiff relied on the fact that it was incorporated under the Companies Act and that it was owned by small tea farmers who joined the membership and that its status was changed to a public company Limited by shares pursuant to Section 3(1) of the Kenya Tea Development Authority (Revocation) Order 1999, and that the Government has no control over KTDA and that it does not operate in close cooperation with the State

12. Whereas this court recognizes the constitutional and legislative rules governing the right to sue and be sued by a corporation, it also recognizes the unique facts of this case. The Plaintiff in this case is a Limited Company with its own Articles of Association that governs it, as well as shareholders who hold it accountable if something goes wrong. It is not sponsored by the government or centralized money, but by small-scale farmers therefore it is a public entity as espoused under Article 227 of the Constitution therefore capable of being defamed.

13. I do therefore find that the Plaintiff is not a public Company and wish to rely on the **American Book Co. v Gates** where the Court held that when a Corporation is so defamed as to lose the confidence in its customers in its product, the corporation may maintain action without an allegation of special damages.

14. In **D T Dobie & Company Kenya Limited v Muchina (1982) KLR 1** it was held that a suit should only be struck out if it is so weak that it is beyond redemption and is incurable by amendment. As long as a suit can be injected with life, it should not be struck out.

15. In the end, I decline to strike out this suit and instead dismiss the motion dated 04.1.2021 with costs abiding the outcome of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF DECEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

.....for the 2nd Defendant

..... for the 3rd Defendant

..... for the 4th Defendant

.....for the 5th Defendant

..... for the 6th Defendant