



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 86 OF 2014

CHARITY WANJIKU MUIRURIPLAINTIFF

VERSUS

THE STANDARD GROUP LIMITED....1ST DEFENDANT

MOHAMMED ALI.....2ND DEFENDANT

KATUA NZILE.....3RD DEFENDANT

JUDGMENT

1. By way of a plaint date 4th April, 2014, the Plaintiff instituted a suit against the 1st Defendant, The Standard Group Limited, 2nd Defendant, Mohammed Ali and 3rd Defendant Katua Nzile and jointly and severally prayed for:

- a. A declaration that the inclusion of the Plaintiff and/or a clip of the Plaintiff in the series, programme and broadcasting of the “jicho pevu Gharuri ya Saitoti” aired and/or carried out on 7th April, 2013 and uploaded on www.standardmedia.co.ke are acts of negligence and irresponsible journalism.
- b. A declaration that the Plaintiff was not a necessary person and/or party to warrant being featured and included in the programme and broadcasting titled “jicho pevu Gharuri ya Saitoti” aired on 7th April, 2013.
- c. An injunction restraining the Defendants by themselves, their agents, servants and employee or otherwise howsoever from repeating, airing, publishing or circulating in any way or at all the statements, broadcasting and/or contents of the series programme and broadcasting titled “jicho pevu Gharuri ya Saitoti” featuring the Plaintiff and/or with a clip of the Plaintiff in the Kenya Television Network (“KTN”), its web site or in any of its media houses and/or businesses or at all.
- d. An order of mandatory injunction directing the 1st Defendants to forthwith remove the clip and feature of the Plaintiff from the series, programme and broadcasting titled “jicho pevu Gharuri ya Saitoti” and from its website and all others sites associated with the 1st Defendant.
- e. Special damages as pleaded in paragraphs 24 and 25 above.
- f. Damages for libel.
- g. Damages for injurious and malicious falsehood.
- h. Cost of this suit.
- i. Interest on (a), (b), (c), (d), (e), (f) and (g) from the date of judgment until payment in full.

2. The Plaintiff described herself as a journalist by profession and a media personality. She has sued the 1st Defendant, The Standard Group Ltd, a Multi-Media House and the owners of Kenya Television Network (hereinafter **KTN**) and the 2nd and 3rd Defendants as it’s employees,

agents or members of staff.

3. The Plaintiff's complaint is that on or about the 7th April, 2013, KTN aired its investigative programme titled "**jicho pevu Gharuri ya Saitoti**". That the programme was an investigative documentary on the death of Hon. Prof. George Saitoti, drug dealers in Kenya and plans to execute a prominent legislator, a prominent personality and journalists. The Plaintiff's complaint is that a clip where she appeared with Artur Magaryan and Artur Sargasyan, commonly known as Artur Brothers or Armenian Brothers while on duty on behalf of the 1st Defendant was featured in the aforesaid programme. That it was stated in the programme that the **Artur brothers** had made prominent people fearful or afraid and were set to hoodwink Kenyans through strategies like the Moi Avenue bomb blast. The Plaintiff's further contended that the clip complained of was aired out of context maliciously and without any justifiable cause and thereby caused defamation to her character by portraying her as a person involved in drugs and other criminal activities.

4. The Plaintiff further avers that as a consequence of the alleged defamatory publication, she has lost job opportunities and also lost opportunities to enhance and grow her career as a media personality. That the Defendants have continued to repeat the programme in question on **KTN's** other sites including uploading the same in **You Tube** and **KTN's** website, www.standardmedia.co.ke. It is further pleaded that the Defendants have failed to admit liability and to apologize.

5. The Plaintiff's claim was denied as per the statement of Defence dated 7th May, 2014. It was pleaded that the broadcast of the feature **Jicho Pevu: Gharuri ya Saitoti** was done in public interest due to the circumstances regarding the suspected killing of a prominent personality in Kenya. It is further contended that the excerpts complained of do not make any reference to the Plaintiff and nor was the feature defamatory of the Plaintiff neither cause any consequential damages. The Defendants further averred that they are not responsible for the acts of third parties in respect of social media publications.

6. The Plaintiff filed a reply to the statement of defence, reiterated the contents of the plaint and joined issues with the Defendants.

7. During the hearing of the case, the Plaintiff called one witness, PW1 Charity Wanjiku Muiruri who is the Plaintiff herein. The Defendants side closed their case without calling any witness.

8. The parties then filed written submissions which I have considered.

9. Defamation is defined in Winfield in J.A. Jolowicz and T. Ellis Lewis – Winfield on Tort 8th Edition, thus:

“Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of the society generally, or which tends to make them shun or avoid that person.”

A defamatory statement, according to Gately on Libel and Slander 8th Edition by Phillips Lewis paragraph 4 page 5 discredits a man or tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit.”

10. This is a suit founded on the tort of defamation. The Court of Appeal in the case of **Wycliffe A Swanya v Toyota East Africa Limited & another Nairobi CA No. 70 of 2008** set out the elements of defamation thus:

“It is common ground that in a suit founded on defamation the plaintiff must prove:-

i. That the matter of which the plaintiff complains is defamatory in character.

ii. That the defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed.

iii. That it was published maliciously.

iv. In slander subject to certain exceptions that the plaintiff has suffered special damages.”

11. The Plaintiff's evidence is that the video footage in question defamed her by unnecessarily including her image therein. That the said clip was taken while she was acting in the cause of duty with the 1st Defendant, who was her then employer. That the **Artur Brothers** who were Armenians were alleged to be assassins and involved in other criminal activities and had captured public interest. That the programme in question was about drug dealers and murders and the **Artur brothers** were featured therein. The video footage was played in court and it included the clip of the Plaintiff being lifted unto a counter by one of the **Artur brothers**.

12. The Plaintiff further testified that she had attended a media party at the Runda Residence of the **Artur brothers** where she had been sent on duty by her seniors when the clip where she was lifted was taken during a photo shoot at the event. The Plaintiff's further evidence was that the footage of the **Artur brothers** as featured in the programme in question was taken at Jomo Kenyatta International Airport at the VIP lounge. That there are other pictures of the **Artur brothers** in the footage and that the programme talked about the bomb blast at Moi Avenue which was connected to the **Artur brothers**. That the footage also talked of the investigations carried thereof and threats to journalists lives.

13. The Plaintiff contended that it was not necessary to include her clip which was taken in year 2007 while the **Jicho Pevu** investigative programme of the **Artur brothers** which was taken 7 years later and was about drug dealers and murderers. That there was no explanation

why she was featured in the said programme yet none of the other media personalities she had appeared with in other photographs and videos taken at the Runda party were included. That in the part where the Plaintiff appears on **Jicho Pevu**, there was mention of the Moi Avenue bomb blast also.

14. The Plaintiff in her evidence stated that immediately after the **Jicho Pevu** programme in question, she became the No. 1 trending topic on twitter. That the impression created was that she had been “busted”, just like in her show on **Radio Africa** by the name “busted”. That there were extremely negative and insulting comments on social media which alluded to her being some form of a prostitute. That there were memes on Face Book which depicted her as a person of loose morals. That the effect of all this is that she was devastated and impeded from carrying out her work. That efforts to tell her side of the story did not make things any better and she ended up losing payments on account of advertisements on her social media platforms which was assessed by Trinc Management at Ksh.1,000,000/=. That an offer of a 5 year contract from Sony Music International in South Africa for USD 15,000-20,000 a month was also withdrawn due to the negative social media.

15. The Plaintiff denied any romantic involvement with the **Artur brothers** or any involvement with the death of Hon. Prof. George Saitoti or any involvement in any plans to murder Hon. Mike Sonko, Maina Njenga or any journalist as alluded to in the **Jicho Pevu** programme in question or any connection in any way with criminal activities.

16. During cross-examination, the Plaintiff maintained her evidence. She explained that the **Jicho Pevu** footage in question was one hour, 26 minutes and 27 seconds long and that her image appears therein for about 5 seconds. Her complaint is that her appearance in the footage in question was out of context and thereby disparaged her reputation. The Plaintiff further described herself as a journalist who qualified in the United Kingdom with a Diploma from Oxford Business School.

17. The Plaintiff’s evidence remains uncontroverted by any other evidence. The publication of the clip where the Plaintiff appears was not denied. I therefore find that the clip was published and concerned the Plaintiff.

18. The investigative programme **Jicho Pevu** was about drug dealers, murders and other criminal activities. The Plaintiff’s clip had been taken several years previously at a party. The Plaintiff’s clip had nothing to do with the investigative programme on criminal activities. The investigative programme was played in court including the clip complained about by the Plaintiff. The comments regarding the criminal activities while the Plaintiff was being shown in the clip directly connects her to the criminal activities being investigated by the journalist. The Plaintiff’s clip was clearly misplaced and out of context. The Plaintiff’s evidence has established that the vitriol on social media was as a result of the criminal activities mentioned in the programme and the immoral connotations thereof.

19. The Defendants did not adduce any evidence. There is therefore no evidence to establish any truth in the publication of the clip complained. The Plaintiff’s uncontroverted evidence is that the Defendants were aware of the circumstances under which she associated with the **Artur brothers**. The publication connotes malice and/or recklessness on the Defendants part. (See for example **Hon. Uhuru Muigai Kenyatta v Baraza Limited [2011] eKLR; Phineas Nyagah v Gitobu Imanyara 2013 eKLR**).

20. The Plaintiff has on a balance of probabilities proved her case. A reasonable man watching the programme complained about would perceive it as defamatory. As espoused by the Court of Appeal in the case of **Miguna Miguna v The Standard Group Ltd & 4 others [2017] eKLR**:

“It has been held in various cases in Kenya and elsewhere that the test whether a statement is defamatory is an objective one and is not dependent on the intention of the publisher but is dependent on what a reasonable person reading the statement would perceive of it”

The Court of Appeal then proceeded to hold that it was not fair for the trial court to expect the Plaintiff therein to call evidence to prove his good character.

21. The Plaintiff has prayed for special damages of USD 15,000 for loss of job opportunity and loss of Ksh 1,000,000/= per month for loss of potential to make money through her social media page. In my view, this is loss of future job prospects and loss of opportunities. They are not money spent by the Plaintiff. As stated by the Court of Appeal in **Zacharia Waweru Thumbi v Samuel Njoroge Thuku [2006] eKLR**:

“If I was to explain or define special damages to a layman, I would say ”they are reimbursement to the plaintiff/victim of tort for what he has actually spent as a consequence of the tortious acts complained of” This point cannot be overstressed. A claimant of special damages must not only plead the claim but also go further and strictly prove, usually by documentary evidence that he actually spent the sum claimed.”

22. There is no claim in the plaint on exemplary and aggravated damages. The submissions on the said headings are therefore not anchored in the pleadings. Parties are bound by their pleadings.

23. The Plaintiff is entitled to general damages to compensate him for the harm caused to her reputation and the distress and humiliation caused by the defamatory publication (See for example **Ken Odondi & 2 others v James Okoth Omburah T/a Omburah & Co. advocates [2013] eKLR; Standard Ltd v G. N. Kagia T/a Kagia & Co. Advocates [2010] eKLR**).

24. The Plaintiff’s counsel submitted for an award of Ksh.10,000,000/= as damages for libel. The court was referred to several authorities wherein the damages awarded was Ksh.5,000,000/= - Ksh.7,000,000/=. On the other hand the Defendants’ counsel quantified the same at Ksh.200,000/=. I have considered the Plaintiff’s position in the society and the consequential damages. I have also considered the fact that the programme in question was aired at around 7.30 p.m. news thereby translating into huge viewing and the uploading of the programme on online platforms. I have further taken into consideration that the clip complained of was factual but placed out of context which factors all count in the assessment of damages. (See also **Johnson Gicheru v Andrew Morton [2005] eKLR** and **Jones v Pollard 1997 EMLR 233-**

243).

25. The declaratory and injunctive orders sought are merited and are hereby allowed. There is evidence of repeat of the programme and online presence of the programme complained of.

26. The upshot is that judgment is entered for the Plaintiff against the 1st, 2nd and 3rd Defendants jointly and severally for the sum of Ksh.3,000,000/=, declaratory orders and injunctive orders in terms of prayer (a)(b)(c) and (d) of the plaint and the costs of the suit.

Date, signed and delivered at Nairobi this 24th day of Oct, 2019

B. THURANIRA JADEN

JUDGE