



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 656 OF 2007

CITY HOPPER LIMITED..... PLAINTIFF

V E R S U S

THE STANDARD LIMITED RESPONDENT

JUDGEMENT

1) **City Hopper Limited**, the plaintiff herein, filed an action based on the tort of defamation against the Standard Limited, the defendant herein, vide the plaint dated 17th September 2007 in which it sought for judgement as follows:

a) *General damages*

b) *Aggravated damages*

c) *Costs of the suit*

d) *Any other or further relief*

2) The defendant filed a defence to deny the plaintiff's claim.

3) When the suit came up for hearing, the plaintiff summoned Judy Thuo (PW1) to testify in support of its case while the defendant summoned Paul Kalemba (DW1) to testify in support of its defence.

4) PW1, a director of the plaintiff company told this court that the plaintiff was aggrieved by the cartoons published by the defendant titled "**Muddy Crush**" as depicting the plaintiff as '**Shitty Hoppa**'. It is the evidence of PW1 that the word 'Shitty Hoppa' displayed the plaintiff in bad light in view of the fact that the plaintiff was still new in the market. PW1 also produced another cartoon caricature which implied "**Michuki rules**" had achieved their purpose to kill the original Kenya Bus and create Citi Hoppa. The plaintiff further alleged that the defendant had in an earlier cartoon published a caricature of a bus titled: "**Chuki Hoppa**" and "**City Leper**" which publications were intended to attack the plaintiff and damage its reputation. PW1 stated that the aforesaid publications implied that the plaintiff company was hopeless.

5) PW1 stated that the plaintiff has been in business for over 11 years with few outstanding accident claims. She pointed out that at the time of the publication no other company had the City Hoppa logo except for the plaintiff. It is pointed out that the defendant had no justification to use vulgar word "shit" in reference to the plaintiff.

6) In its defence, one, Paul Kalemba (DW1) testified and told this court that he is a cartoonist publishing weekly features for the defendant. He denied that the article published on 18th August 2008 under title 'accidents' that there was any meaning and references to legal notice, flouting of rules, increase of accidents and preferential treatment of the plaintiff by the Government.

7) DW1 stated that with respect to the cartoons, he confirmed that the words '**leper**', "**hopeless**", "**shitty hoppa**" and '**Chuki Hoppa**' were negative words in their ordinary meaning. DW1 stated that the aforesaid words were only intended to provoke thought. DW1 also admitted that he did not contact the plaintiff before publishing the cartoons complained of.

8) Two main issues arose for the determination of this court.

First, Is whether the defendant is liable for defamation.

Secondly, whether the damages should be awarded and how much.

9) On the first issue, it is the submission of the plaintiff that it has tendered credible evidence which established that the defendant published cartoons and words which were defamatory of the plaintiff. The defendant is of the submission that the plaintiff failed to present evidence proving the existence of the ingredients of the tort of defamation. The defendant pointed out that the plaintiff was not mentioned by name in those publications.

10) Having considered the evidence tendered by both sides, it is clear in my mind that the publications were in form of words and cartoons were understood to refer to the plaintiff. Those cartoon caricatures and the words published depicted the plaintiff in the negative sense. I am convinced that the plaintiff's reputation was damaged by those publications. I find that the plaintiff has established the tort of defamation as against the defendant on a balance of probabilities.

11) Having determined the issue touching on liability, I now turn my attention to the issue touching on quantum. The plaintiff beseeched this court to award it ksh.20,000,000/= as general damages and ksh.10,000,000/= for aggravated damages. The plaintiff cited the cases of **Samuel Ndung'u Kukunya =vs= Nation Media Group Ltd and Another (2005) eKLR**, where the court awarded ksh.10,000,000/= and that of **Daniel Musinga t/a Musinga & Co. Advocates =vs= Nation Newspaper (2005) 1KLR 587** in which this court awarded ksh.10,000,000/= too.

12) The defendant on the other hand proposed at payment of ksh.500,000/= is sufficient as general damages.

13) This court was asked not to award aggravated damages since the defendant did not deliberately libel the plaintiff. Having considered the rival submissions and the authorities cited, I am convinced that an award of ksh.6,000,000/= is reasonable in the circumstances of this case. I am also satisfied that there is need to award aggravated damages in view of the fact that the defendant repeatedly made the defamatory publications. I award the plaintiff ksh.2,000,000/=.

14) In the end, I enter judgement in favour of the plaintiff and against the defendant as follows:

i. General damages ksh.6,000,000/=

ii. Aggravated damages ksh.2,000,000/=

iii. Costs of the suit.

Dated, Signed and Delivered in open court this 31st day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent