



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 426 OF 2013

GEORGE KURIA MWAURA.....PLAINTIFF

V E R S U S –

ALPHONCE MUNGAHU.....1ST RESPONDENT

THE STAR PUBLICATIONS LTD.....2ND RESPONDENT

JUDGEMENT

1) George Kuria Mwaura, the plaintiff herein, filed an action based on the tort of defamation and libel against **Alphonse Mungahu** and **Star Publications Ltd**, the 1st and 2nd defendants respectively vide the plaint dated 18.11.2013 and amended on 26.2.2014 in which he sought for the following reliefs:

- a) *Compensatory and exemplary damages*
- b) *An apology in the form and manner appropriate to the plaintiff, published in the Star Publication Ltd.*
- c) *Costs of the suit*
- d) *Interest on (a) and (c) above*
- e) *Such other relief and further relief that this honourable court may deem fit and just to grant.*

2) The defendants filed a joint statement of defence to deny the plaintiff's claim.

3) When the suit came up for hearing, the plaintiff and one independent witness by the name John Maina Mahinda testified in support of the plaintiff's claim. It is the submission of the plaintiff that the publications of the articles by the 1st and 2nd defendants on 19th and 20th September 2013 titled "**Two arrested in Moi land Dispute**" and "**Two deny flogging Moi's land titles**", were false, malicious and defamatory of him.

4) The following are the extracts of the offending publications as pleaded in the plaint.

PUBLICATION DATED 19TH SEPTEMBER 2013

a. **"Two arrested in Moi Land dispute"**

b. **"Hunter turn hunted".**

c. **"Simon Laboso and George Kuria are arrested yesterday for fraud".**

d. **"A dispute in which retired president Daniel Moi is accused of allocating himself 14 acres of Government land took a twist yesterday when one of his accusers was arrested yesterday. Simon Kiprono Laboso was arrested alongside George Kuria who has been accompanying the accusers to the court but who is not a party to the suit."**

e. *“The court has been asked to determine which of the two titles is genuine.”*

f. *“Laboso and Kuria were arrested by CID officers for fraud.”*

PUBLICATION DATED 20TH SEPTEMBER 2013:

a. *“Two deny forging Moi’s land titles”.*

b. *“Long arm of the law; George Kuria Mwaura and Simon Kiprono Laboso are led to the Milimani Law court cell after denying forgery of former President Moi’s title deeds”.*

c. *“Two businessmen who sued Retired President Daniel Moi for allegedly grabbing their land were yesterday arraigned in a Nairobi Court and charged with forgery.”*

d. *“Simon Kiprono Laboso and George Kuria Mwaura were charged with forging documents in respect of a parcel of land at Embakasi”.*

e. *“They were arrested on Wednesday at Milimani Law Courts immediately after the hearing of the case they had sued Moi for allegedly grabbing and transferring the 16 acres piece of land to a private company”.*

f. *“Mwaura is charged with obtaining registration documents by false pretence”.*

5) Goerge Kuria Mwaura (PW1) testified and stated that he has never been a party to a dispute pitting H.E. D. T. Moi against four others in E.L.C no. 1403 of 2007. He submitted that the allegations by the media that he was a party to the suit were falsehoods since he has never had any dealings with H.E. D. T. Moi over the 16 acres piece of land at Embakasi, in Nairobi area. The plaintiff further stated that the allegations that he jointly forged a title document for the 16 acres of the land belonging to H.E D. T. Moi is falsehood, malicious and propaganda aimed at tarnishing, embarrassing and assassinating his character. PW1 also stated that the allegation that he gave false information and recorded a statement with the police regarding the 16 acres parcel of land is falsehood and cannot be justified by the defendants. PW1 further averred that the defendants acted irresponsibly in publishing information obtained from a charge sheet without proper verification. PW1 also averred that he has a valid title document for L.R. No. 209/9943, therefore the C.I.D officers illegally charged him with trumped up charges. The plaintiff stated that the publication of the false information was intended to injure his personal integrity, credit, honour, character and reputation thus bringing his image into public scandal, ridicule, odium, contempt and for that reason he has suffered stress, mental torture, anguish and humiliation. Reverend John Maina Mahinda (PW2), told this court that when he read the publication complained of by the plaintiff, he begun to doubt the plaintiff’s integrity and character. PW2 said he presided over the plaintiff’s wedding but he now begun to mistrust him when the publications came out. PW2 further stated that the congregation of his church i.e **P.C.E.A Ruai**, doubted him and did not even wish to elect him as one of the church leaders due to the negative publication and was therefore prompted to write a letter to the congregation to clear the air so that the mistrust against the plaintiff could go down.

6) Alphonce Mungahu (DW1) testified on behalf of the defendants.

He admitted publishing the offending articles. DW1 stated that it was true that there was pending before court, **E.L.C. No. 1403 of 2007** over ownership of L.R no. 14277 in Embakasi where H.E. D.T. Moi was one of the parties named therein. He pointed out that the plaintiff and Simon Kiprono Laboso were some of the people who appeared in court on 18.9.2013 and were thereafter arrested within the court precincts. On 19.9.2013, the plaintiff and Simon Kiprono Laboso were taken to court where they were jointly charged with forgery of documents of title no. L.R. no. 209/9943. It is said by DW1 that the plaintiff and Simon Kiprono Laboso denied the joint charges and were released on cash bail. DW1 further stated that what they published were what transpired in court on 18th and 19th September 2013 concerning the plaintiff ,therefore there was no malice. He also averred that the words were not defamatory of the plaintiff.

7) At the close of evidence parties were invited to file written submissions. The parties herein filed their separate issues.

8) Two main issues commend themselves for determination

First, whether or not the publications by the defendants were defamatory of the plaintiff.

Secondly, what are the available remedies in the circumstances.

9) On the question as to whether or not the publications complained of were defamatory of the plaintiff, it is important to state from the outset that the defendants admit publishing what the plaintiff found offensive, claiming that the same were not malicious nor defamatory of the plaintiff. It is admitted by DW1 that the plaintiff was not a party to the suit **E.L.C. no. 1403 of 2007**. This contradicts the allegation published in article of 20.9.2013 in which it was stated that the two businessmen had sued retired president H.E. D. T. Daniel Moi for grabbing their land. Had the defendants taken time to verify the facts of the case, they would have found out the plaintiff was not a party to any suit pitting H.E. D.T. Moi and any other parties. The defendants were therefore reckless in publishing a report which they had not verified. I am convinced that the defendants had made serious allegations against the plaintiff and the disparaging remarks were published with full knowledge of the defendants that the same were false and unfounded. The defendants have stated that they are relying on the defence of **fair comment, qualified privilege and justification**. In my humble estimation, in order for those defences to succeed there must be a factual basis which is not the position in this case. It was incumbent upon the defendants to show that the information they published were true or were substantially true. At the hearing of this suit, it turned out that there was no evidence to support the assertion that the plaintiff had sued **H.E. D.T. Moi in E.L.C. no. 1403 of 2007** or that he forged title **L.R. no. 14277** or that he gave false information to the police. I am convinced that the defendants knew prior to the publication that the allegations they published were false. In fact, DW1 admitted in cross-examination that the plaintiff was not a party to E.L.C. no. 1403 of 2007. PW2 testified and told this court that the plaintiff is a prominent businessman and a member of the **Presbyterian Men Fellowship, Ruai Parish** and further stated that as a result of the publications he was discredited, shunned and avoided by members of the congregation and the entire church and could not even be elected into any position in the church. In the end, I am satisfied that the plaintiff has proved on a balance of probabilities that he was defamed by the defendants' publications.

10) The second issue to be determined is what reliefs should be granted to the plaintiff. I have already outlined the sought of prayers the plaintiff has sought. In this case the plaintiff has sought for *inter alia* **general damages and exemplary damages**. In such actions, the sum to be awarded will be at large, which is a matter of judicial discretion. The plaintiff has argued that the award must compensate him for damages to his reputation. The plaintiff cited the case of **Hon. Nicholas Biwott vs= Clays Ltd (2000) 2 E.A 334** where the plaintiff was awarded ksh.30,000,000/=.

He also cited the case of **Hon. Chris Obure vs= Tom Oscar Alwako t/a Headline publishers and others Nairobi H.C.C.C. no. 956 of 2003**, where this court awarded ksh. 15m as general damages and ksh. 2m as exemplary damages.

11) The plaintiff asked this court to award him a global sum of ksh.15,000,000/= to cover both general, exemplary and damages in lieu of an apology. On quantum, the defendant urged this court to dismiss the claim stating that the plaintiff had failed to prove his claim hence he is not entitled to damages.

12) Having considered the authorities cited and the plaintiff's standing in society I am convinced that he is entitled to be compensated by way of payment of damages. On general damages, I am of the view that an award of ksh.3million is sufficient.

13) On exemplary damages, there is evidence that the defendants made two publications and were asked to publish an apology but they declined to do so. On this head, I award the plaintiff kshs.500,000/=. I have already alluded that the defendants are not willing to publish an apology. They feel that, what they published was the gospel truth. On this head, I award the plaintiff ksh.500,000 in lieu of an apology.

14) In the end, judgment is entered in favour of the plaintiff and against the defendants, jointly and severally as follows:

i. General damages	ksh.3,000,000/=
ii. Exemplary damages	ksh. 500,000/=
iii. Damages in lieu of apology	ksh. 500,000/=
Total	ksh.4,000,000/=
iv. Costs of the suit	

v. Interest at court rates on (i), (ii), (iii) and (iv) above from the date of judgment until full payment.

Dated, Signed and Delivered in open court this 18th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent