



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE. NO. 324 OF 2016**

**CHARLES KINOTI AKWALU ..... PLAINTIFF**

**VERSUS**

**JOSEPHINE KANANU NKWENE ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff vide a plaint dated 19<sup>th</sup> December, 2016 filed this suit seeking damages for alleged libelous publication by the Defendant on her Facebook page as follows:

**“Mafuns am so surprised today over a certain issue & if this is th wy (sic) to go then meru tumeisha(siasa ya matumbo:) this monig all MERU professionals ie 90 members gathered for breakfast mtg at the Deputy Presidents residence at KAREN, Charles Kinoti Akwalu ws given 3million to subdivide to the 90members, he unfortunately escaped with th cash. ooh God saidieni maskini...3million while poverty in Kenya is taking its cause...tafuteni mganga!!”**

2. It is averred that the said publication was malicious and calculated to injure the Plaintiff’s business and lower his esteem before his clients, family, friends, colleagues and the general public.

3. The Plaintiff prays for general damages as follows:

**(a) An apology and retraction of similar prominence as the defamatory statement;**

**(b) General damages for libel;**

**(c) General damages for malicious falsehood;**

**(d) Exemplary damages;**

**(e) Damages for psychological and emotional distress;**

**(f) Costs of this suit together with interest thereon; and**

**(g) Any other remedy that this Honourable court may deem fit to award.”**

4. Interlocutory judgment was entered against the Defendant on 25<sup>th</sup> July, 2017. The case subsequently proceeded to formal proof.

5. In his evidence, the Plaintiff adopted his witness statement dated 15<sup>th</sup> December, 2016. The Plaintiff stated that he hails from the county of Meru and described himself as a businessman in Nairobi. The Plaintiff further described himself as an opinion leader of good standing and repute. That the Facebook post complained of mentioned him by name and had tagged him, thereby becoming accessible to his Facebook friends and followers, attracted several comments and was shared with the other audience on social media.

6. The Plaintiff’s contention is that as a result of the malicious and untrue posts and comments, he has suffered loss of reputation not only in Meru and but nationally. He blames the Defendant for not having contacted him for his side of the story and failure to apologise or pull down the post.

7. At the close of the Plaintiff's case, his counsel filed written submissions. I have considered the said submissions.

8. Defamation is defined in Winfield in J.A. Jolowicz and T. Ellis Lewis – Winfield on Tort 8<sup>th</sup> 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 8<sup>th</sup> 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.”**

9. The elements of defamation were stated by the Court of Appeal in case of **Wycliffe A Swanya v Toyota East Africa Limited & another Nbi CA No. 70 of 2008** as follows:

**“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 utterances 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.”**

10. In the case at hand, the Plaintiff's evidence is uncontroverted by any other evidence. The statement complained of was published and it was circulated through social media. The statement concerned the Plaintiff. The statement has been shown to be untrue. There is no evidence of any verification of the contents thereof. This connotes malice on the Defendant's side. I hold that the statement was defamatory.

11. On quantum, the Plaintiff's counsel submitted for an award of Ksh5,000,000/= as general damages and Ksh.500,000/= punitive and exemplary damages. The Plaintiff's counsel relied on the following case: **Susan Wangui Chomba v Petere Kisa Otabonge KLR** where it was rendered as follows:

**“In assessing compensatory damages, the court will take into account the distress, hurt and humiliation which the defamatory publication has caused the plaintiff. But obviously the quantum of such damages will depend upon the seriousness of the libel and any actual proved damage that the same may have caused the plaintiff. The more closely it touches the plaintiffs personal integrity, professional reputation, honour, courage, loyalty and the chore attributes of her personality, the more serious the libel is likely to be...” In this case, the court awarded the plaintiff general damages of kshs.2,000,000, punitive or exemplary damages of Kshs.500,000 and costs of the suit.”**

12. Having held that the post was defamatory, I now embark on the question of assessment of damages. The Plaintiff has prayed for general damages and exemplary damages. In the circumstances of the instant case, the Plaintiff is entitled to general damages to compensate him for the harm caused to his reputation and the distress 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**).

13. Exemplary damages go beyond compensation. They are meant to punish the wrongdoer and act as a deterrent from similar conduct in future (See for example **Ken Odondi & 2 others v James Okoth Omburah T/a Omburah & Co. advocates [2013] eKLR** and **Standard Ltd v G. N. Kagia T/a Kagia & Co. Advocates [2010] eKLR**.)

14. In the case at hand, the words complained of were published to a number of persons. There was no apology or retraction. The Plaintiff suffered distress and loss of reputation both socially and as a businessman. The libel was serious in that it depicted the Plaintiff as a person who is unscrupulous and dishonest. I assess general damages at a composite figure of Ksh. 1,000,000/=.

15. Consequently, Judgment is hereby entered for the Plaintiff against the Defendant for the sum of Ksh.1,000,000/= plus an apology in terms of prayer (a) of the plaint. Costs of the suit to the Plaintiff.

Dated, signed and delivered at Nairobi this 25<sup>th</sup> day of Sept, 2018

**B. THURANIRA JADEN**

**JUDGE**