



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2059 OF 2000

WILFRED KAMAU GITHUA.....PLAINTIFF

V E R S U S

NATION MEDIA GROUP LIMITED.....DEFENDANT

JUDGEMENT

1) Wilfred Kamau Githua, the plaintiff herein, filed an action against Nation Media Group Ltd, the defendant herein, vide the re-amended plaint dated 18th July 2002 whereof he sought for the following reliefs:

a) An order that the defendant do make a full and an unqualified apology, amends and withdraws the said remarks and statements and such an apology, amendment or withdrawal be given the widest circulation similar to the complained of publications.

b) General damages and aggravated damages.

c) Costs of this suit.

d) Interest on (b) and (c) at court rates

e) Any further or alternative relief as this honourable court may deem fit and just.

2) The defendants filed a defence to the re-amended plaint denying all the allegations in the plaint and pleaded that the publications were published under the sense of public duty and without malice and in honest belief that the information published was true.

3) When this suit came up for hearing, the plaintiff testified and summoned an independent witness in support of his case. The defendant opted to close its defence without summoning witnesses in support of its defence.

4) The plaintiff (PW1) executed two witness statements which he relied. PW1 stated that he is a valuer by profession and that at the time of the defamatory publications he was practising in the name and style of Githua & Associates. He averred that on 8th and 21st December 1999, the defendant in its section titled **“Business week”** published two defamatory articles which destroyed his practice. It is the plaintiff’s evidence that as a result of the publications his clients deserted him and he was forced to relocate to his home to do a little work as a valuer.

5) PW1 further stated that his friends shunned him and his family suffered financial ruin due to his inability to get work and make a living. PW1 produced in evidence as an exhibit a copy of the Daily Nation of 7.12.1999 in which the defendant is alleged to have published the following statement of and concerning the plaintiff:

“Senior Officers at the Nairobi City Council, together with a local consultant, have fleeced the City Council of more than shs. 30 million in a convoluted agreement on survey works. The consultant, Githua & Associates, was “contracted” to complete the survey works for wayleaves (right of way) acquired for water pipelines to supply water to the City from Ndaka-ini dam.....

“According to documents, the firm is a professional valuer and not a surveyor. Questions have now been raised as to why a surveyor was not appointedthe firm was awarded the contract to carry out survey work, and submission of accurate survey plans and drawings to the director of surveys in the Ministry of Lands for authentication and alteration of the original Registered Index Maps (RIMs).

No survey records relating to leeways have been deposited with the director of surveys nor his authorised officials in Thika or Murang’a Districts, according to the liason officer, Mr. Simon Ng’ang’a, himself a surveyor, in a memo dated June 21, 1999.

Further, the consultant submitted land certificates and registered land certificates and registered deed agreement forms without the necessary supporting documents. Among the documents is an award form, which details the area acquired, the developments thereon, value awarded and details of the interested parties to the land acquired.

The consultant simply submitted lists of names of purported property owners and their signatures without evidence of their ownership. According to a memo by a surveyor at City hall, Githua and Associates simply duplicated development plans given to him for purposes of land acquisition.

Such duplication has created confusion which later provoked the property owners to uproot the beacons

“Although the consultant passed himself as a surveyor, his fees are based on the Valuer’s Act. The charges for physical survey work are defined in Schedule 8 of the Act and hardly exceed Shs.4,500/= per plot for the kind of work the surveyor was to do, sources say. His fee notes however are in the region of shs.200,000/= per plot. According to available documents, the consultant charged hourly rates”

“Sources said that the project has been questioned on more than one occasion by City hall officials, but no action is ever taken. This is because, sources added, some senior officers at City hall have done everything possible to frustrate efforts to remove the consultant from the project, and also bulldozed payments”

“At one time, said the sources, the office of the liaison officer was broken into and a claim for shs.12.3 million for the consultant processed. It is not clear whether it was paid, however. The liaison officer had withheld it as the work done could not be verified”

“A source has indicated that the documents are being white-washed, reducing the amounts paid from shs.32 million to shs 9 million for the controversial contract. According to new documents, the consultant has lodged fee notes worth shs. 30 million”

6) The plaintiff also produced a copy of the Daily nation of 21.12.1999 in which the defendant is alleged to have published the following of and concerning the plaintiff

“Following an expose in “Business Week” that a clique of officers and a consultant have fleeced City hall shs. 30 million in an unending contract, strange developments have been taking place at City hall. Senior Officers of the Nairobi City Council have now conjured up a contract for Third Nairobi Water Supply Project.....”

“The contract between the Water and Sewerage Department and Githua and Associates was signed and sealed on March 10, 1988, four years after the consultant began work.....”

“The signatures on the contract are those of the suspended Town Clerk, Mrs Zipporah Wanderah, and the immediate former mayor, Mr. Samuel Mbugua. City Hall sources, however, doubt the authenticity of the signatures which they suspect were appended to the documents after the two had left office.....”

“..... the first document attempted to whitewash the controversial project by reducing the amount paid from shs. 32 million to sh. 9 million. According to New documents, the consultant has lodged fee-notes for sh. 30 million. The document shows that shs. 5 million is outstanding and this for a project whose initial cost was estimated at shs.873,000/= ...”

“.....According to a memo by a surveyor at City Hall, Githua and Associates simply duplicated development plans for purposes of land acquisition”

7) PW1 told this court that the aforesaid publications were defamatory of the plaintiff in that they were calculated to lower him in the estimation of ordinary, just and reasonable men.

8) He averred that the articles depicted him as a liar, a thief, fraudster and conman who obtained money by falsely pretending that he was a surveyor whilst he was a valuer. The plaintiff summoned one Peter Kimani Muhindi (PW2) as an independent witness. PW2 stated that he has known the plaintiff as a reputable valuer since the early 1970s and with passage of time he developed close personal relationship with him. He stated that after he read the two publications he began to have a negative view of the plaintiff and that he no longer wanted to deal with him anymore. PW1 further stated that after the publications, the plaintiff stopped attending club meetings and even shut his business office in Nairobi town.

9) In his evidence, PW1 further stated that he was at all material times a qualified valuation surveyor involved in consultancy and valuation work through his firm known as Githua & Associates and that he had been contracted by the City Council of Nairobi to undertake valuation work and facilitate the provision of land survey and other related services pertaining to phases 2 and 3 of the third Nairobi water supply project. He described the services he was rendering to include valuations of affected parcels of land to ascertain compensation payable to land owners, deed plans on portions of compulsorily acquired and acquisition of certificates of titles for the portions acquired.

10) The defendant admitted in paragraphs 5 and 6 of its defence that it published the words complained of but denies that it published them maliciously or falsely. In paragraph 7 of its defence the defendant contends that the suit is time-barred as the cause of action allegedly did

not arise within a year and beseeched this court to have it struck out.

11) At the close of evidence learned counsels were invited to file and exchange written submissions which they did. I have considered both the documentary and oral evidence tendered by the plaintiff plus the rival written submissions and the authorities cited. The parties to this dispute did not file agreed issues. However, I think the following issues arose for the determination of this court:

i. Whether this suit is time-barred.

ii. Whether the articles published by the defendant are defamatory of the plaintiff

iii. Whether the plaintiff is entitled to the prayers sought in the plaint.

12) On the 1st issue, the defendant is of the submission that the plaintiff's suit is time-barred under Section 4(2) of the Limitation of Actions. The defendant pointed out that twelve (12) months from 7th December 1999, which is the date when the cause of action arose would take us to on or before 7th December 2000 by which time the plaintiff should have filed his suit. The plaintiff is of the contrary view that this suit was filed within time hence not time-barred.

13) It is not in dispute that the first article was published on 8.12.1999 while the second one was filed on 21.12.1999. Under **Section 57(a) of the Interpretation and General Provisions Act**, the day on which an event happens is excluded from the computation of time. Therefore in computing time in respect of the first article of 7.12.1999, twelve months begun to run from 8.12.1999. This suit was filed on 8.12.2000. I am convinced that the suit was filed within 12 months hence the preliminary objection is overruled.

14) The second issue as to whether the publications were defamatory of the plaintiff. In the absence of evidence on the part of the defendant, it is clear that there is no defence to the plaintiff's claim. In other words, no evidence has been given to challenge that which was given by the plaintiff and his witness.

15) There was also no evidence to support the defendant's defence to show that the defendant had a duty to publish what it did or that it did not act maliciously. In the publications, it is clear that the plaintiff was depicted as a thief, liar, cheat, fraudster. It is clear from the plaintiff's evidence that the ordinary meaning of the words uttered meant that the plaintiff forged documents, was a cheat, a thief and further that he obtained money by false pretences.

16) It is also not in dispute that the plaintiff presented uncontroverted evidence of how the articles affected his business and personal life.

17) The final issue is whether the plaintiff is entitled to the reliefs sought in the plaint. Having considered the evidence and the submissions, I am convinced that the plaintiff met all the essential elements necessary to establish the tort of defamation and therefore he is entitled to the reliefs sought in the re-amended plaint.

18) The plaintiff sought for an apology. It should be noted that the publication complained of was done more than 9 years ago. It may not be of any useful purpose to order the defendant to carry out a publication due to the passage of time. This court is of the submission that the defendant can be ordered to pay some money in lieu of apology. I direct the defendant to pay the plaintiff a sum of ksh.500,000/=.

19) The plaintiff sought for general damages. Having considered the rival submissions and the authorities cited, I am convinced that a sum of ksh.4,000,000/= is sufficient and reasonable.

20) On aggravated damages the plaintiff has been able to show that he is entitled to claim aggravated damages. The defendant blatantly refused to offer an apology. They carried out the offensive publications on two occasions. I ward the plaintiff ksh.500,000/=.

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

i. General damages ksh.4,000,000/=

ii. Aggravated damages ksh. 500,000/=

iii. Damages in lieu of apology ksh. 500,000/=

Net total ksh.5,000,000/=

iv. Costs of the suit.

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

Dated, Signed and Delivered in open court this 30th day of November, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendants