



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO. 313 OF 2009

RTD JUSTICE AARON RINGERA.....PLAINTIFF

-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

JUDGEMENT

1) Retired Justice Aaron Ringera, the plaintiff herein, filed this suit against **The Standard Ltd** vide the plaint dated 10th June 2009 and amended on 22.6.2009 whereof he sought for judgment as follows:

a) General damages;

b) Damages on the footing or aggravated and exemplary damages;

c) An injunction restraining the defendant its agents or servants or otherwise from further printing, circulating, distributing, publishing or otherwise causing or authorizing to be published the same or and such libels of and concerning the plaintiff;

d) Costs;

e) Interest on (a), (b) and (d) above.

f) Any other or further relief or reliefs that this honourable court shall deem just to grant.

2) The articles which provoked the filing of this suit were in the Defendants' newspaper **The Standard on Sunday** published on 7th June 2009 under the heading:

“Kibaki Wants Ringera to get another term to cover up Mega Scandals”

“..... the president is most impressed with Ringera's record of concealment and grand-standing on 'grand' corruption. Kibaki wants another five years of kowtowing to his orders at the highest level of KACC. He wants Ringera to continue the excellent cover up of the anglo-leasing scandal. That has been Ringer's paramount brief for the last five years, and he has done exceptionally well.”

3) The second article was published on 14.6.2009 after this suit had been filed titled **“How Wako and Ringera are helping Anglo-leasing cheque to defraud us”** as follows:

“Fighting graft in Kenya is officially on the back burner. But ordinary Kenyans out of impotence and outrage talk and write about it. Now they don't want us to even write harmless columns. This newspaper was sued by Justice Aaron Ringera for last Sunday's piece on his tenure at the Kenya Anti-Corruption Commission (KACC) and mega scandals. Allegedly, on the basis that piece was defamatory.

Ringera has a history of attempting to gag those he thinks are fighting the government of the day. In the early 1990s during the height for the fight for democracy and multipartism, Ringera filed a suit against the Law Society of Kenya stopping it from agitating for democracy and reforms. We must deal with him the same way the law society dealt with him. Ignore

him!

This week we highlight the concealment and grandstanding on corruption by the Kenyan Government by sharing without readers a most explosive dossier on the anglo-leasing scandal. The report prepared by pricewaterhouse cooper assisted by Atkins Advantage Technical Consultants Limited and e2E government. Ringera and the Attorney General, Mr. Amos Wako, have copies. If one needs any more evidence or insight on the grand conspiracy against the Kenyan public, or see how State agents are conspiring with Anglo leasing masterminds to defraud Kenya, then this reports a compulsory reading.”

4) The defendant filed a defence to deny the plaintiff's claim. The plaintiff successfully applied vide the motion dated 27.1.2011 to have the defence struck out and dismissed on 22.9.2011. This suit therefore proceeded for hearing as a formal proof.

5) The plaintiff (PW1) was the only witness who testified in support of his case. He adopted the contents of a witness statement he executed on 15.5.2017 as his evidence in chief.

6) PW1 told this court that the two publications depicted him as follows:

i. Had a record of concealment and grandstanding on grand corruption in Kenya by the Kenyan Government while serving as a Director of the Kenya anti-Corruption Commission.

(K.A.C.C.)

ii. Had done an excellent cover up of anglo-leasing scandal and had this as his paramount brief for the last five years of his term at K.A.C.C.

iii. That by filing this case he was attempting to gag or stop those whom he thought were fighting the government of the day.

iv. That he was party to a grand conspiracy with Anglo-leasing master minds to defraud the Kenyan public.

7) PW1 further stated that the message conveyed to the public by the defendant in the publications were that he was a criminal, corrupt, a thief and unfit to hold any public office. He also stated that the crimes he was accused of by the defendant were some of the most serious economic crimes that a person can commit against the public in any country.

8) The plaintiff further stated that the defendant's newspaper is widely read in East and Central Africa in both hard and soft copy. He said that recently he was able to access the defendant's website and read the articles complained of. PW1 gave his evidence of the extent of his reputation nationally, regionally and internationally.

9) The plaintiff is of the submission that the defendant took upon itself a mission to completely destroy his reputation and integrity at all costs irrespective of the consequences.

10) At the close of the plaintiff's evidence, the parties were invited to written submissions. I have considered the evidence presented by the plaintiff together with the rival submissions. The question of liability was settled when the defendant was struck out and dismissed on 22nd September 2011. Having considered the evidence presented by the plaintiff, I am convinced that the plaintiff established on a balance of probabilities that he was defamed by the articles published by the defendant.

11) The remaining main issue is the assessment of quantum. According to the defendant the amount which should be given to the plaintiff as damages should be significantly lower than ksh. 7 million. The defendant cited the case where the plaintiff sued **Nation Newspapers Ltd. i.e H.C.C.C. no. 94 of 2011 Haron Ringera vs= Nation Newspapers Ltd** and was awarded **ksh.7,000,000/= on account general damages.**

12) The defendant proposed that a sum of ksh.2million for general damages. The defendant also cited the case of **John Evans Gicheru vs= Andrew Morton & Another** where the claimant was awarded ksh.6,000,000/=.

13) The plaintiff on the other hand urged this court to award him a global figure of ksh.100,000,000/= to cover both general and aggravated and exemplary damages.

14) The plaintiff also cited the case between himself and **The Nation Newspapers Ltd** in which he was awarded ksh.11,500,000/= for both general and exemplary damages. The plaintiff pointed out that this is a unique and peculiar case and therefore not comparable to any other. It was stated that the defendant blatantly disobeyed successive injunctive orders by continuing to publish the injurious matter.

15) Having considered the evidence, the submissions and the Authorities cited, I am convinced that the plaintiff's reputation was seriously injured by the aforesaid publications. I agree with the plaintiff that this case is unique and peculiar. It would appear that the defendant was hell bent to inflict maximum reputational damage on the plaintiff. I think an award of ksh.10,000,000/= is a reasonable compensation for general damages.

16) The plaintiff has also beseeched this court to grant him exemplary and aggravated damages. The defendant is of the submission that no grounds have been advanced for this court to make an award in relation to aggravated and or exemplary damages. It is also submitted that an apology was made on demand.

17) It is apparent from the evidence that the defendant was served with an order of injunction on 17.6.2009 with a penal notice. The defendant went ahead to publish the second publication despite having been served with the court order.

18) It is also evident that the defendant went ahead and posted the same defamatory information concerning the plaintiff on the internet or its website. It is also true that the defendant published an apology which prima facie did not comply with the court order issued on 10th June 2010 directing it to publish an apology forthwith.

19) In circumstances, I am convinced that the plaintiff is entitled to an award of damages for exemplary and or aggravated damages. I award the plaintiff ksh.3,000,000/= on this head.

20) It is clear that I have awarded in total a sum of ksh.13,000,000/= representing both general, exemplary and aggravated damages. The figures suggested by the plaintiff are far too exorbitant while those suggested by the defendant are way below comparable awards.

21) The plaintiff has also applied for an order of injunction. It is argued that the defendant has previously disobeyed court orders to deny the plaintiff protection of the law to protect his reputation and integrity. I am convinced that the plaintiff is entitled to the order.

22) In the end judgment is entered in favour of the plaintiff and against the defendant as follows:

i. General damages **ksh.10,000,000/=**

ii. Exemplary & aggravated damages **ksh.3,000,000/=**

Total **ksh.13,000,000/=**

iii. An injunction to restrain the defendant, its agents or servants or otherwise from further printing, circulating, distributing, publishing or otherwise causing or authorizing to be published the same or any such libels of and concerning the plaintiff.

iv. Costs of this suit.

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

Dated, Signed and Delivered at Nairobi this 23rd day of November, 2018.

.....
J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents