



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL CASE NO. 477 OF 2007**

**DAVID MUGAMBI SIMON.....PLAINTIFF**

**-VERSUS-**

**NATION MEDIA GROUP LIMITED.....DEFENDANT**

**JUDGEMENT**

1) David Mugambi Simon, the plaintiff herein, sued Nation Media Group Ltd, the defendant herein, vide the plaint dated 7.6.2007 in which he sought for general and exemplary damages for libel. The defendant filed a defence and denied the plaintiff's claim.

2) When this suit came up for hearing, the plaintiff's case was supported by the evidence of four witnesses while the defendant closed its case without summoning witnesses to testify in support of its defence.

3) The plaintiff was at the material time a businessman operating a hardware business, transport and agricultural produce in Nairobi, Migori and Kinangop. On 18.6.2006, the defendant's issue of Taifa Jumapili printed a photograph of the plaintiff sandwiched between two policemen, with both of his thumbs tied in a string and above the photograph there is a heading with the following words:

**“MSHUKIWA ANASWA”** and below the photograph, the following words are printed:

**“Mshukiwa wa genge hatari akisindikizwa na polisi baada ya msako mkali ambapo mmoja alinaswa na wengine wawili kutiwa mbaroni katika barabara ya Accra, Nairobi, jana pia bastola na risasi tano zilipatikana.”**

4) The aforesaid photograph and article was repeatedly printed the next day on the Daily nation of 19.6.2006 with the heading **“Poor ties that Bind”**

5) The defendant admitted in paragraph 4 of the defence of having published the words complained. The plaintiff told this court that he was a prominent and reputable businessman who traded in the name and style of **Mukeu Distributors** and also owned a wholesale shop at **Karagatha shopping centre** in Kinangop and that he engaged in the transport business. He said that his business was doing extremely well before the publication of the defamatory statement. He said he had received several accolades for his great contribution in his work and in the world business. This is to show that the plaintiff was a good and an honest businessman. It is the evidence of Simon Macharia Wainaina (PW2) that he knew the plaintiff as his tenant in the premises in South Kinangop where the plaintiff operated a wholesale business. PW1 said that the plaintiff's sales dwindled after the publication and the plaintiff found it difficult to pay rent. PW2 stated that the plaintiff was now viewed as a gangster forcing him to demand he vacate his premises since he did not want to be associated with a gangster.

6) Justus Ndege Mbuuri (PW2) said that he knew the plaintiff very well and he was shocked when he learnt that he had been associated with criminal acts and therefore he began to shun him. He said he stopped buying goods from the plaintiff's shop. The plaintiff also stated that as a result of the publication he was ridiculed by people who knew him and that his business collapsed. He further claimed that his mother suffered a minor stroke upon reading the offensive publication.

7) At the close of evidence learned counsels were invited to file and exchange written submissions. Having considered the evidence and the rival submissions, the following issues commend themselves for determination.

**First**, is whether the publication makes reference of the plaintiff and if yes whether the words complained of in their natural meaning or by way of innuendo or both are defamatory of the plaintiff.

**Secondly**, whether the plaintiff is entitled to the reliefs sought.

8) On the first issue, it is the submission of the plaintiff that though the article does not mention him by name, the words on top of the photograph and the words below are captured in the same caption. It is said that the photograph is that of the plaintiff whose thumbs are tied in a rope and he is sandwiched between two policemen, therefore the plaintiff is of the submission that it is clear that the words refer to one other than him. The defendant did not address this court over this issue. Having looked at the article produced in court, it is clear in my mind that the photograph and the wordings of the aforesaid publications appear in the same caption, that the publications refer to the photograph of the plaintiff.

9) The second limb of the first issue is whether the aforesaid publications were defamatory of the plaintiff. It is the submission of the defendant that the words printed indeed represent what was captured in the picture. The defendant pointed out that in his testimony in cross-examination the plaintiff conceded that there was a police operation before the publication of the article and that at the material time when the photo was taken he was in police custody having arrested.

10) The defendant argued that the plaintiff was arrested on suspicion of being part of a criminal gang and that during the said operation and subsequent arrest of the plaintiff, a pistol and bullets had been recovered.

11) In short the defendant is of the submission that the words complained of were neither false nor defamatory. It is not in dispute that the defendant did not tender any evidence to show that there was a police operation along Accra road.

12) There was also no evidence tendered to show that three suspected gangsters were arrested. There was no evidence tendered to show that the plaintiff was one of those gangsters arrested on the material day in which the police recovered a pistol and some ammunitions. The plaintiff tendered evidence showing that he was arrested on 23.5.2006 and the event entered in the occurrence book at the Central Police Station, Nairobi. The plaintiff tendered evidence showing he sued the police and managed to obtain a favourable judgment vide petition no. 33 of 2009. In view of the foregoing, it is clear that the publication injured the reputation of the plaintiff.

13) Having come to the conclusion that the plaintiff's reputation was destroyed by the publication, the next question is whether the plaintiff is entitled to the reliefs sought in the plaint. The evidence tendered shows that the defendant's publication was not only untruthful but also defamatory. The plaintiff is therefore entitled to the reliefs sought. The plaintiff was able to show that the statement which was published in Taifa Jumapili on 18.6.2006 was further repeated in the Daily Nation of 19.6.2006. whoever read those publications viewed the plaintiff as a dangerous person who carried guns and he is capable of robbing people in broad day light.

14) As a result the plaintiff's reputation and businesses were destroyed. The plaintiff asked this court to award him ksh.10,000,000/= and ksh.5,000,000/= as general and exemplary damages respectively.

15) The defendant is of the opinion that there is no justification at all to award the plaintiffs damages. In seeking for the aforesaid award, the plaintiff relied on the case of **Miguna Miguna =vs= Standard Group Ltd & 4 others (2017) eKLR** where the claimant was awarded ksh.5,000,000/= and ksh. 5 million as general and exemplary respectively. Having considered the guidelines for assessing damages and having taken into account the authorities cited, I am convinced that the plaintiff is only entitled to general damages. There are no plausible reasons to award him exemplary damages.

16) In the end, judgment is entered in favour of the plaintiff and against the defendant. The plaintiff is awarded ksh.3,000,000/ as a reasonable figure. The award to attract interest at court rates from the date of judgment until the date of full payment. Costs is also awarded to the plaintiff.

**Dated, Signed and Delivered at Nairobi this 23<sup>rd</sup> day of November, 2018.**

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents