



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 86 OF 2011

DORCAS FLORENCE KOMBO.....PLAINTIFF

- V E R S U S -

KENYA BROADCASTING CORPORATION.....DEFENDANT

JUDGEMENT

1. Dorcas Florence Kombo, the plaintiff herein, filed an action vide the plaint dated 19th March 2011 against Kenya Broadcasting Corporation, the defendant herein. In the aforesaid plaint, the plaintiff sought for judgment against the defendant as follows:

- i. An unconditional apology to the plaintiff.
- ii. General damages.
- iii. Costs of the suit.
- iv. Interest on (b) at court rates until full payment.

2. The defendant filed a defence to deny the plaintiff's claim.

3. When the suit came up for hearing, the plaintiff adopted her witness statements as her evidence. Learned counsels also recorded a consent order to have the evidence tendered in **Nairobi H.C.C.C no. 87 of 2011, Hon. Musikari Kombo =vs= Kenya Broadcasting Corporation** adopted and relied upon in this case. The defendant informed this court that it was not going to summon witnesses in support of its case.

4. The plaintiff testified in supported of her case as PW2. The plaintiff stated that the following statement which was in the defendant's website was defamatory to her:

“And at the Anti-corruption court the wife of former local government minister Musikari Kombo, Elizabeth Kaloki Kombo was charged with three counts of fraud.

Kombo was alleged to have fraudulently acquired public property and issuing a false document to a school principal.

It was alleged that she irregularly obtained over 8 million shillings on diverse dates between April 12 and May 2009 being a senior director of Education in Coast Province.

She pleaded not guilty to the charges and was released on a cash bail of 100,000 shillings and a surety of a similar amount.”

5. It is the evidence of the plaintiff that she came to learn of the publication in the defendant’s website on 3.3.2011 titled “**Kenyan Minister in court over abuse of office**” where it was reported that she the wife of Hon. Musikari Kombo had been charged at the Anti-corruption court with three counts of fraud. She categorically stated that she was not known by the name Elizabeth Kaloki Kombo who was referred to as the wife of Hon. Muskari Kombo. The plaintiff denied being involved in any fraud. She also said that she received several inquiries from relatives and friends inquiring whether she had been charged with an offence and whether she was legally married to Hon. Musikari Kombo. She said that the article was published with malice with the aim of disparaging her character towards right thinking members of society. The plaintiff gave her qualifications as a certified public account (CPA) and a member of the Institute of Certified Public Accountants of Kenya (ICPACK). She also stated that she is a chartered accountant and a fellow of the Chartered Public Secretary being a member of Certified Public Secretaries of Kenya (C.P.S.(K) and having also worked with Deloitte and Price Waterhouse Coopers for 21 years. The plaintiff also summoned her husband, Hon. Musikari Kombo (PW1) to testify in support of her case. PW1 corroborated the evidence of PW2 that she is a chartered accountant with repute. PW1 stated that he too saw the offending article published by the defendant. He said that the same was not limited to Kenyan citizens alone but was meant for the whole world. PW2 said that his family featured prominently in the article and that at the material time it was in the public domain that he was married and that none of the officers from the defendant sought to verify the information from him before publishing. PW1 further stated that it was ethical that since the defendant was going to use a family relation in sensationalizing a story, it should have engaged him as the former minister of Local Government as alluded in the feature. PW1 further stated that the story was in fact false, malicious and defamatory in that his wife (PW2) was not charged with any criminal offence and that he (PW1) was not married to Elizabeth Kaloki Kombo. PW1 and PW2 both stated that they instructed their lawyer to demand for an apology but the defendant declined to tender any apology

6. At the close of evidence, this court invited the parties to file and exchange written submissions. The plaintiff’s advocate made submissions stating that the plaintiff was defamed by the article. It is argued that the article was not only false and malicious but was calculated to disparage her character and were meant in their ordinary meaning to mean that the plaintiff was charged for fraud and embezzlement of public funds and that being a spouse of a former minister was abusing the trust vested in her for her selfish gains. She further argued that the article depicted her as a person engaging in corruption and corrupt practices.

7. In its submissions, the defendant argued that though the article may have been latently false, it made no direct reference to the plaintiff therefore there was no malice. The defendant further argued that no inference of guilty could be made by one being charged in a court of law. Though the defendant argued that the article was pulled down two days after its publication, that assertion was proved otherwise when the plaintiff through PW1 tendered evidence showing otherwise.

8. After a careful consideration of the evidence and the rival submissions, I have come to the conclusion that the plaintiff was defamed. She was depicted in the article as a corrupt person who was undergoing trial in an Anti-corruption court facing three counts of fraud. The article also depicted the plaintiff as a person who fraudulently acquired public property using forged documents.

9. Having come to the conclusion that the plaintiff has proved on a balance of probabilities that she was defamed, let me now turn my attention to the assessment of damages. The plaintiff sought to be awarded a sum of ksh.30,000,000/= as a fair and just compensation. The plaintiff cited the following authorities:

i. **Nation Media Group =vs= Daniel Musinga C.A No. 120 of 2008** in which the Court of Appeal sitting at Nakuru awarded ksh.4,000,000/=

ii. **Machira =vs= Mwangi & Another (2001) K.L.R 532** where this court awarded the plaintiff ksh.8,000,000/=

iii. **Lucy Njiru =vs= Nation Media Group, Nairobi H.C.C.C no. 835 of 2007** where this court awarded ksh. 5 million.

iv. **Hon. Christopher Obure =vs= Tom Oscar Alwaka & 3 others Nairobi H.C.C.C No. 956 of 2003** where the plaintiff was given ksh.15,000,000/= as general damages and ksh.2,000,000/= exemplary damages.

v. **Dorcas Florence Kombo =vs= Royal Media Services, Nairobi H.C.C.C NO 85 of 2011** was awarded ksh.5,000,000/= as general damages for a similar reporting.

10. The plaintiff also urged this court to issue an order directing the defendant to publish an apology and in lieu of an apology the defendant be ordered to pay ksh.2,000,000/=.

11. Having failed to publish an apology despite knowing that the publication was factually wrong this court was beseeched to award exemplary damages.

12. The defendant on the other hand is of the view that since the plaintiff has not proved the damage she has suffered then she is not entitled to damages. It pointed out that the amount of damages suggested by the plaintiff of ksh.30,000,000/= is manifestly excessive in the circumstances. The defendant relied on the case of **Ali Chirau Mwakwere =vs= Royal Media Services (2005) eKLR** where this court awarded ksh.1,000,000/=. The defendant proposed that if the court is minded to award damages then a nominal amount be granted.

13. I have carefully considered the authorities cited by both sides. I have noted that the first three cases cited by the plaintiff relate to advocates who sued for damages for being defamed in their professional capacities. In my humble view, the most relevant authority is that of **Dorcas Florence Kombo =vs= Royal Media Services Ltd, Nairobi H.C.C.C No. 85 of 2011** in which this court dealing with similar facts as those obtaining in this case, awarded the plaintiff ksh.5,000,000/=.

14. This decision was made on 7.11.2014 and I do not see why I should depart from it. Consequently I award the plaintiff ksh.5,000,000/= as general damages.

15. The remaining question is whether I should issue an order directing the defendant to publish an apology. I find the prayer reasonable. The plaintiff presented evidence showing that the defendant has not pulled down the offending article from their website. I think the plaintiff is justified to demand for an apology. I hereby issue an order directing the defendant to publish an apology to the plaintiff in its website within a period of 30 days. In default, the plaintiff is at liberty to apply for the appropriate orders.

16. The plaintiff is awarded costs of the suit.

Dated, Signed and Delivered in open court this 27th day of January, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant