



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 337 OF 2015**

**HON. MARTHA KARUA .....PLAINTIFF**

**- V E R S U S -**

**HON. MOSES KURIA ..... DEFENDANT**

**JUDGEMENT**

1) Hon. Martha Karua, the plaintiff herein, sued Hon. Moses Kuria vide the plaint dated 24<sup>th</sup> September 2015, in which she sought for judgement in the following terms:

- a. *General damages for libel*
- b. *Exemplary damages*
- c. *Punitive aggravated damages*
- d. *Interests on a, B, and c above at court rates*
- e. *Costs of this suit with interest thereon.*

2) The defendant filed a statement of defence dated 8<sup>th</sup> October 2015 to deny the plaintiff's Claim.

3) When the suit came up for hearing on 20<sup>th</sup> September 2017, the defendant and his counsel failed to turn up despite having notice of the hearing date hence the same proceeded for hearing exparte. On 1<sup>st</sup> November 2017, this court set aside the exparte proceedings and gave the defendant an opportunity to present his defence pursuant to the motion dated 11<sup>th</sup> October 2017 filed by the defendant. The suit was fixed for hearing on 5<sup>th</sup> December 2017 but come that date, the defendant and his counsel also failed to attend court forcing this court to issue an order closing the defence case and the case to revert back to the position it were before 1<sup>st</sup> November 2017. This court therefore proceeded to write its judgment on the basis of the evidence presented on 40<sup>th</sup> September 2017 and the submissions filed on 25<sup>th</sup> September 2017.

4) It is the plaintiff's case that on 21.9.2015 the defendant attended political rally disguised as a prayer meeting at Kapsokwony, Bungoma County where he uttered the words the subject of this litigation knowing that his utterances would be picked, published and widely disseminated by various media houses. The defendant is alleged to have uttered the following words:

**“today I want to state it as it is, whoever gets annoyed is his problem. When we had election**

**violence in Kenya, we had PNU and ODM. Each party was seeking victory. I was in PNU with MP Serut. All of us rushed to the ICC ... I was part of the team that wrote a letter to the International Criminal Court and this was political theatrics and we need to tell Kenyans the truth..... I am ready to call on Martha Karua ... come and tell us that this was only a political game....”**

The aforesaid words were so picked and published by the Standard and the Daily Nation newspapers on 21.9.2015. The words were also given prominence and published by the Star newspaper on 22.9.2015. The aforesaid newspaper cuttings were filed as the bundle of documents by the plaintiff in support of her case. Upon reading the story, the plaintiff sent a demand letter to the defendant demanding for an apology and a retraction. It is the averment of the plaintiff that upon receipt of the demand letter, the defendant published yet another statement from the precincts of parliament building which is to the effect that he had met with the plaintiff at Club Galileo in Westlands where they drafted a letter and schemed on how to recruit false witnesses against the accused persons at the International Criminal Court including Deputy President William Ruto. The plaintiff was then prompted to file this suit against the defendant. It is the defendant's defence that his utterance were not actuated by malice but were made in good faith and in public interest. Unfortunately, the defendant failed to attend court to present evidence in support of his defence.

5) The plaintiff testified without summoning independent witnesses in support of her case. In her testimony Hon. Martha Karua stated that she is an advocate of the High Court of Kenya and that she is currently the Chairperson of NARC Kenya, a duly registered political party with countrywide membership. She further told this court that she served as a Senior Resident Magistrate until 1987. It is also her evidence that she served as a member of parliament for Gichugu Constituency between 1992 and 2009. In 2005, she said, she was appointed the minister for Justice and Constitutional Affairs and following the post election violence in 2007/2008 she was reappointed as Minister for Justice and Constitutional Affairs in General Coalition government that was in office in between 2008 and 2013.

6) It is her evidence that she has local, national and international reputation which she has earned through sheer diligence, hard work and sweat hence she needs protection.

7) The plaintiff further stated that on Sunday 20<sup>th</sup> September 2015 while watching NTV 9pm news, the plaintiff heard the defendant mention her name to the effect that they were together with others where they drafted a letter to the International Criminal Court implicating the Deputy President of the Republic of Kenya for crimes against humanity. The defendant is said to have uttered the aforesaid words during the meeting held at Kapsikwony in Bungoma County.

8) The plaintiff stated that she had never met the defendant, neither was she involved in any acts that were geared towards recruiting and coaching of persons to testify against the Deputy President and neither did she author any letter, by herself or jointly with the defendant as alleged.

9) The defendant statements have been perceived by the plaintiff to be highly libellous, defamatory and scandalous, and were geared to portray the plaintiff as a corrupt individual who bribed people to masquerade as witnesses against the Deputy President before the International Criminal Court at the Hague.

10) The plaintiff stated that despite the plaintiff's advocate issuing a demand for retraction of the statement as well as an apology, the defendant still went ahead to repeat the same utterances in a press statement issued from the parliament buildings on 22<sup>nd</sup> September 2015.

11) From the evidence and submissions tendered, the issues for determination by this court are two fold:

- i. Whether or not there was proof of defamation against the defendant
- ii. If yes what is the quantum of damages

12) On the first issue as to whether there is evidence tendered to prove defamation, it is the submission of the plaintiff that it is from the utterances of the defendant that media houses picked the stories as they appeared in the attached excerpts. The Standard newspaper of 21<sup>st</sup> September 2015 on the front page had the story titled **“Kuria blames ODM, PNU rivalry for Ruto woes.** The Daily Nation of 21<sup>st</sup> September 2015 published the story under National news at page 4 with the heading **“Kuria alleges political intrigues landed Ruto in the Hague,”** The front page of the Daily Nation of 21<sup>st</sup> September 2015 had the heading **“Gatundu MP blames Raila and Karua for Ruto ICC case”**. The aforementioned newspapers have a nationwide circulation and are read by a majority of Kenyans.

The plaintiff is of the view that she has established the ingredients of defamation. The ingredients of defamation were restated in the case of **John Ward –vs- Standard Ltd (2006)eKLR as follows:**

*i. The words must be defamatory in that they tend to bring a person to hatred, ridicule, or contempt or which cause him to be shunned or avoided or has a tendency to injure him in his office, profession or calling; and*

*ii. The words must be false and malicious in that there is lack justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false can be evidence of malice; and*

*iii. The defamatory words must be shown to have been published by the defendant; and*

*iv. The words must refer to the plaintiff*

13) It is important to determine whether or not the plaintiff has tendered credible evidence to prove that she had actually been defamed. Defamation involves a false derogatory statement made against a person without lawful justification. The offending statement must be one that harms a person’s reputation, decreases the respect, regard or confidence in which a person is held. The alleged offending statement is reproduced in verbatim in paragraph 11 of the plaint as follows:

**“today I want to state it as it is, whoever gets annoyed is his problem. When we had election violence in Kenya, we had PNU and ODM. Each party was seeking victory. I was in PNU with MP Serut. Al of us rushed to the ICC ... I was part of the team that wrote a letter to the international criminal court and this was political theatrics and we need to tell Kenyans the truth..... I am ready to call on Martha Karua ... come and tell us that this was only a political game....”**

14) It is the submission of the plaintiff that in ordinary meaning, the utterances by the defendant were understood to mean that the plaintiff was the person behind the case against the Deputy President at the ICC.

15) The plaintiff in her uncontrovered evidence stated that an acquaintance from Italy contacted her wanting to know the truth or otherwise of the allegations. It is her submission that the wide dissemination aggravated the injury and damage to her reputation and character. The plaintiff further submitted that the defendant’s actions were motivated by ill will, malice and the said words were published recklessly in disregard as to whether or not they were libellous or injurious to her. The plaintiff further denied ever drafting a letter to ICC or plotting a case against anyone at the ICC nor recruiting witnesses to give false evidence against anyone at any time in her life. After a careful consideration of the pleadings, the evidence and the submissions, I am convinced that the plaintiff has established her case to the required standard in civil cases. The plaintiff’s utterances were false and unwarranted. I am convinced that the plaintiff has been severely injured in her character, personal credit and reputation and standing as a politician, business lady and an advocate of the High Court of Kenya and as a consequence therefore she has been gravely lowered in the estimation of the right thinking members of the society.

16) In the end I find that on a balance of probabilities the tort of defamation has been established against the defendant.

17) Having determined the question of liability on defamation, let me now turn my attention to quantum. In the plaint the plaintiff sought for damages on the following heads:

- i. General damages for defamation*
- ii. Exemplary damages*
- iii. Punitive and aggravated damages.*

*The plaintiff also prayed to be given costs and interest.*

In assessing damages in defamation cases, the following factors inter alia are taken into account:

- i. Gravity of the allegation
- ii. Extent of circulation
- iii. The conduct of the defendant prior to the commencement of the action upto judgment.
- iv. Mitigating factors.

18) The plaintiff has pleaded and tendered evidence to prove that the defendant's utterances were published widely in national newspapers, electronic media as well as social media platforms. The plaintiff argued that the wide coverage aggravated the injury and damage to her reputation and character. With respect, I agree with the plaintiff. Her evidence has not been controverted by the defendant. There was also evidence tendered showing that the defendant subsequently repeated the false and libellous statements in a press conference outside parliament buildings and in his defence of justification.

19) In the circumstances I am convinced that general damages as well as aggravated and exemplary damages should be awarded to the plaintiff. The plaintiff has beseeched this court to award her a global sum of ksh.20,000,000/=. She cited the case of **Samuel Ndungu Mukunya –vs- Nation Media Group Ltd and Another H.C.C.C no. 420 of 2011** in which this court awarded ksh.15 million as general damages, sh.3,500,000/= for aggravated damages and ksh.1,500,000/= in lieu of an apology.

20) I have considered the relevant authorities and the material placed before this court. I am of the humble view that the following awards are sufficient, reasonable and appropriate in the circumstances of this case:

- |   |                    |
|---|--------------------|
| <b>i. General damages</b>   | <b>5,000,000/=</b> |
| <b>ii. Aggravated damages</b>   | <b>1,000,000/=</b> |
| <b>iii. Exemplary damages</b>   | <b>500,000/=</b>   |
| <b>iv. Net total</b>  | <b>6,500,000/=</b> |
| <b>v. Interest at court rates from the date of judgment until full payment.</b> |                    |

Consequently, judgment is entered in favour of the plaintiff and against the defendant in the sum of ksh.6,500,000/= plus interest at court rates from the date of judgment until full payment and costs of the suit.

Dated, Signed and Delivered in open court this 20<sup>th</sup> day of December, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant