



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 142 OF 2014

ARTHUR PAPA ODERA PLAINTIFF

VERSUS

PETER O. EKISA ALIAS SHUJAA PETER O. EKISA . DEFENDANT

JUDGMENT

The plaintiff brought this suit against the defendant for damages for libel attributed to the defendant. It was his case going by his pleadings that between the months of February and March, 2014 the defendant printed, published and disseminated information defamatory of him on a platform known as Facebook which in the natural meaning of the said publication were understood to mean that he was an unprincipled man, unprofessional, corrupt and has been misusing Uwezo Fund resources. The plaintiff also alleged that the facebook platform has international circulation and accessibly and therefore detrimental to him.

The words were also in their natural meaning capable of being construed to mean the plaintiff was morally bankrupt, adulterous and a criminal. It is his case that the defendant ought to have known that the plaintiff was not at all connected to any such allegations and that the false publication would cause the plaintiff to suffer distress and embarrassment.

The defendant also ought to have known that the false publication would tarnish the plaintiff's image and would disparage him both economically and socially. All the negative implications were said to be advanced under Order 2 Rule 7 of the Civil Procedure Rules.

Article 33 and 34 of the Constitution cannot aid the defendant in this matter even if he were to claim enjoyment of the freedom of the media. That freedom is subject to the limitations provided by the Constitution which include the need to respect the rights and freedoms of other individuals. – see **KWACHA GROUP OF COMPANIES AND ANOTHER VS. TOM MSHINDI AND 2 OTHERS [2011]EKL.R.**

A demand to have the said platform removed and notice of intention to sue was given but the defendant failed, refused and or neglected to do so hence this suit.

The record shows that the defendant was served with summons to enter appearance but failed to do so or file any defence. At the instance of the plaintiff an application for judgment against the defendant was made and the same duly entered by the Deputy Registrar. The matter was then listed for formal proof. The plaintiff gave evidence and called one witness. He produced his witness statement and adopted it as his evidence in chief. There is also a bundle of documents annexed to the plaint which the plaintiff also adopted.

In the absence of any rebuttal either by way of a statement of defence or evidence, the pleadings and the

evidence of the plaintiff remains uncontroverted. Some of the statements in the facebook were in the plaintiff's vernacular language. However, P.W. 2 presented a translation which again has been accepted by court in the absence of any challenge.

In the ordinary meaning of the offending words, there is no doubt whatsoever that they are extremely defamatory of the plaintiff.

The plaintiff is the Member of Parliament for Teso North and as such is a public figure with a wide following. There is no doubt that the platform chosen by the plaintiff was intended to and did achieve the desire to be accessed by as many people as possible. Indeed, the number of people who contributed to the exchanges is overwhelming to say the least. The damage of character sustained by the plaintiff

must have been enormous. I saw and heard the plaintiff testify and I have no doubt that what he told the court is the truth.

The defendant must take his victim as he found him. The defendant embarked on a path of character assassination totally unprovoked and made sure that as many people as possible consumed those allegations.

In my judgment the plaintiff has proved his case against the defendant and is therefore entitled to damages. I have already stated the plaintiff's public standing in society and more particularly in the eyes of the people he represents in Parliament. There is no doubt whatsoever that the allegations were serious and may have serious repercussion in his future political life.

The learned counsel for plaintiff has cited several authorities, some relating to damages. –**See Chirau Ali Mwakere Vs Royal Media Services Limited (2005) eKLR.** Where the court awarded Kshs. 3Million being one million each for general damages, exemplary damages and aggravated damages . That was in May, 2005 which is over 10 years ago.

I have taken into consideration attendant factors herein including the refusal by the defendant to apologize or pull down the offending words from the Facebook platform. In my judgment I make an award of Kshs. 2 million general damages, Kshs. 1.5 Million exemplary damages and Kshs. 1.5 Million aggravated damages making a total of Kshs. 5 million. The plaintiff shall also have the costs of this suit.

Dated, signed and delivered at Nairobi this 31st day of March, 2016.

A. MBOGHOLI MSAGHA

JUDGE