



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 425 OF 2013**

**GEORGE KURIA MWAURA..... PLAINTIFF**

**V E R S U S**

**PAUL OGEMBO..... 1<sup>ST</sup> DEFENDANT**

**NATION MEDIA GROUP LIMITED..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. George Kuria Mwaura, the Plaintiff herein, applied for the Defendants' defence to be struck out and for entry of summary judgement in favour of the Plaintiff vide the motion dated 10<sup>th</sup> June 2015, the subject matter of this ruling. The motion is supported by the affidavit of George Kuria Mwaura. When served, Paul Ogemba and Nation Media Group Ltd, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively, opposed the same by filing grounds of opposition and the replying affidavit of Sekou Owino. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions.
2. I have considered the grounds set out on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. I have also taken into account the grounds of opposition and the rival submissions. It is the submission of the Plaintiff that the Defendants' joint statement of defence contains mere general denial of the Plaintiff's claim without raising a reasonable defence. It is also argued that the defence is vexatious, frivolous and is intended to prejudice and delay a fair trial of the suit. In essence, the Plaintiff avers that the defence was filed outside the prescribed timeline.
3. The Defendants on the other hand are of the view that their defence raises triable issues therefore it should go for trial. In other words the Defendants argued that the case is not all that obvious so that the defence can be said to be a sham and full of mere denials.
4. It is important at this juncture to lay the brief background of this dispute. It is alleged by the Plaintiff that on 19<sup>th</sup> and 20<sup>th</sup> day of September 2013, Paul Ogemba, the 1<sup>st</sup> Defendant herein, while under the employment of Nation Media Group Ltd, the 2<sup>nd</sup> Defendant herein, falsely and maliciously wrote and printed and or caused to be printed and published by the 2<sup>nd</sup> Defendant in the 2<sup>nd</sup> Defendant's issue of the Daily Nation Newspaper concerning the Plaintiff, articles concerning the Plaintiff words which in the ordinary meaning meant and were understood to mean that the Plaintiff has a dispute with H. E. D. T. Moi, retired president of the Republic of Kenya over a 16 acre of land in Embakasi near City Cabanas, Nairobi County.
5. It is also argued that the alleged articles indicates that the Plaintiff sued the former president in which he is depicted to have forged title documents in the name of the retired president H.E. D. T. Arap Moi. The Plaintiff further alluded that the Defendants publication showed that the Plaintiff had been charged for fraudulently registering a title deed belonging to the retired president.
6. A critical examination of the Defendants' defence shows that the Defendants in paragraph 5 denied the contents of paragraphs 5, 6 and 7 of the plaint. The Defendants further denied that those words were false nor were published maliciously. The Defendants further deny that the

Plaintiff suffered in his integrity, credit honour, character and or reputation.

7. In the affidavit filed in support of the motion, the Plaintiff has specifically stated that the Defendants have made a general denial which did not show some reasonable grounds of defence. In paragraph 5 of the plaint, the Plaintiff clearly averred that he has never had any business dealings with H. E. D. T. Moi over 16 acres parcel of land situated at City Cabanas. The Defendants responded by stating that they have no knowledge of those allegations. A cursory look at the publications complained of will reveal that the Defendants had published words showing the Plaintiff was involved in a land dispute with H.E. D. T. Arap Moi. In paragraph 7 of the plaint, the Plaintiff aver that he informed a team of journalists including the 1<sup>st</sup> Defendant that he was not a party to the suit as published by the 2<sup>nd</sup> Defendant. In paragraph 7 of their defence the Defendants merely denied that they had knowledge of the contents of paragraph 7 of the plaint. In the documents filed together with the plaint, the Plaintiff presented a copy of an amended plaint dated 22.02.2005 which shows that the Plaintiff was not a party to Nairobi H.C.C.C. no. 1014 of 2004.
8. Having analysed the rival submissions and the material placed before this court, I am convinced that the Defendants' defence amounts to a mere general denial. In my view, the same is not a reasonable defence but is meant to delay a fair conclusion of the matter. In the end, I find the Plaintiff's motion dated 10.06.2015 to be meritorious. The same is allowed as prayed.

Dated, Signed and Delivered in open court this 22<sup>nd</sup> day of April, 2016

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant