



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 98 OF 2011**

**JORIM WAHORE MARENYA.....PLAINTIFF**

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

**KENYA ANTI-CORRUPTION COMMISSION.....1<sup>ST</sup> DEFENDANT**

**ROYAL MEDIA SERVICES LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Jorim Wahore Marenya, the plaintiff herein, filed an action against Kenya Anti-Corruption Commission and Royal Media Services Ltd, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively vide the plaint dated 9<sup>th</sup> March 2011. In the aforesaid plaint, the plaintiff sought for judgment in the following terms:
  - i. *General damages for Libel*
  - ii. *Exemplary and aggravated damages for Libel*
  - iii. *A permanent order for injunction compelling the defendants, their servants and/or agents to expunge the documentary subject to these proceedings (sic) from their archives.*
  - iv. *A permanent injunction prohibiting the defendants, their servants and/or agents from publishing or further disseminating the documentary subject to these proceedings (sic) any further and in any manner whatsoever.*
  - v. *A complete and unequivocal withdrawal, retraction and apology from the defendants in the same manner published and of equal prominence.*
  - vi. *Costs of the suit.*
  - vii. *Interest on amounts awarded on (a), (b) and (e) above at court rates from date of filing of this suit until payment in full.*
2. The defendants each filed a defence to deny the plaintiff's claim.
3. When the suit came up for hearing, the plaintiff and one Joseph Mark Ogembo testified in support of the plaintiff's case. It is the evidence of the plaintiff (PW1) that on or about the 11<sup>th</sup> day of June 2011 between 3.00pm and 4.00pm that Kenya Anti-Corruption Commission, the 1<sup>st</sup> defendant herein prepared and caused to be published a documentary on corruption which included the following words:

“..... 524,000 square miles, that is about 582,000 square kilometres. It is a country with

**very rich cultures and beautiful wildlife. Kenya is a geographically diverse. Key attractions include the Great Rift valley containing the extinct volcanoes, hot springs and of course, the sandy beaches at the coast.... among all these is a well developed tourist attraction including hotels, lodges, campsites and a variety of activities. It is no wonder Kenya is a popular tourist destination attracting millions of visitors each year.... all the beauty and pride of Kenya is in danger due to continued existence of corruption...corruption continues to pose serious threat security (sic). Social and economic growth and has contributed to the decline of foreign investment in the country.... the government has taken numerous initiatives towards the fight against corruption...”**

4. PW1 alleged that the above quoted excerpt defamed him. He stated that the documentary was viewed worldwide since it was aired during the world-cup season which in effect damaged his reputation leading to a decrease in business and loss of clients and profit margin drastically. The plaintiff said that he operated a tour company called Tambua Africa Safaris where he is one of the directors. PW1 stated that Tambua Africa safaris relies on mostly clients from Kenya and across the globe. The plaintiff averred that he was in his office at South B when Royal Media Services Ltd, the 2<sup>nd</sup> defendant on the instructions of the 1<sup>st</sup> defendant aired the aforesaid documentary. It is alleged that the 1<sup>st</sup> defendant was celebrating their achievements against corruption. PW1 claimed he did not see the clip but he managed to look at it later. The plaintiff claimed that in the video clip played by the 2<sup>nd</sup> defendant in the documentary, there was a clear picture/image of the plaintiff seated somewhere in Thika at an open field allegedly being given a bribe. The plaintiff stated that the same picture was used in 2005 when the plaintiff was arrested and arraigned in Embu on the allegation of soliciting and obtaining a bribe which case was heard and in the end, he was acquitted in the month of February 2010. PW1 complained that he was depicted as a corrupt person and yet his businesses depended on integrity and trust. Joseph Mark Ogembo (PW2), a colleague of the plaintiff informed this court he worked for NSSF with the plaintiff who was his close friend. PW2 claimed he was the one who called and informed PW1 to watch the video clip.
5. The 1<sup>st</sup> defendant did not summon witnesses in support of its case. The 1<sup>st</sup> defendant however played the video clips in court which were admitted in evidence by consent of both parties. The 1<sup>st</sup> defendant is of the view that he video clips which were played in open court seem to suggest that the plaintiff is or was corrupt, greedy, unpatriotic, morally bankrupt and a criminal. The 1<sup>st</sup> defendant further stated that the name of the plaintiff was never mentioned. The 2<sup>nd</sup> defendant summoned Njenga Njihia (DW1), its legal officer to testify in support of its case.
6. DW2 admitted that the video clip was aired by the Royal Media Services on account of instructions from the 1<sup>st</sup> defendant therefore the 2<sup>nd</sup> defendant cannot be liable for defamation.
7. Having outlined in brief the evidence tendered before this court, it is now appropriate to deal with the issues for determination. The first issue to be determined is whether the plaintiff was defamed. The plaintiff submits that the actions of both the 1<sup>st</sup> and 2<sup>nd</sup> defendants were negligent and malicious since the 1<sup>st</sup> defendant was at all times aware that the plaintiff had been discharged on account of criminal proceedings in which it fully participated. It is also argued by the plaintiff that the 2<sup>nd</sup> defendant had failed to verify the veracity of the contents of the documentary and or the imagery used therein. The 2<sup>nd</sup> defendant has relied on the defence of qualified privilege and stated that it only aired the contents of the documentary as instructed by the 1<sup>st</sup> defendant. I have carefully analysed the evidence presented before this court. It is not in dispute that the plaintiff's picture was used in the documentary which was aired by the 2<sup>nd</sup> defendant as instructed by the 1<sup>st</sup> defendant. I viewed the video clips which were played in court and it is clear to me that though the 2<sup>nd</sup> defendant attempted to blur the pictures of the plaintiff it was apparent that one viewing those videos can easily recognise that of the plaintiff. It is admitted by the 1<sup>st</sup> defendant that the documentary was meant to educate the public on the ills of corruption. The pictures shown depicted the plaintiff as receiving money from another person. While a statement of corruption

was being verbalised by the 1<sup>st</sup> defendant. This can lead to a reasonable person to assume and believe that the plaintiff was one of the successfully prosecuted corruption cases by the 1<sup>st</sup> defendant. In my humble opinion, an ordinary reasonable person watching the documentary, will come to the conclusion that the plaintiff is a corrupt person. It is clear from the evidence presented that the 1<sup>st</sup> defendant had no lawful justification to use the plaintiff's image in a documentary used to educate public on the scourge of corruption. There is no doubt that the 1<sup>st</sup> defendant was aware that the plaintiff had been discharged and or acquitted of the criminal charges preferred against him before the Embu Chief Magistrate's court. I am convinced that as a result of the documentary being aired, the plaintiff's character and reputation was brought to ridicule before the eyes of right thinking members of society. I find the 1<sup>st</sup> defendant liable for defamation as against the plaintiff.

8. The 2<sup>nd</sup> defendant admits having published the documentary. It invokes the defence of qualified privilege. The 2<sup>nd</sup> defendant cannot hide behind the back of the 1<sup>st</sup> defendant. As a reputable media house it should have applied caution in the use of pictures and names to avoid publications which may harm the reputation and character of other people like in this case. The 2<sup>nd</sup> defendant did not attempt to carry out a background check of the documentary before airing it to the public.
9. The 2<sup>nd</sup> defendant in the circumstances acted in a reckless manner thus injuring the reputation and character of the plaintiff. I too find the 2<sup>nd</sup> defendant liable for defamation.
10. The second issue to determine is the question regarding quantum. I have already come to the conclusion that the plaintiff was injured in his character and reputation. The plaintiff has asked this court to award him damages in the sum of kshs.3,000,000/= plus an additional sum of kshs.400,000/= under section 16A of the Defamation Act. The plaintiff cited the case of **Kipyator Nicholas Kiprono Biwott =vs= Clays Ltd and 5 others (2000) eKLR** where the court awarded ksh.3,000,000/= as general damages. He also relied on the case of **Ochieng & 8 others =vs= Standard Ltd (2004) eKLR** where the plaintiff was awarded kshs.4,500,000/=
11. The 1<sup>st</sup> defendant on its part was of the view that no award should be given to the plaintiff because he failed to prove that he suffered any damage. The 2<sup>nd</sup> defendant too was of the same view that since the plaintiff did not prove any form of damage suffered, he was not entitled to damages.
12. I have on my part stated the plaintiff's reputation and character was injured and his esteem in the public eye lowered. I have considered the authorities presented to this court.
13. I think the one which is applicable to this case are
  - i. **Muthui Mwai & another =vs= Standard Newspaper and other (2012) eKLR** where the court awarded ksh.400,000/= as general damages.
  - ii. **Ochieng & 8 others =vs= the Standard Group Ltd (2004) eKLR** where each plaintiff got an amount equivalent to ksh.500,000/=
14. In the end I am convinced that a global sum of ksh.1,00,000/= is a reasonable award as damages for the plaintiff. The defendants are jointly and severally found liable for defamation. Consequently they should pay the plaintiff ksh.1,000,000/= as damages for defamation with costs of the suit.

**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