



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 283 OF 2014

JOSEPH KIMARU K. CHUMO..... PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED DEFENDANT

JUDGMENT

The plaintiff brought this suit against the defendant for damages following a report published by the defendant which he pleads was defamatory of him. The defendant is said to have published a report in its issue of Thursday May 15, 2015 entitled “**Shame of police renting out houses.**” The following words were part of that report which is the basis of the plaintiff’s suit against the defendant. It reads as follows,

“Assistant Commissioner Of Police based at Directorate of Criminal Investigations Headquarters Joseph Chumo, as the officer in charge of security, was also allocated House number 59, but is said to have rented it out to some of his friends. When the matter was being investigated, the officer confirmed that the house had been allocated to him, but he was not staying there. He said he would occasionally meet his friends at the house, but maintained that he did not live here.”

In his pleadings, the plaintiff states that he resides in the said house number 59 West Park Estate Langata, Nairobi with his entire family from the time it was allocated to him in September, 2011. It is his case that the allegations in the said report published by the defendant are not only false but malicious, defamatory and expressly meant to discredit, embarrass and malign his status, not only among his peers and professional colleagues but lower his standing in the eyes of the right thinking members of the society.

He contends that after the publication he has suffered extreme mental anguish having received telephone calls, messages and inquires regarding the report from not only his family members but friends and relatives from within and outside the country.

As a result, he claims general and exemplary damages against the defendant. He made a demand and gave notice of intention to sue but the defendant failed, neglected and or refused to make good his claim.

The record before me shows that summons to enter appearance were served upon the defendant and received by one S. Owino the head of legal for the defendant on 17th October, 2014. There is an

affidavit of service filed on 17th February, 2015

confirming the said service. The defendant however, did not enter appearance or file any defence.

The plaintiff then made a request for judgment under Order 10 Rules 9 and 10 of the Civil Procedure Rules which judgment was entered on 25th February, 2015. This suit was then listed for formal proof.

The plaintiff gave evidence and called one witness Mr. Samuel Bore who is a Superintendent of Police. At the time this report was made by the defendant, the plaintiff was an Assistant Commissioner of Police but now a Police Commissioner. In his evidence in chief, he adopted his witness statement in which he reiterated his pleadings.

Mr Bore on the other hand is the officer who was detailed by the then Deputy Inspector General, Ms. Grace Kaindi, to investigate the report of police renting out houses. The investigations included unit No. 59 alleged to have been rented out to an Asian by the plaintiff. Mr. Bore, Inspector Wilson Odung and another police officer went to all the houses which had been identified and on reaching house No. 59 found the plaintiff, his wife and three children. On inquiring about the allegation the plaintiff clarified he had been living in the said house since it was allocated to him by his employer.

On the allegation of renting the house to an Asian, he said he had an Asian friend who works with Lochab Transporters Limited and sometimes on his way to Eldoret from Mombasa, he would pass by for greetings and this was misconstrued to mean that he had rented a room to him. Mr. Bore prepared a report to the Deputy Inspector General which exonerated the plaintiff and this was before the defendant published the offending report.

It was his evidence that he was surprised to find the report in the Daily Nation Newspaper three months after he had cleared the plaintiff.

In the absence of any evidence from the defendant, the evidence of the plaintiff and his witness remains uncontroverted. He has proved his case against the defendant. I watched and heard him testify. The report had pained him. I have no doubt that this had affected him emotionally. The defendant is accordingly liable to the plaintiff in damages for the injury he suffered.

The defendant did not reply to the demand made by the plaintiff. The defendant publishes the Daily Nation, one of the most popular publications in the country and which also has a commanding readership locally and internationally. I say so because it is also online. The learned counsel for the plaintiff has cited some three cases to guide the court in the award for damages. With respect however, the awards made in those cases were extremely high and may not have taken into consideration the impact such awards may have on the economy.

The plaintiff's case falls within the bracket of **HCCC No. 474 of 2009 Patrick Nyoike Vs. The People Limited** where Ougo J awarded Kshs. 4 Million General damages and Kshs. 100,000/= as aggravated damages to the plaintiff. See also **Johnson Evan Gicheru Vs. Andrew Morton & Another [2005 eKLR]** and **Nation Media Group Limited & 2 Others Vs. John Joseph Kamotho and 3 Others [2010 eKLR]**

The guiding principles in awarding damages in cases of this nature are the gravity of the allegation, the circulation of the medium in which it is published and any repetition among others. Other factors that mitigate damages include publication of an apology. In this case, the publication was made only once but it was prominent enough to attract the readers. There was no apology even after demand.

In my judgment considering the nature of the allegation, I make an award of Kshs. 4 million general damages and Kshs. 1 million exemplary damages making a total of Kshs. 5 million to the plaintiff. The plaintiff shall also have the costs of the suit and interest at court rates.

Dated, signed and delivered at Nairobi this 13th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE