



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**HCA CASE NO. 186 OF 2006**

**DAVID MACHARIA MUTHAMI.....APPELLANT**

**VERSUS**

**STEPHEN N.K. GACHIRI..... RESPONDENT**

**JUDGMENT**

1. Stephen N.K.Gachuri (the respondent) filed Nyahururu PMCC no. 131 of 2006 against DAVID MACHARIA MUTHAMI (the appellant) seeking

(a). General and aggravated /exemplary damages for defamation and

(b). An order that the appellant make an unqualified apology and also publish a retraction of the confirmed remarks.

c). An injunction to restrain the appellant from repeating by way of mouth, printing and/or dissemination or by any other means of the contents of the words or any words similar to the ones complained of. The background to these prayers were that sometime in the year 2002, the appellant by word of mouth and through print media falsely and maliciously said concerning the respondent as an education officer that he

**"is given, Kshs. 500/- or more whenever he visits schools."**

It was the respondents contention that the said words, in the natural and ordinary meaning, meant and were understood to mean directly and by innuendo that

(a). The respondent was a corrupt person who should not be allowed to hold any office.

(b). The respondent in conjunction with others, was engaged in unlawful and fraudulent dealing in the education sector

(c). The respondent was an unpatriotic conspirator, malicious scheme and untrustworthy.

2. The respondent complained that these words greatly injured his character, credit and reputation, his career and had brought him to hatred, contempt and ridicule, further that his reputation had been harmed in the estimation of the society who had shunned and viewed him with a lot of suspicion.

3. Upon hearing the parties, judgment was entered in favour of the respondent, and awarded general damages in the sum of Kshs. 450,000/ - exemplary damages of Kshs. 200,000/- and costs of the suit.

4. The appellant was aggrieved by the decision. In his statement of defence he denied any allegation and

put the respondent to strict proof. The appeal is based on grounds that;

- (a). The trial magistrate misdirected himself as the decision was not supported by any evidence and in finding that the appellant had uttered the words complained of.
- (b). The trial magistrate made finding on issues which were not pleaded.
- (c). The evidence by the respondent was inconsistent and contradictory.
- (d). Even if uttered, these words were incapable of constituting slander and libel.
- (e). The pleadings were defective.
- (f). The award was manifestly excessive and not in accordance with the law.

5. The respondent was an Inspector of schools in Wanjohi zone, and his duties included managing education, and inspecting, nursery, primary and secondary schools in the zone. The respondent had been posted to the said zone in February 1999. The appellant's children attended Wanjohi primary school, and just after the days of his posting, the appellant alongside other parents (named as Stephen Gatonye, Peter Njuguna and Mburu complained to the respondent about the school's balance sheet in the year ending December 1998. The respondent requested to be given time as he had not familiarized himself with the situation.

On 11.2.99, the said parents wrote to the respondent a letter, complaining about the schools balance sheet, with a copy of that letter being to the District Education Officer. On 11.03.99, they wrote another letter saying the respondent was arrogant and action ought to be taken against him.

6. On 10.10.99, the said parents went to the District headquarters alleging that the respondent was covering up - ultimately audit was carried out, which concluded that the accounts were proper. Matters seemed to have settled down until 8.2.02 when a meeting was held at Wanjohi primary school, where the appellant said that he would not pay any money since the same was being misappropriated and embezzled by the inspector of schools and the head teacher. Although the respondent was not present at that meeting, he received information from the head teacher and the schools chairman.

7. On 5.03.02 the appellant paid Kshs. 500/= to school under the noted heads:-

- (a). Watchman
- (b). Development
- (c). Tuition
- (d). Activity.

Thereafter the appellant said he had had evidence which would ensure the respondent and head teacher got dismissed for collecting illegal charges.

The respondent explained that the amount referred to had been agreed to by parents at a meeting, at the time when levies had not been abolished in primary schools. Subsequently, the respondent was summoned by the Nyandarua District Education officer (Mrs. Elizabeth Karani) and asked to respond to allegations in a letter dated 7.3.02 written by one Mr. Nteere on behalf of the Permanent Secretary referring to claims by the appellant that he was receiving Kshs. 500/- each time he, went to a school. Investigation were carried out which showed that there was no such thing

8. On 8.2.03, at a meeting where parents were planning to pay some money for development, the appellant announced that he would not pay any money as the respondent would embezzle it. The

respondent told the trial court that the appellant influenced some parents from 6 schools who wrote a letter passing a vote of no confidence on the respondent.

9. The respondent stated that for the six years that he had been a zonal inspector, there had been no complaints about the running of schools. At the meeting of 8.2.02, about 250 parents were present when the appellant uttered the words complained of.

10. Peter Njuguna Chege (PW2) a parent at Wanjohi primary school confirmed that he was in the group of parents complaining about the schools accounts which issue had been in existence even before the respondent was posted to the area. He confirmed that there had been a resolution passed in February 2002 for parents to pay school levies, but the appellant was against this, saying the respondent was the one receiving the kshs. 500/-. On cross examination he confirmed that he and the appellant had written several letters of complaint to the respondent's bosses as they believed that the latter was favoring the head teacher. However matters at the school were eventually resolved after a meeting with the respondent.

11. Daniel Muchemi Mwangi (PW3) the chairman of Wanjohi Primary School's steering committee confirmed that on 8.2.02 there was an annual general meeting at that school with a total of 328 parents in attendance. They discussed matters of development of the school and parents agreed to continue paying levies. However the appellant objected saying the money paid was being embezzled by the Inspector and the head teacher. The respondent was overruled and parents resolved to continue making payments.

12. On 5.3.02 while at the school he learnt from the head teacher that the appellant said he had paid money not authorized by the government and now his trap had worked. On 14.03.02, PW3 and the head teacher were summoned by the DEO and questioned about illegal levies on grounds that the appellant had raised complaints in that regard, and had further made allegation that the respondent was being paid kshs. 500/- without the consent of parents.

The witness stated

**"on 8.5.03, there was a parents meeting at Wanjohi Primary ..... the defendant rose and asked why the respondent was being given Kshs.500/-....."**

13. John Nteere (PW4) who was in charge of primary schools administration in the county in the year 2002, confirmed that the appellant had gone to his office complaining among other things that;

"The area inspector of schools was moving around during his inspection of schools and demanded Kshs. 500/= whenever he made such visits. He said the inspector was Mr. Gichiri.

14. The complaints by the appellant are what prompted him to write to the District Education Officer seeking that respondents reaction to the allegations. The report by the District Education Officer established that those allegations had no basis. On cross examination he stated'

***"The defendant told me the inspector was demanding kshs. 5000/-,***

He explained that he avoided mentioning the appellant's name in the letter he wrote to the District Education Officer to avoid compromising the investigations and safeguard the appellants identify. Further, that there was only one inspector within Wanjohi area, so he knew who the appellant was referring to.

15. Francis Njuguna Mwangi, (PW5) the head teacher at Wanjohi primary school confirmed the meeting which took place on 8.2.02 and that the appellant interrupted the meeting saying he would not pay the levies because the money was being misappropriated by the respondent. PW5 stated as follows:

***"He said that for every attending (sic) by the appellant I used to give him Kshs. 500/-."***

He stated that 280 parents were present at the meeting.

16. The appellant in his defence confirmed that he knew the respondent and that he had indeed complained about the misuse of money at the school and written various letters to the respondent's bosses complaining about him. However he denied ever saying that the respondent was corrupt and was being given Kshs. 500/- whenever he visited schools.

The appellant admitted being at the parents meeting which was held on 8.2.02 and that PW3 and PW5 were present. However he denied that he had objected to the levies or uttering the words attributed to him. He also denied ever going to PW4's office with any complaints saying he did not even write a letter of complaint referred to by PW4. It was his contention that PW4's letter referred to a parents meeting complaints without mentioning a name. On cross examination he confirmed that an audit at the school gave a clear bill of health.

17. The defence witness Joseph Mburu and Francis Githamo (parents at the school) also maintained that although the appellant asked questions about payment of Kshs. 500/=, he never raised issues about the money being given to he respondent.

In his judgment the trial, magistrate noted that the case was hinged on the claims pleaded to the effect that the appellant falsely and maliciously said that the respondent was given kshs. 500/- or more when he visited schools as a zonal inspector.

18. The trial magistrate found that the evidence of PW2, PW3 and PW5 who attended the meeting were very consistent, detailed and forthright regarding what transpired on that day. He held that their evidence was corroborated by that of PW4 regarding the appellants discontent and claims in reference to the respondent. The trial magistrate was of the view that apart from the respondent and PW5, none of the other witnesses could be said to be harbouring any grudge against the appellant, and that each acted independently and at no time did they get to conspire against the appellant, nor did the appellant suggest existence of any grudge.

19. The appellants defence was considered and rejected as not being credible especially because the witnesses he called, contradicted each other.

The trial magistrate held that the appellant uttered the words complained of with no justification at all. The trial magistrate noted that the libel and slander by the appellant did not affect the respondents career progression as investigations were made by his superiors concerning the allegations and he was cleared. He however observed that respondent's reputation and estimation in society, and his standing as an Inspector of schools was negatively affected by the respondents utterance.

The appeal was disposed off by way of written submissions. The appellants counsel questioned the credibility of PW5 saying he contradicted the respondent by saying the latter was present at the meeting where the words complained of were uttered, yet respondent had said he was not present, and that information regarding what transpired at the meeting was only conveyed to him. Further that none of the witnesses evidence corroborated PW5 in his claims about what appellant said. It is argued that this witness had just made up things.

20. It was also contended that the trial magistrate relied on evidence of PW2 (Peter Njuguna Chege) who was not even present during the meetings of 8.02.02 and that because PW2 was a friend turned foe to the Appellant, his evidence should have been treated with a lot of caution.

22. The respondent's counsel argued that the trial magistrate's judgment was sound and this court should not interfere with it. He submitted that it did not matter whether the investigations into the allegations by the appellant established that the same were untrue saying that many of issues the appellant raised with regard to the respondent resolved around receiving Kshs. 500/- every time he went to school. He urged the court to uphold the trial magistrate's finding regarding the credibility of PW2, PW3 and PW5 saying indeed their evidence was corroborated and the appellants complaint/ claims is what prompted the bosses to have respondent summoned by the District Education Officer Nyandarua.

23. I have analyzed and re-evaluated the evidence, and also considered the submissions made by both counsel. As regards PW2, it is true that he was not at the meetings of 08/02/02 where the offending words were uttered. However his evidence was useful and worthy of consideration in demonstrating that both he and the appellant had been dissatisfied with the manner in which the school was being managed. The appellant made his displeasure known regarding payment of the Kshs. 500/-. This was not just stated by all, the prosecution witnesses but even the defence witness (DW2) confirmed that at the meeting the appellant questioned the payment of Kshs. 500/-. PW2 evidence was useful in demonstrating and confirming the appellant's attitude and genesis of the problem. The trial magistrate therefore did not err in taking that evidence into account.

24. Whereas PW5 is faulted as being one who is out to spin a yarn it must be borne in mind that PW1 was not the only one at the meeting. The respondent's case did not hinge on his evidence alone. Whether it was said that he, gave the respondent Ksh. 500/ = every time the respondent visited the school or whether it was that every time respondent visited the school he would be given Kshs. 500/-, the effect was the same. It suggested and communicated impropriety on the part of the respondent. Although the trial magistrate in his judgment referred to two issues, he also recognized that the respondent was bound by his pleadings, and that what was pleaded was the issue of receiving Kshs. 500/= every time he visited the school. So I hold and also find that the trial magistrate did not completely go off at a tangent and fail to consider what was pleaded.

25. Although the appellant denied writing the letter to John Nteere, (PW4) I find that witness to be an independent witness and his reaction upon receiving the complaint clearly demonstrates that he had genuine concerns about the complaints the appellant had raised - which were the same ones he had raised at the meeting, and also separately with some of the individual witnesses. The appellant went to PW4's office, delivered the letter, but re-stated verbally to PW4, his complaint which touched on the contents of the letter. PW4 satisfactorily explained why he did not mention the appellant by name, when he raised that issue with the District Education Officer Nyahururu.

26. Of course the appellant as a consumer of services from the Ministry of Education, had a right to complain, but that right did not extend to false allegations and imputing bad conduct on the respondent. I concur with the respondent's counsel and the trial magistrate that the respondent did not have to be sacked to prove injury of his character. The allegations by the appellant were believed by the respondent's supervisor that is why, in the spirit of fairness, investigation had to be conducted. At the meeting where over 200 parents were attending such claims does not need Plato's wisdom to understand the meaning and implication, especially given the setting and background - the appellant had just complained about funds being embezzled and why he would not pay, before spewing his claims.

I am satisfied that the trial magistrate finding was proper.

27. I have considered the award and I take into account the principles to be considered when awarding damages in a claim of defamation, certainly as was observed in the case of ***John Mchui vs. Nation Media Group Misc. HCC no. 216 of 2008***, money cannot adequately compensate the injury of character but it must be a vindication of the victim to the public and a consideration to him/her for a wrong done. An appellate court shall not interfere with damages unless they are excessively high, as inordinately low or they are based on wrong principles. That is not the case here, and I find the sum awarded was fair and modest. I decline to interfere with the damages awarded. Consequently I find no merit in the appeal, and it is dismissed with costs to the respondent.

**Written and dated this 16<sup>th</sup> day of December 2014 at Bungoma.**

**H.A OMONDI**

**JUDGE**

**DELIVERED and dated this 29<sup>th</sup> day of January 2015 at Nakuru**

**JUDGE**

N/A for appellant

Mbugua for respondent

Mwai court clerk