



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 189 OF 2002

WANGUHU NG'ANG'A.....PLAINTIFF

VERSUS

THE STANDARD LIMITED.....DEFENDANT

J U D G M E N T

1. The Plaintiff's claim in this suit is in defamation. The words complained of were published by the Defendant on 6th May 2001 in its weekly newspaper called the *Sunday Standard* alongside a picture of the Plaintiff, a one-time speaker of the *National Assembly* one *Humphrey Slade* and another well-known personality (in his time) called *Joseph Gatuguta*, one time a Member of Parliament for Kikuyu Constituency. The words and the picture were published under the caption **FROM OUR FILES**. The words were -

“1961:

What petition is Wanguhu Ng'ang'a giving the speaker of the National Assembly, Hon Humphrey Slade? Could it be notes for his maiden speech that never was? Of course, there is no honour in being a perennial loser in General Elections but Ng'ang'a deserves special mention for not learning from history. This is a man who is yet to realize his ambition to be a Member of Parliament since November 30, 1961. Perhaps he should invite Mr Joseph Gatuguta (centre), the first MP for Kikuyu, to Ford Asili Secretariat for discussions on why history respects no man”.

2. It is the Plaintiff's case, as pleaded in his **further amended plaint filed on 10/04/2002** that the words complained of in their natural and ordinary meaning and in the full context in which they were written and published were understood to mean, *inter alia*, that the Plaintiff is a buffoon, slow learner, incapable of winning an election, not competent to hold a national office of a political party, deserving no respect, incapable, without skill, unfit, inept, incapacitated, bungling, unreasonable and a useless politician.

3. It is further pleaded that the words complained of meant and were understood to mean that the Plaintiff's politics are ancient, antiquated, behind the times, bygone, obsolete, old-fashioned, out of date and primitive; that the Plaintiff is an injudicious, unthinking, ill-advised, ill-considered and imprudent politician; and that he is a short sighted and myopic politician.

4. It is the Plaintiff's further case that the words complained of not only damaged his reputation as a respected and well placed politician, but that the words were malicious, false and calculated to cause him

pecuniary and political damage, and to prejudice his political career and livelihood.

5. The Plaintiff sought general and exemplary damages for defamation as well as an appropriate permanent injunction to restrain the Defendant from publishing any further words defamatory of him.
6. The Defendant entered appearance and filed a statement of defence dated 02/04/2002. It admitted publication of the words complained of but denied that they were defamatory as alleged. The Defendant further pleaded that the words were fair comment made in good faith and without malice on matters of public interest. It gave particulars. The Defendant also pleaded **section 15** of the *Defamation Act, Cap 36*.
7. The Defendant denied that the Plaintiff suffered any injury as pleaded and put him to strict proof of the same. It also denied the malice pleaded.
8. The Defendant finally pleaded that the Plaintiff failed, despite invitation, to provide his version of the story for publication.
9. The Plaintiff filed a brief reply to the defence.
10. The parties filed an agreed statement of issues dated 24th June 2003.
11. The Plaintiff filed its list of documents on 28/05/2003. A bundle of the documents was filed on 22/07/2014 after the trial had commenced. The same was produced in evidence as **Exhibit P1**. The Defendant's list of documents was filed on 25/07/2011. I cannot find on the court record any bundle or copies of those documents.
12. The Plaintiff testified (as PW1) and called one witness, **Sami Mandela Gachugu** (PW2). Both adopted their previously filed witness statements (respectively dated 20/01/2012 and 16/04/2012) as their testimonies-in-chief. They were cross-examined. I have considered their testimonies.
13. The Defendant did not call any witness or lead any evidence.
14. The parties filed written submissions which I have considered, including the cases cited. The Plaintiff's submissions were filed on 16/08/2014 while those of the Defendant were filed on 02/10/2014. Delay in preparation and delivery of this judgement was caused by my transfer to another (very busy one-judge) station. The transfer came before the parties' written submissions were filed. The delay is regretted.
15. The Plaintiff's testimony-in-chief was in consonance with his pleadings. In cross-examination he stated that the words complained of offended him as they portrayed him as not genuine, as not speaking the truth. He said the writer of the words was doubting his standing and made him look like a **liar, bogus and unworthy** in the eyes of the public. He however admitted that the words liar, bogus and unworthy were not used in the offending statement.
16. Again in cross-examination the Plaintiff admitted that in his political career he has never won a parliamentary seat. He said he had stood for such election twice – for **Gatundu** and **Westlands**. He also admitted that even after publication of the offending words he continued to hold many positions of leadership in political parties. Finally he admitted that he was invited by the Defendant to supply a write-up of his own version of the story for publication and that he did not.
17. PW2 testified that he was the Plaintiff's long-standing close friend and neighbour. When he read the words complained of he was in the Plaintiff's campaign team for the up-coming general elections in 2002. The Plaintiff had intended to stand for elections as a member of parliament for **Kasarani** in Nairobi, but he did not so stand. PW2 said that the words complained of affected the community's perception of the Plaintiff. As for himself (PW2) the words did not affect his perception of the Plaintiff, but he saw how those words affected the Plaintiff's health and political career.

18. In cross-examination PW2 stated that he had known the Plaintiff for over 40 years. He (Plaintiff) had stood for parliamentary seats four or five times from 1964. He never worn any parliamentary seat.

19. Despite the words complained of PW2 stated that he is still very good friends with the Plaintiff. He did not shun him. He (PW2) found the words complained of offensive. The Plaintiff was not a perennial loser of elections despite not ever winning any parliamentary election. He admitted that in his testimony-in-chief he did not state that the offending words were false.

20. It is trite that a claimant in defamation must prove to the required standard that the words complained of were published of and concerning him, that they were published by the defendant, that they were false, and that they were defamatory in character of the claimant.

21. In the present case there is no dispute that the words complained of were published of and concerning the Plaintiff, and that they were published by the Defendant. The main issue therefore is whether those words were false and defamatory in character.

22. The words complained of, expressly and in the context of their publication, were in reference to the Plaintiff's career in parliamentary politics, and particularly his parliamentary ambitions. The words were without a doubt cynical and uttered as insult and ridicule. It was no doubt an unfriendly and unflattering reference to the Plaintiff's unsuccessful parliamentary ambitions. Such words would offend and wound anyone if uttered in the same circumstances as obtained in this case. It would be a painful reminder of unfulfilled political ambitions over a long period of time!

23. But were the words complained of necessarily defamatory in character? The Plaintiff took particular umbrage to the words "perennial loser". But he had lost all the parliamentary elections that he had contested over the years. By his own count it was 2 elections, but by his witness's count it was 4 or 5 elections. He had not contested in one constituency but in several. He was indeed a repeated loser of parliamentary elections.

24. Was he a perennial loser of parliamentary elections? *Perennial* is defined in the *Oxford Advanced Learner's Dictionary, International Students' Edition* as -

” 1 (a) *constantly occurring*

(b) *lasting for a long time*

2 (of plants) *living for more than two years”.*

The Plaintiff's loss of parliamentary elections constantly occurred whenever he stood for such elections over many years. By his own count he stood twice and lost both. His friend's testimony was that he had stood four or five times and lost all of them. It was certainly unflattering to call him a perennial loser (of parliamentary elections). But it was indeed true that he was a perennial loser of those elections.

25. I find that the words complained of were substantially true. They were not defamatory of the Plaintiff, though certainly unflattering and offensive. The many innuendos pleaded by the Plaintiff are gross exaggerations. On liability therefore I find for the Defendant. The Plaintiff has failed to prove his case on a balance of probabilities.

26. Had he succeeded on liability I would, in assessing damages, have noted that by his own testimony the words complained of did not affect his political career. He continued to be elected to positions of leadership in political parties and in other areas. He offered no evidence that he was shunned by his friends or relatives. PW2, his friend, did not shun him). But he would have been entitled to compensatory damages as of right to assuage his hurt feelings and provide some succour for the damage to his character and reputation. I would have awarded him and all-round figure of KShs 500,000/00.

27. As it is, the Plaintiff's case is dismissed with costs to the Defendant. It is so ordered.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MURANG'A THIS 24TH
DAY OF APRIL 2015**

H P G WAWERU

JUDGE