REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 95B OF 2012

Veronica Wambui…………………..……………………………………………Appellant

Versus

Michael Wanjohi Mathenge……………..…………………………………….Respondent

(An appeal from the Judgment and Decree of the Hon. C.W. Wekesa R.M. dated 25.07.2012, Nyeri ,in CMCC No. 8 of 2012, Michael Wanjohi Mthenge vs Veronica Wambui)

JUDGMENT

Veronica Wambui (hereinafter referred to as the appellant) has appealed to this court against the judgment and decree issued in Nyeri CMCC No. 8 of 2012. In the said case, the lower found in favour of the Respondent and awarded him damages of **Ksh. 50,000/=** for defamation plus costs of the case.

The Respondent had sued the Appellant for allegedly uttering defamatory words of and concerning the Respondent on two different occasions, namely on 12th & 30th October 2011 at the respondents' home and at the Wamagana Chiefs Camp. The words complained of are *"You witch and uncircumcised man, you have stolen my goats, chicken and bewitched my children."* The Respondents claimed that the said words were uttered without any justification, were false and malicious and that the same were uttered in the presence of his wife, area chief and other members of the public and that the words complained of were exceedingly slanderous of his character and taken in their ordinary and plain meaning and in the context they were uttered, they bore an innuendo the particulars whereof are pleaded in paragraph **7** of the Plaint.

The defendant denied in his defence that she uttered the words complained of, that the said words bore the alleged meaning and added that the appellant assaulted her daughter aged 14 years in 1995 and was charged in Criminal case no. 723 of 1995 and that the dispute was heard before the chief and resolved and also at a police station.

At the hearing the Respondent narrated how the Appellant uttered the alleged words *in Kikuyu* first at his homestead and also at the chiefs' camp where the words were uttered in the presence of four assistant chiefs and many people working at the chiefs compound. The Respondent called **PW2** and **PW3** as his witnesses and their evidence essentially corroborated his testimony.

In her defence in court, the Appellant denied the allegations in the Plaint and disputed the Appellants evidence and stated that they only went to the chief because of her missing goat. The appellant denied that she abused the appellant in the presence of his wife. She denied that she was at the chiefs office on 12.10.2011 as alleged and added that she was only there on 24th and 27th. She stated that the appellant was charged in court in 1995 for assaulting her child. She denied ever abusing him.

After analysing both the Appellants and defence case, the learned Magistrate concluded that the Respondent had proved his case and awarded him general damages of **Ksh. 50,000/=** plus costs and interests. Dissatisfied with the said judgement, the appellant lodged an appeal before this court and put forward **8** grounds of appeal which in my view can safely be reduced into **2 n**amely, **(a)** whether the learned Magistrate was right in concluding that the Respondent had proved his case to the standard required under the law and **(b)** secondly whether the award of **Ksh. 50,000/=** was reasonable and justifiable in the circumstances of the case.

Both parties filed written submission. In their submissions, counsel for the Appellant raised a point law that the words complained of were not stated in the original language in the plaint and in his view this was a serious omission and cited the case of **Nkalubo vs Kibirige[1]** where it was held that *'libellous words should be set out in that language with literal translation in English."* Counsel also cited several English decisions and leading authors in support of the said position.

In response thereto Counsel for the Respondent cited the provisions of Order **2** Rule **7 (3)** (formerly Order **VI Rule 6A)** of the Civil Procedure Rules 2010 and submitted that the suit is not incompetent for failure to plead the words complained of.

Counsel for the Appellant cited authorities to support his submission that the words are not defamatory and that the intention was merely to annoy and urged the court to find that the decision in question was based on the wrong principles, insufficient evidence and incompetent pleadings.

Counsel for the Respondent in his submissions insisted Order **2** Rule **7** sub-rules **(1) (3**) does not require that that the words *must be stated in the language they were pleaded and that the plaint contained the necessary particulars*. *In his submission, there is no legal requirement that defamatory words must be quoted in the language in which they were uttered and cited* a High Court decision in the case of ***Christine Gathoni vs Esther Gitura.***.[2]Counsel further submitted that the elements of defamation were proved and urged the court to dismiss the appeal.

I have considered pleadings filed in the lower court, the evidence adduced in the lower court and the judgement of the trial magistrate and the rival submission made by both counsels and the authorities relied therein.

Since a case of this nature involves words and phrases, it is necessary to state the meaning, nature and distinction between the words *"Defamation"* and *"Slander"*. On the whole defamation as a tort whether as libel or slander has been judicially defined to encompass imputation which tends to lower a person in the estimation of right thinking members of the society generally and thus expose the person so disparaged (Plaintiff) to hatred, opprobrium, odium, contempt or ridicule.[3] It is trite that slander on the on the other hand has been defined as a false and defamatory statement (i.e. of a transient nature) made or conveyed by spoken words, sounds, looks, sighs and gestures or in some other non-permanent form (as against libel which is required to be in some permanent form) published of and concerning the plaintiff that is to a person other than the plaintiff without any lawful justification or excuse whereby the plaintiff has suffered special damages. I must add that slander is actionable *per se* without proof of damage being required to be proved by the plaintiff to succeed in the action.[4]

The next question to address is whether or not the words must be reproduced in the plaint in the original language they were stated and a translation thereof stated. I have no doubt in my mind that alleged defamatory words are essential ingredients required to constitute successful action in slander. Where the words are uttered in a foreign language or in a language different from the court language, Learned authors of *Gatley on Libel and Slander* have authoritatively stated as follows:- *"Where the libel or slander was published in a foreign language, it must be set out in the statement of claim in that language and followed by a literal translation. It is not enough to set out a translation without setting out the original or vice versa. The pleader should include an allegation to the effect that the translation is a true interpretation of the foreign language used*"[5]

Gatley on Libel and Slander further authoritatively state that "in the case of claims for slander, there is

now an express procedural requirement that the precise words used be set out in the particulars of claim. [6] This reflects the pre-existing law to the effect that the actual words spoken had to be set out verbatim 'in order that the defendant may know the certainty of the charge, and may be able to shape his defence.' Statements of a case in an action for defamation are extremely important.

To my mind, setting out the alleged defamatory words in a suit is a requirement. The implication of not following strictly the language used in uttering defamatory words in its original form in a suit were well captured in the Nigerian case of **Egbe vs Adefarasin**[7] where the learned Judge emphatically stated:-

> *"I am of the firm view that where the practice and procedure of setting out the defamatory words in a foreign language in a suit as here has not been strictly followed (as in this case by pleading the slander in Kalabari language and its translation to English) in constituting a claim in slander as here, the claim is challengeable on grounds of not having disclosed a reasonable cause of action in slander and in that event the action is liable to be struck out albeit in limine. This is more so where the slander in a foreign language has not been translated to English language at all in the plaintiffs' pleadings. In other words if there is no English translation of the defamatory words of course the action is fatally flawed"*

Thus, it is settled law that the defamatory words in an action in slander as uttered in foreign language must be set out side by side the literal translation to English language of the slanderous words for the action to be properly constituted. This position is well captured in **Bullen amd Leake on Pleadings** 11th Edition at page **510** and has been cited with approval in numerous cases to the extent that it has assumed the singular distinction of the law and practice in cases of this nature.

For the court to arrive at the determination as to whether, the words were defamatory, the original version and the translation must be pleaded and proved because words may bear different meanings in different languages.

The key issues for determination in this appeal are whether the alleged defamatory words ought to be pleaded in the plaint in the language in which they were uttered, whether the words were defamatory of and concerning the plaintiff and whether the court arrived at the correct award. Although there appears to be a relaxation of the rigours of the rules of pleadings, the particulars of the claim must be pleaded with particularity to enable the defendant not only to understand what it is the claimant alleges the words mean, but also enable him to decide whether they have the meaning.

In the case of **Nkalubo vs Kibirige[8]** cited by the appellant, it was held as follows:-

> *"In all suits for libel the actual words complained of must be set out in the plaint. In libel and slander the very words complained of are the facts on which the action is grounded. It is not the fact of the defendant having used defamatory expressions, but the fact of his having used those defamatory expressions alleged, which is the fact on which the case depends….This is not a mere technicality, because justice can only be done if the defendant knows exactly what words were complained of, so that he can prepare his defence. In this case the letter having been written in luganda, the particular words complained of should have appeared in the plaint in that language, followed by a literal translation into English…Whereas it is true that relief not founded on pleadings will not be given but a court may allow evidence to be called, and may base its decision, on un pleaded issue, the court does not think that it can be invoked to allow the introduction of what amounts to a new cause of action….<u>The essence of defamation suit is that certain specific words used by the defendant were defamatory of the plaintiff.</u> Where one is dealing with spoken words, it may of course transpire in the course of evidence that the words used were not exactly what the plaintiff believed them to have been, but if they were to the same effect, he can still recover, although an application for leave to amend would be prudent. <u>If, however, a suit were founded on an allegation that certain words were used and then, without any amendment of the pleadings, the plaintiff were awarded damages on evidence that substantially</u>*

different words were used, no defendant would know how to prepare his case and injustice rather than justice would result………………It must be borne in mind that rules of court are drafted to aid the efficient administration of justice and failure of one party to observe these rules can result in a failure of justice to the other. This is a case in which there was no miscarriage of justice and it would be unjust now to allow the appeal to succeed on this issue"

My understanding of the above authority is that were the words are not pleaded in the plaint but in the course of the evidence the words come out clearly, the court may well find for the plaintiff. In the present case can it be said that the words came out clearly in the evidence? I do not think so. A look at the Appellants evidence in chief at page 35 of the record reveals the appellant stating *"I do not know English so I would not state the above words in English. I pray that the plaintiffs' case be dismissed."* On cross-examination, the Appellant said *"I have not studied but I reached standard five…..I signed the statement but I do not know its contents…"*This raises doubts as to whether the appellant was never prejudiced by not having the exact words reproduced in the plaint or in evidence in the language they were uttered. I have looked at the evidence, but the same words were not reproduced in their original language and recorded in the proceedings. To me this was a serious omission.

Where the words complained of come out clearly in evidence, then the court can find that there was no prejudice on the part of the defendant. Justice **G. V. Ondunga** in the case of **Dr. Lucas Ndingu Munyua vs Royal Media Services Ltd & Another[9]** dismissing a defamation case on similar grounds had this to say:-

"In this case however, neither in the plaint nor in the evidence were the exact words reproduced so that the court is handicapped in finding whether the words published were in fact defamatory"

Emukule J in **Kariunga Kirubua & Co Advocates vs The Law Society Of Kenya & Others[10]** citing with approval the case of **Collins vs Jones[11]** and **Lougheed vs CBC[12]** were it was held that "*he (Plaintiff) must in his pleading set out the words with reasonable certainty……"*

Justice G. V. Ondunga[13] in the above cited case found that failure to particularize the alleged defamatory words rendered the suit incompetent. **Abbot CJ** in **Wright vs Clements[14]** held *that 'the law requires the very words of the libel to bet out in the declaration in order that the court may judge whether they constitute a ground for action.*"

I find that in jurisdictions similar to ours, there is general unanimity that alleged defamatory words must be pleaded in the original language they were uttered. This position was ably stated in the case of **Muir vs January**[15] where it was held:-

*"In an action for defamation the actual words used are the material facts. It is an elementary rule of pleading that all material facts must be pleaded. Therefore in an action for defamation the actual words, or the part complained of, must be pleaded by setting them out in the declaration. It is not enough to describe their substance, purpose or effect. If the words are in a foreign language, the actual words used must be set out in the foreign language, followed by a literal translation. Failure to comply with this rule of pleading rendered the pleading defective, and in the absence of an amendment to cure the defect, the plaintiff could not obtain judgement on the basis of the pleading"**[16]***

The importance of the actual words uttered or published in pleadings has always been a recurrent reminder, since in libel or slander; the words used are the material facts and must therefore be set out in the statement of claim. The High Court of Uganda in **Capt. Kibuika Mukasa vs The New Vision Publishing Co. Ltd[17]** citing **Nkalubo Vs Kibiringe[18]** reiterated the above position and added:-

"In the instant case, it was not good to merely describe the substance of the articles complained of in one paragraph. The law requires the very words in the libel to be set out in order that the court may judge whether they constitute a ground of action. The plaintiff has not done this. For example, the Luganda words complained of ought to have been quoted verbatim and translated

into English the official court language to make part of the pleadings."

The purpose of pleadings is to enable the defendant to know the case he had to meet so that he could properly plead his defence with the result that the issues would be sufficiently defined to facilitate the appropriate questions for decision to be resolved. In a defamation case this purpose cannot be achieved unless the words are pleaded with sufficient particularity. Pleadings do not only define the issues between the parties for the final decision of the court at the trial; they manifest and exert their importance throughout the whole process of the litigation. They contain the particulars or the allegations of which further and better particulars may be requested or ordered, which help still further to narrow the issues or reveal more clearly what case each party is making. They act as a measure for comparing the evidence of a party with which he has pleaded. They determine the range of admissible evidence which the parties should be prepared to adduce at the trial.

I am alive to the *"overriding objective"* under Sections **1A & 1B** of the Civil Procedure Act and also the provisions of Article **159 (2) (d)** of the Constitution of Kenya 2010. Before I examine the said provisions I find it fit to recall with approval the words of **Justice Hancox** in **Githere vs Kimungu**[19] where he stated that *"the relation of rules of practice to the administration of justice is intended to be that of a handmaid rather than a mistress and that the Court should not be too far bound and tied by the rules, which are intended as general rules of procedure, as to be compelled to do that which will cause injustice in a particular case."* Commenting on the same subject, the **Hon. Mr. Justice Robert Makaramba**, judge of the High Court Tanzania stated *"the inherited common law adversarial system with its attendant English practice and procedure has always been at the centre of public criticism for contributing to delays in the dispensation of justice together with its attendant procedural technicalities."*[20]

Procedural laws refer to rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties.[21] It was this strictness of having due regard to the rules of civil procedure that occasioned the loss of many legitimate claims by plaintiffs thus denying them access to justice.

The overriding concept however came to cure this. **Michael Howard**[22] defines the Overriding Objective *"as a principle from the civil procedure rules. The purpose of the overriding objective is for the civil litigation and dispute resolution process to be fair, fast and inexpensive. The principle is that each case should be treated proportionately in relation to size, importance and complexity of the claim and the financial situation of the parties. The courts must consider the overriding objective when they make rulings, give directions and interpret the civil procedure rules."*

The double O's in the phrase Overriding Objectives are what coined what is today famously known as the term Oxygen Principle. In **Hunker Trading Company Limited vs Elf Oil Kenya Limited,**[23]perhaps the first case to be grounded on the new provisions the Appellate Jurisdiction Act (sections **3A** and **3B)**, it was held that section **1A** of the Civil Procedure Act came in to provide facilitation of just, expeditious and proportionate resolution of civil disputes in Kenya as the overriding objective of the Act. It states *"the overriding objective of this Act and rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act."* The courts duties in performing such mandate under section **1B** of the Civil Procedure Act are:-

a. *The just determination of the proceedings,*
b. *The efficient disposal of the business of the Court,*
c. *The efficient use of the available judicial and administrative resources,*
d. *The timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties,*
e. *The use of suitable technology.*

Article **159 (2) (b)** of the Kenya Constitution 2010 propounds that in exercising judicial authority, the courts and tribunals shall not delay justice.

Considering the above provisions which introduced the oxygen principle, in **Kamani vs Kenya Anti-Corruption Commission**[24] the court drew comparisons to the *Wolf reforms* which introduced similar provisions in England in 1998 by way of the Civil Procedure Rules and further considered the English case of **Bigizi vs Bank Leisure**[25] in which **Lord Woolf** himself talked about the concept of overriding principle objective as follows:-

> *"Under the {Civil Procedure Rules} the position is fundamentally different. As rule **1.1** makes clear the {rules} is a new procedural code with the overriding objective of enabling the court to deal with cases justly. The problem with the position prior to the introduction of the {rules} was that often the court had to take draconian steps such as striking out the proceedings….."*

In the above cited case of **Kamani vs Kenya Anti-Corruption Commission**[26] the court had this to say:-

> *"It is, accordingly, clear to us that the amendment to section 3 of the Appellate Jurisdiction Act, did not, without more, come in to sweep away the well-known and established principles of law hitherto in place before the said amendment…the notice of appeal is incurably defective and such defect could not in the circumstances we have outlined above, be cured by invocation of section **3A** and **3B** of the Appellate Jurisdiction Act. This to our understanding means sections **3A** and **3B** of cap **9** cannot be invoked as a matter of course so as to excuse all and any kind of failing on the part of a party to abide by the requirements of the rules made to regulate appeals to this court"* ***(Emphasis added)***

In **Stephen Boro Githia vs Family Finance Building Society & 3 others**[27] **Nyamu J** had this to say:-

> *"The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with and whatever is in conflict with must give way. A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time. The court must warn the litigants and counsel that the courts are now on the driving seat of justice and the courts have a new call to use the overriding objective to remove all cobwebs hitherto experienced in the civil process and to wed out as far as practicable the scourge of the civil process starting with unacceptable levels of delay and cost in order to achieve resolution disputes in a just, fair and expeditious manner……the challenge to the courts is to use the new broom of overriding objective to bring cases to finality……."*

In my view the overriding objective was brought to ensure that justice is served to both parties and further where there is a conflict of the Oxygen Rules Principles with the substantive law, the law ought to be interpreted in such a manner that will ensure the administration of justice. In this regard, I stand guided by the above quotation from the case of **Kamani vs Kenya Anti-Corruption Commission**[28] that the amendments did not come *to sweep away the well-known and established principles of law hitherto in place before the said amendment, and that the said amendments cannot be invoked as a matter of course so as to excuse all and any kind of failing on the part of a party to abide by the requirements of the rules made to regulate conduct of cases.* To me the said position represents the correct legal position. I find nothing in the **overriding objective** to suggest that a party ought not plead all the material facts and since no amendment was sought in the lower court, the justice of the case demands that the appellant ought not suffer prejudice on account of the said omission.

In **Abdulrahaman Abdi vs Safi Petroleum Products Ltd & 6 others**[29] the court stated:-

"The court has to weigh the prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party"

I have no doubt in my mind that the Oxygen principle has come to revolutionize our civil procedure and tailor it to fit the contemporary society where access to justice and equality is the crux, but in my view the court has to consider the peculiar facts of each case and as observed in the above judgement, weigh the

prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party. In this regard and having considered all the facts of this case I am persuaded that the scales of justice tilt in favour of the Appellant.

Guided by the several leading authorities cited above, which are in my view relevant to the case before me, I find that the omission to plead the alleged defamatory words in the plaint accompanied by a literal interpretation of the case was fatal to the respondents case and on that basis this appeal succeeds.

On damages, it is trite that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in **Rook Vs. Rairrie.[30]** It was echoed with approval by this Court in **Butt Vs. Khan[31]** when it held as per Law, J.A that:-

> **"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low"**

The latitude in awarding damages in an action for libel is very wide, and the one thing a court of appeal must avoid doing is to substitute its own opinion as to what it would have awarded for the sum which has been awarded by the judge below. See ***Tanganyika Transport Co. LTD V Ebrahim Nooray[32]***

In **Broom V Cassel & CO.*[33]*** the House of Lords stated that in actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a by-stander of the baselessness of the charges. As **Windeyer J**. well said in **Uren Vs John Fairfax & Sons Pty. Ltd.[34]:-**

> **"It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation,that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as a vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money."**

I would think that in the instant case to arrive at what could have been said to be a fair and reasonable awards the learned trial Magistrate could have drawn considerable support in the guidelines in **Jones V Pollard[35]** and where a checklist of compensable factors in libel actions were enumerated as: -

i. *The objective features of the libel/slander itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition.*

ii. *The subjective effects on the plaintiff's feelings not only from the prominence itself but from the defendant's conduct thereafter both up to and including the trial itself.*

iii. *Matters tending to mitigate damages, such as the publication of an apology.*
iv. *Matters tending to reduce damages.*

v. *Vindication of the plaintiff's reputation past and future.*

Having considered the facts of this case this case, the award by the learned magistrate and the position of the Respondent in the society, the law, authorities and the words complained of, I find nothing to suggest that the award of **Ksh. 50,000/=** is excessive or inordinately low.

However, in view of my earlier finding, this appeal succeeds. The Judgement and Decree of the Learned Magistrate issued in Civil Case number **CMCC No. 8 of 2012** Nyeri be and is hereby set aside and the same is substituted with an order dismissing the said suit.

I further order that each party shall bear its costs both in this appeal and in the lowers court.

Right of appeal 28 days

Dated at **Nyeri** this **21st** day of **October** 2015

John M. Mativo

Judge

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[1] {1973} EA 102

[2] HCC APP NO 81 of 2000

[3] See Nitel vs Togbiyele {2005} (Pt 246) 246, 357, B.P.P.C vs Gwagwada {1980}4 NWLR (Pt.116) and 439

[4] See words and phrases legally used Vol. 5, S-Z, P. 83, and also Egbe vs Adefarasin {1987} 1 NSCC {Vol. 18} Per Chukwuma-Eneh

[5] {9th Edition} Paragraph 26.15 at 659

[6] 11th Edition, paragraph 28.13, at page 970

[7] {1987} 1 NSCC {Vol. 18} Per Chukwuma-Eneh

[8] {1973}EA 102

[9] High Court Civil Case No. 52 of 2008

[10] {2009}eKLR

[11] {1955} 1 QB 564 at page 571

[12]{1978}4 WWL 338

[13] Supra note 8

[14] {1802}3, cited in Gatley on Libel and Slander para 26. 11

[15] {1990} BLR 388

[16] Zenebio vs Axtell {1975} 6 T.R 162 and International Tobacco Co of South Africa Ltd vs Wollhein & Others {1953} S.A. 603 applied

[17] Misc App No. 148 of 2013, Stephen Musota J

[18] Supra note 8

[19] {1975-1985} E.A 101

[20] Ho. Mr. Justice Robert V. Makaramba, "Breaking the Mould; Addressing the Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench, TLS, February 2012 in Arusha, Page 7

[21]Elizabeth A M, Oxford Dictionary of Law, Oxford University Press, London, 2001 at Page 1241

[22] Howard Michael, Civil Litigation and Dispute resolution: Vocabulary Series, Legal English Books Publishers, 2013

[23] {2010} eKLR

[24] Ibid

[25] PLC {1999} 1 WLR 1926

[26] Supra note 35

[27] Civil Application No. Nai 263 of 2009

[28] Supra note 35

[29][2011] eKLR

[30] **[1941] 1 ALL E.R. 297**

[31] **[1981] KLR 349**

[32] ***[1961] E.A. 55.***

[33] **[1972] A.C. 1027**

[34]117 C.L.R 115, 150

[35] **[1997] EMLR 233. 243**