



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 427 OF 2013

GEORGE KURIA MWAURA PLAINTIFF

VERSUS

RACHEAL MBURU..... 1ST DEFENDANT

THE PEOPLE MEDIA GROUP LIMITED..... 2ND DEFENDANT

RULING

1. George Kuria Mwaura, the plaintiff herein, took out the motion dated 10th June 2015 in which he applied to have the 1st and 2nd defendants joint statement of defence to be struck out. He also sought for the entry of summary judgement as prayed in the plaint. The motion is supported by the affidavit of the plaintiff. The defendants filed grounds of opposition and preliminary points of law to resist the motion. When the motion came up for interpartes hearing leaned counsels appearing in the matter recorded a consent order to have the same disposed of by written submissions.
2. I have considered the rival written submissions. I have further considered the grounds set out on the face of the motion plus the grounds filed in opposition. I have also considered the facts deponed in the supporting affidavit. The brief background of this dispute can be discerned from the pleadings and submissions. On 19th September 2013, the 1st defendant alleged to have caused to be published in the 2nd defendant's issue of the **People newspaper** concerning the plaintiff the following words interalia
 - a. ***“Two held over shs. 1.6b Title forgery claims.”***
 - b. ***“Two businessmen arrested were arrested yesterday morning at Milimani Law Court for allegedly forging a title deed of land worth shs.1.6b in Embakaksi Nairobi, formally owned by retired president Daniel Arap Moi”***
 - c. ***“Mr. Kiprono Labosos and Mr. George Mwaura were apprehended, minutes after the case linking the retired president to the sale of disputed 16 acres of land, was mentioned before Land Environmental Division judge, Pauline Nyamweya”.***
 - d. ***“The two were locked up in basement cell by the Criminal Investigation Directorate Officers who had camped outside the court room for over two hours”.***
 - e. ***“The move to arrest the businessmen follows the Director of Public Prosecutions recommendation”.***
 - f. ***“In August, the court allowed the businessmen to amend the case and name Mr. Moi as a defendant”.***
 - g. ***“Nyamweyad directed the case filed back 2004 to start a fresh and include the former head of state”.***

- h. ***“Moi is required to file a title deed of the suit property and evidence to show that he sold it to Tulip Properties Limited”.***
- i. ***“Mwaura, Laboso and two others have asked the court to keep out tulip Properties Limited alleging it illegally the land”.***
- j. ***“The claim they had valid title documents to the land issued to them by Commissioner of Lands in 1998 for ksh.25 million”.***
- k. ***“The plaintiffs have implored the court to compel the retired president to produce the document of the suit land and a copy of banker’s cheque he received from Tulip Properties Limited for purchase of the land”.***
- l. ***“Investigation conducted by the Director of Public Prosecution and Ministry of Lands Cabinet Secretary shows the two titles are genuine”.***
- m. ***“Simon Kiprono Laboso and George Kuria rare led away by the CID officers after being arrested at Milimani Law Court yesterday.***

The 1st defendant falsely and maliciously wrote and printed and/or caused to be printed and published by the 2nd defendant, the plaintiff’s purported pleadings seeking for orders that:-

- a. ***“Mr. Moi illegally and without justifiable cause, transferred the land to Tulip Properties Limited”.***
 - b. ***“Mr. Moi was a trustee of government land and had no capacity to allocate himself a public parcel of land and transfer it to himself:.***
 - c. ***“The deed plan issued to Mr. Moi was null and void and acquired in breach of Kenyan Laws”.***
 - d. ***“Mr. Moi never applied for a certificate of valuation to assess the stamp duty”.***
3. The plaintiff averred in his pleadings that he has never had any business dealing with the Retired President Daniel Arap Moi over the 16 acres parcel of land situated at City Cabanas in Nairobi area. He also denied having forged any title document in the name of the retired president.
 4. The plaintiff stated that the aforesaid publication were false and malicious. The plaintiff was prompted to sue the defendants when the duo failed to comply with the plaintiff’s demands to make amends.
 5. When served with the summon and plaint the defendants entered appearance and filed a defence to deny the plaintiff’s claim.
 6. The plaintiff has now beseeched this court to strike out the Defendants’ defence vide the motion dated 10.06.2015. It is the plaintiff’s submission that the defence has no reasonable grounds of defence. It is also argued that the same amount to an abuse of the court process. The defendants on their part urged this court to dismiss the plaintiff’s motion for lacking in merit.
 7. They argued that the defence raises triable issues which can only be tested in a trial.
 8. It is pointed out that the parties have even filed 14 agreed issues hence the defence cannot be said to be without reasonable grounds. I have carefully perused the affidavit of the plaintiff filed in support of the motion. The defendant did not file a replying affidavit to controvert the averments. The plaintiff clearly stated that he never sued the former president. The defendant did not show that the plaintiff was party to Nairobi E.L.C no. 1403 of 2007.
 9. The plaintiff further averred that he never gave false information to the police nor forged title documents belonging to the former president, Daniel Arap Moi. The defendants have failed to put forward any form of evidence to counter the above averment.
 10. Since the above allegations form the basis of the defamation case and which ought to be canvassed in this application, the defendants have failed to discharge the burden of showing that they have a prima facie bonafide defence. I am convinced that the defendants have nothing to

show that the offending publication was not defamatory hence it cannot be said to be fair comment nor justified. The defence of fair comment can only be available if facts are true and the matter is of public interest which is not the case here. In the final analysis I find the defendants' defence to be scandalous, frivolous and vexatious. Consequently the motion dated 10.06.2015 is found to be meritorious. It is allowed as prayed.

Dated Signed and Delivered in open court this 20th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant