



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NUMBER 339 OF 2011

PROF. KAREGA MUTAHI.....PLAINTIFF

VERSUS

HEADLINK PUBLISHERS LIMITED.....1ST DEFENDANT

MAO PRINTERS.2ND DEFENDANT

J U D G M E N T

The Plaintiff, Prof. Karega Mutahi, filed this suit by a plaint dated 12th August, 2011. He claimed general damages, aggravated and exemplary damages arising from allegedly defamatory and malicious publication of certain words by the defendants. The Plaintiff also sought a permanent injunction restraining the defendants' from further publishing, printing, circulating, distributing and/or disseminating any other or further articles concerning the plaintiff. Finally, the Plaintiff also sought an apology and a retraction in an article given same prominence as that given to the published defamatory words now complained of.

The Plaintiff's claim was that the defendants falsely and maliciously printed or caused to be printed and published an offending article in a Newspaper called Weekly Citizen , being Volume 14 No. 29 for July, 25th – 31st, 2011 with a heading **“PS KAREGA’S NAME IN ANOTHER MAJOR SCAM AGAIN”**. Then the same Newspaper on 8th – 14th August, 2011 volume, printed again concerning the Plaintiff the following words in another heading – **“TOWN CLERKS ON CHOPPING BLOCK.”**

The Plaintiff pleaded and later in his evidence testified that the said quoted words were in their natural and ordinary meaning, by imputation and/or by way of innuendo or otherwise meant or were understood to mean, of the Plaintiff, that: -

1. The Plaintiff is a filthy and totally corrupt public servant who loves to steal from the poor at any time.
2. The Plaintiff is corrupt and incompetent public servant who has no regard for legal process and law of this country.
3. The Plaintiff is a dishonest and oppressive person, not deserving of the public position entrusted to him.

4. The Plaintiff is unjustly and illegally enriching himself through unprocedural awards of contracts and resultant bribes and kick backs.
5. The Plaintiff engages in, approves or condones corruption.
6. The plaintiff is a politically aligned civil servant who is hell bent on serving political interests at the expense of the public.

The Defendants, who were served with the Plaintiff and summons to enter appearance, did not do so. As a result the Plaintiff sought and obtained an ex parte judgment in default of appearance and defence on the 5th July, 2012. The case thereafter proceeded to the formal proof on the 7th November, 2013. The court at this stage accordingly, is concerned only with quantum of damages as liability was not denied nor defended by the Defendants.

The Plaintiff testified in his evidence that the publications of the above words has seriously injured his personal credit, character and reputation and that it has also in his profession as an academician and long serving Civil Servant greatly and adversely damaged him. That the publications have brought him into public scandal, ridicule, odium and contempt in the estimation of the right thinking members of the public and society.

The Plaintiff in his oral testimony in court, explained that the publications were meant to refer to the assertion that he was flouting tendering procedures in the process of awarding public tenders for construction of farmers markets in Kenya. Indeed, the articles alleged that he had awarded tenders to his cronies and/or tribesmen who had also pocketed a chunk of the public funds involved even before they started the work.

The Defendants, the Plaintiff testified, falsely and maliciously accused him of being at the centre of the loss of Ksh.4.2 Billion which was part of the free Primary Education fund after disbursing Ksh.2.6 billion for the construction of markets. The Plaintiff further testified that the said publication had falsely and maliciously claimed that the Plaintiff had stolen and channeled some of the said funds to secret overseas accounts, with the alleged blessings of the then President Mwai Kibaki.

The Plaintiff further in his evidence testified that all these allegations in the publications, were false and malicious and that even the relevant parliamentary Committee, investigated the claims and found no truth in them. He complained that the publications portrayed him as a thief who stole from the poor, a corrupt, incompetent and filthy public servant who had no respect for the law, who was dishonest and oppressive and who was underserving of the public office he occupied. That he had unjustly and illegally enriched himself out of the stolen public funds and/or kickbacks and was hell-bent to wrongly serve political interest of the day.

The Plaintiff denied all these allegations imputations and innuendos. He testified that he had served the public in various capacities for a period of about 40 years. He has been a teacher, taught in primary schools, secondary schools, training colleges and in the Universities. He became a Permanent Secretary in 1989 and successfully and lawfully served seven ministries of the government over a period of 20 years. He concluded by stating that the false and malicious publications were intended to and indeed marred his character, reputation, exemplary public service record and personal private and public life career reputation. He averred that he deserved the damages he had claimed, especially since the Defendants really denied nothing.

He sought the following damages: -

- a. General Damages - Ksh.10,000,000/-
- b. Aggravated and exemplary Damages Ksh.5,000,000/-
- c. A permanent injunction
- d. Publication of apology and retraction.
- e. Costs and interests.

I have carefully perused the pleadings and the evidence adduced by the Plaintiff in formal proof. The Defendants neither filed any defence nor defended the proceedings. As a result judgment in default was entered. The evidence adduced by the Plaintiff was not controverted in any cross-examination nor denied. The court accordingly accepts the evidence as truthful. That means that the effect of the published words is as claimed by the Plaintiff. I will accordingly now turn to the quantum of damages in this case.

Section 16A of the Defamation Act Cap 36 of the Laws of Kenya provides thus: -

“In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just:

Provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than Four Hundred Thousand Shillings.”

The Court of appeal in the Case of **Johnson Evans Gicheru Vs. Andrew Mortona & Another [2005] eKLR** stated in a action of libel that the trial court in assessing damages, is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time the verdict is given. The Judges quoted with approval the checklist of compensable factors as listed in the case of **Joes Vs Pollard [1997] eMLR 233-234**. The list looks as follows: -

- 1. The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition.**
- 2. The subjective effect on the plaintiff’s feelings not only from the prominence itself but from the defendant’s conducts thereafter both up to and including the trial itself.**
- 3. Matters tending to mitigate damages, such as the publication of an apology.**
- 4. Matters tending to reduce damages.**
- 5. Vindication of the plaintiff’s reputation past and future.**

I have carefully applied the above principles to the facts of this case. The Defendants in this case published the defamatory article and later repeated it even after a demand notice had been served to them after publishing the first publication. They refused or ignored the request to apologize and retract. They did not even attempt to justify the allegations and indeed appeared to regard the notice for apology and retraction with in contempt. The result was that their published words remained published without even a little mitigation.

The published words in their contest and open meaning in the circumstances of this case were in the view of this court, false and malicious. They were intended to have and had the meaning assigned to them by the Plaintiff. They portrayed the Plaintiff as a thief who dishonestly and corruptly and unlawfully handled and applied public funds to his personal use here and outside this country in secret external accounts. The words also portrayed the Plaintiff as unfit and unworthy of public office. The words seriously marred the Plaintiff’s good name and reputation, earned painstakingly over 40 years of good, honest and effective service.

It is the view of the court that the Plaintiff in these circumstances deserves compensation in general damages. Considering the fact that the Defendants refused and/or failed to tender apology and offer retraction, the court views their conduct as one that holds no respect for other people’s rights and would with impunity not hesitate to repeat their unfair and unjust conduct.

In Nairobi HCCC No. 102 of 2000 the court by Khaminwa, J awarded **Mr. Daniel Musinga of Musinga & Co. Advocates**, Kshs.10,000,000/- general damages in a similar libel. In Nairobi HCCC No. 956 of

2003 in **Obure Vs Tom Alwako & others**, Lenaola, J awarded Ksh.17,000,000/- against the Weekly Citizen which is the same or sister Newspaper. In **Joshua Kulei Vs Kalamka Ltd** in Nairobi HCCC No. 375 of 1997 O’Kubaso, J awarded, Ksh.10,000,000/- against the People Daily Newspaper. In **Biwott Vs Mbugus**, the court awarded Ksh.10,000,000/- in general damages and Ksh.5,000,000/- in exemplary damages.

Having regard to the cases above and taking into account the facts of this case as I do the best I can to award such damages as fairly as possible, I award the following in this case.

1. ***General Damages Ksh.8,000,000/-***
2. ***Exemplary and aggravated damages Ksh.4,000,000/-***
3. ***Interest on the awarded damages from the date of this judgment***
4. ***Costs are to the Plaintiff.***

Order accordingly.

Dated and delivered at Nairobi this 18th day of September, 2014.

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D A ONYANCHA

JUDGE