



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 396 OF 2011

PETER MAINA NDIRANGU..... PLAINTIFF

V E R S U S

NATION MEDIA GROUP LIMITED..... DEFENDANT

J U D G M E N T

1. The Plaintiff's suit is in defamation. General damages are sought. The words pleaded by the Plaintiff to be defamatory of him are to be found in paragraph 4 of the **plaint** dated **14th September 2011**. Those words were published in the '*Daily Nation Newspaper*' issue of 16th September, 2010 published by the Defendant.

2. At paragraph 5 of the **plaint**, the Plaintiff has pleaded that the words complained of, in their natural and ordinary meaning, and also by innuendo and inference, were defamatory of him. The words complained of are not a quotation of the actual words alleged to be defamatory of the Plaintiff, but more of this later. The Plaintiff has also pleaded that as a result of the said words he has been gravely injured in his credit and reputation and has been brought to odium and contempt in the eyes of the public, and has also been injured in his business as an auctioneer.

3. The Defendant entered appearance and filed a **statement of defence dated 1st November, 2011**. Publication of the words complained of was admitted. However, the Defendant denied that the words complained of could be understood to bear any meaning defamatory to the Plaintiff or that the said publication was motivated by malice.

4. The Defendant further stated that the words complained of were not meant to be understood, by innuendo or otherwise, as stated in paragraph 5 of the **plaint**. Further, that pursuant to the outcome of the court proceedings concerned, private prosecution was allowed and subsequently it published a report on the legal position of the matter.

5. The Defendant further pleaded that the words complained of were published as a public duty and without malice, and in the honest belief that the facts contained in the stories were true; and that the publication was made on a privileged occasion for the benefit of the public. It sought to rely on the provisions of the **Defamation Act, Cap 36**. It thereafter sought dismissal of the Plaintiff's claim.

6. The Plaintiff testified and called no other witness. The Defendant did not call or lead any evidence.

7. The Plaintiff is a licenced auctioneer. He adopted his **witness statement filed on 15th September 2011** as his testimony-in-chief. He also produced in evidence as **Exhibit P1** his bundle of documents filed on 15th September 2011. His testimony is that he has been an auctioneer since 1998 and

that the false information published shocked him so much that he fell ill as he expected to go to prison on a charge of capital robbery; that he contemplated suicide rather than go to prison due to the said publication; that he lost auctioneering contracts as his clients thought he was a bad person; that he has never recovered the clients that he lost; and that his opinion was never sought by the Defendant before publishing the article.

8. Upon cross-examination, he stated that he filed suit because he got embarrassed and tortured by the article. He however confirmed that there was indeed a complaint which led to filing of a private criminal prosecution against him and others. He argued that the article complained of was a misreporting of that prosecution, even though he had been summoned to appear in court, as there was no summons for him to appear in court.

9. The Plaintiff further conceded that the article, which was titled *Top Officer summoned in Muite Case*, did not directly refer to him. In the body of the article he was also not referred to by name, but he opined that as he was the only auctioneer in the case the article was referring to him. The article spoke of 'the auctioneer' as having been summoned to appear in court; he therefore took it that he would be charged.

10. Upon re-examination, he averred that he was served with the complaint in the private prosecution as he was the only auctioneer in the matter.

11. That was the totality of the evidence laid before the court. Written submissions were filed on behalf of both parties. Those of the Plaintiff were filed on **25th March 2014** while the Defendant's submissions were filed on **12th March 2014**. I have considered those submissions.

12. To sustain an action in libel, it is important that the words used are set out verbatim in the particulars of the claim. In *Gatley on Libel and Slander 11th Edition Sweet & Maxwell 2008* the learned writers have observed at page 967, paragraph 28.11 thus -

“In a libel claim the words used are material facts and they must therefore be set out verbatim in the particulars of the claim, preferably in the form of a quotation. It is not enough to describe their substance, purport or effect.”

And in *Fitzsimons –vs- Duncan Kemp & Co Ltd [1908]2lr. R. 483*

“In libel you must declare upon the words; it is not sufficient to state their substance.”

In *Collins –vs- Jones [1955] 1QB 564* Denning, L.J. stated -

“A plaintiff is not entitled to bring a libel action on a letter which he has never seen and of whose contents he is unaware. He must in his pleading set out the words with reasonable certainty. The court will require him to give particulars to ensure that he has a proper case to put before the court and is not merely a fishing one”.

13. Thus the particulars of the claim must be pleaded with particularity to enable the defendant not only to understand what it is the claimant alleges or what the words mean, but to enable the defendant to know the exact claim he has to face. In deciding whether a statement bears a defamatory meaning, whether in its plain meaning or by innuendo, the court has to construe the very words used or complained of. This is the basis upon which it is a requirement that the exact words complained of not only be pleaded, but be set out verbatim in the statement of claim.

14. A reading of the words complained of in Exhibit P1 shows that the Plaintiff did not plead verbatim the words complained of. He conceded in cross-examination that a complaint was raised against him and others and application for private prosecution made. The reporting as published was thus substantially true.

15. The essence of a defamatory statement is, if false, its tendency to injure the reputation of another person, to lower him in the estimation of right-thinking members of society generally, or to expose him to public hatred, contempt or ridicule, or if it causes him to be shunned or avoided. In this case the words complained of, in so far as they concerned the Plaintiff were true and could not be defamatory of him.

16. The Plaintiff has not proved his case on a balance of probabilities. His suit is dismissed with costs. It is so ordered.

17. In the event that I am reversed on appeal, I will assess damages I would have awarded the Plaintiff had he succeeded.

18. Though libel is actionable *per se* (without proof of damage), for purposes of assessment damages to be awarded to a plaintiff it is necessary to look at all relevant factors, such as the circulation of the medium in which it is published. It is also prudent for a plaintiff to adduce evidence showing how his reputation and business had actually suffered as this may affect the quantum. The defendant's conduct both up to and including the trial is also important.

19. It is clear that the words complained of did not have any serious effect on the Plaintiff's reputation. Although they could have caused distress to the Plaintiff, it was not anything extreme as to attract a heavy award. I would have awarded the Plaintiff general compensatory damages of **KShs 100,000/00 (One Hundred Thousand)** only.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF OCTOBER 2014.

H. P. G. WAWERU

JUDGE.