



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 105 of 2011

ROBERT THORONJO KARANI PLAINTIFF

VERSUS

JEREMY MIRITI BUNDIDEFENDANT

J U D G M E N T

1. In this suit the Plaintiff claims against the Defendant general and aggravated damages for libel, costs of the suit and interest. His case is that in an e-mail addressed to his superior officer and copied to others within the organization the Plaintiff, the Defendant and the others worked for (**The Kenya Anti-Corruption Commission**) the Defendant defamed him in respect to the use of a motor vehicle belonging to the employer.
2. The e-mail is pleaded in paragraph 7 of the plaint dated 23rd March 2011 as follows:-

“Michael,

It is noted with concern that one of the officers in your division Mr. Robert Karani picked a commission motor vehicle KAS 618Q Toyota Prado on Sunday 1st August 2010 from the reception with no authority from the officer in charge of transport. This is against the staff rules and regulations.

We are informed that the vehicle broke down in Nyeri with a defective clutch system. This vehicle had just arrived from safari with a commission driver and there was no report/record of clutch problems. This break down can only be attributed to improper use/inexperienced handling of the vehicle. We have on several occasions observed that several vehicle defects have occurred when on self drive by the officer amongst others.

When from safari over weekends/evenings, the drivers normally keeps vehicles keys and work tickets at the security reception desk and we do not expect any commission Officer to pick a vehicle from the security officers without authority. This action of the officer on a Sunday is questionable. There are vehicles attached to the division and the same could have been used as per the arrangements within the division.

Please inform the security officers not to allow any officer to pick Commission vehicles without authority from the officer in charge of transport. By a copy of this e-mail, the SO-Administration is hereby requested to liaise, obtain and compile a report of how/with whose authority this vehicle left integrity centre and how the breakdown occurred.

J. BUNDI”

3. It is the Plaintiff's case that the words contained in the above e-mail, in their common and ordinary use, meant, and were understood to mean:-

(i) That the Plaintiff was guilty of abuse of office contrary to section 46(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

(ii) That the Plaintiff had "blatantly violated existing staff rules and regulations as contained in the Governance Manual for the Kenya Anti-Corruption Commission."

(iii) That the Plaintiff had violated the Public Officers' Ethics Act.

4. Interlocutory judgment was entered against the Defendant on 19th August 2011 as the Defendant failed to enter appearance or file defence after being duly served with summons to enter appearance and copy of the plaint. The case was then fixed for "formal proof".

5. The Plaintiff testified and did not call any other witness. He adopted as part of his testimony his detailed **witness statement dated 4th March 2011** filed together with the plaint. He produced in evidence his list and bundle of documents filed together with the plaint as **Exhibit P1**.

6. As already pointed out, there is already judgment on liability. But it is interlocutory judgment which may or may not be confirmed upon "formal proof" of the case. I have read the words complained of. As they stand, I am satisfied that the words are defamatory of the Plaintiff in the manner pleaded at paragraph 7 of the plaint. The words were published to a number of other persons working with the Plaintiff. I therefore affirm the judgment on liability already entered for the Plaintiff.

7. I will now consider damages and the quantum thereof. In doing so I have considered the testimony of the Plaintiff (including the documents he produced in evidence and the written submissions of his learned counsel (including the cases cited). The defamation, as pleaded and proved, is libel. Libel is actionable *per se*. In other words, the Plaintiff need not prove actual damage to his character and reputation to be entitled to some damages. But obviously the quantum of such damages will depend upon the seriousness of the libel and any actual, proved damage that the same may have caused the Plaintiff. The Plaintiff produced no evidence of any tangible damage he may have suffered, for instance to his career or other prospects.

8. The Plaintiff is entitled to compensatory damages for the harm to his character and reputation on account of the libel, and also to assuage him for his hurt feelings. I have taken into account the fact that the defamatory e-mail was circulated only to a very small number of persons within the organization where they all worked. The defamatory words were not published to the world at large.

9. I have also taken into account the provisions of **section 16A (i) of the Defamation Act, Cap 36**. I am not satisfied that misuse of a motor vehicle by an officer who otherwise has authority to drive and use the motor vehicles of his employer in the course of his duties would amount to an abuse of office offence under section 46 (1) of the **Anti-Corruption and Economic Crimes Act** punishable with imprisonment for a period not exceeding 10 years and a fine not exceeding KShs 1 million. It would probably only be an administrative offence attracting disciplinary action.

10. Having considered the cases cited in support of the quantum suggested by the Plaintiff's learned counsel, I will award him compensatory damages of KShs 300,000/00.

11. The Plaintiff has also claimed aggravated damages, principally upon the basis that the Defendant was actuated by malice to write and publish the defamatory e-mail. There appear to have been procedural lapses, deliberate or otherwise, on the part of the Defendant in the manner in which he raised his complaints against the Plaintiff. Even after these lapses had been pointed out, the Defendant did not take any steps to follow the correct procedures. His action of copying the defamatory e-mail to persons he need not have copied it to indicated a desire to prejudice the Plaintiff's privilege of dividing and using his employer's motor vehicles in the course of his duties.

12. I therefor find that the libel was actuated by malice, and I will award the Plaintiff aggravated damages of KShs 150,000/00.

13. I will in the end enter judgment for the Plaintiff against the Defendant in the total sum of KShs. 450,000/00, plus costs and interests at court rates. Interest upon the damages will of course run from the date of judgment. Those will be the Orders of the Court.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS DAY 18TH OF JANUARY
2013**

H. P. G. WAWERU

JUDGE