



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL NO. 119 OF 2007

MARY NJIRU MBORA.....1ST APPELLANT
CELIA NTHIGA NGONDI.....2ND APPELLANT

VERSUS

CHELESTINO IRERI MUREKIE.....RESPONDENT

J U D G M E N T

This Appeal arises from **Siakago Civil Case No. 4 of 2007**. The plaintiff therein is the Respondent while the defendants are the Appellants herein.

The plaintiffs claim was for damages for defamation of character. In his plaint however, he has not particularized the defamatory words or statements complained of.

In paragraph 3 of his plaint, he has stated that he got a message from his wife ***“that she had been informed that the plaintiff had carnal knowledge of one Wanyaga Njeru – a minor.”***

- This Virginia Ndegi is not even one of the defendants.

Actually paragraphs 4, 5 and 6 are all based on hearsay as to what other persons are said to have been told by the defendants or by other persons who are not parties to the suit.

Paragraph 7 states that

“that the said rumours have shunned me (sic) as a respected member of the community and as a personal (sic) employee in the civil service as a Nutritional Officer III in Mbeere.”

The evidence of his witnesses was a repeat of the said rumours. In their joint defence, the defendants/appellants denied having defamed the plaintiff/Respondent.

After hearing the parties, the learned trial magistrate in a very sketchy judgment found the case proved to the required standard and awarded damages to the tune of 60,000ksh. No legal basis whatsoever was given for his judgment and award. The appellants being dissatisfied with the judgment and award filed this appeal through Fatuma Wanjiku & Co. Advocates. She has proffered 6 grounds of appeal which I will nonetheless not repeat here for purposes of this judgment. The respondent was represented by Njeru

Ithiga & Co. Advocates for the purposes of this Appeal.

Both counsel filed written submissions. I have considered the evidence adduced before the trial court along with the said submissions. I have also been duly informed by the cited authorities.

To start with, I must say that as rightly submitted by counsel for the appellants, this is a suit that ought to have been struck out for disclosing no cause of action. This could have happened had the defendants been represented in the subordinate court and if the application for striking out had been made. I say so because the plaint did not actually meet the minimum threshold of pleadings required in defamation cases. In a claim based on defamation, the plaintiff must particularize the particulars of defamation. The actual words must be repeated as nearly as possible in the same words. The words uttered if they were uttered in a language other than the language of the court, must be translated. In this case, the plaintiff did not state the words or statements allegedly made by the defendants which he claims were defamatory. Indeed, the source of the allegations in question is said to be one of the defendant's daughters who is not even a party to this suit. As rightly submitted by counsel for the appellants, the plaint does not on its face disclose any cause of action. In a defamation case, the words used must first be established before a finding as to whether the same were defamatory or not can be made. It is only after that has been done that the court can then proceed to conclude if as a result to the said words, then plaintiff has been shunned or avoided by the public. That is to say whether the said words have lowered his reputation in the eyes of right thinking members of public. Rumours which are unverified and which have not been originated by the parties sued can certainly not form a cause of action.

No defamation was proved by the plaintiff/Respondent before the subordinate court. There was no basis for the compensatory award being given in his favour. This Appeal must therefore succeed. I allow the same and set aside the judgment of the trial magistrate and all subsequent orders emanating therefrom. The costs of the suit before the trial court and of this appeal shall be borne by the plaintiff/respondent. Orders accordingly.

W. KARANJA
JUDGE

Signed by the above but delivered and dated by the undersigned at Embu this 29th day of March, 2011.

M. WARSAME
JUDGE